

competence to examine allegations is not subject to the exhaustion of national procedures.” The Committee requests the Government to take these rules into account in the future.

Case No. 1973

Interim report

***Complaint against the Government of Colombia
presented by
the Association of Managers and Technical Staff of
the Colombian Petroleum Industry (ADECO)***

*Allegations: Favourable treatment of a particular trade union organization,
violation of the right to collective bargaining, discrimination
against members of an organization, interference
by an employer and anti-union practices*

114. The complaint is set out in a communication dated July 1998 presented by the Association of Managers and Technical Staff of the Colombian Petroleum Industry (ADECO). The Government replied in a communication dated 15 January 1999.

115. Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. THE COMPLAINANT’S ALLEGATIONS

116. In its communication of July 1998, the Association of Managers and Technical Staff of the Colombian Petroleum Industry (ADECO), which operates in the Colombian Petrol Company (ECOPETROL), a state-run commercial and industrial enterprise employing 10,877 workers (including 4,300 technical staff), explains that it is an industrial trade union and that ADECO workers are covered by the Substantive Labour Code, while its managerial staff, technical staff and personnel employed in positions of confidence are, in accordance with the provisions applied to ADECO, covered by performance-related pay provisions distinct from the system agreed by the company through the relevant collective agreements, it being expressly stipulated in the relevant special pay scheme that in any event, pay and benefits for the staff in question shall not be inferior to those currently applied (Executive Decree No. 1209 of 1994). This special pay scheme is governed by the ECOPETROL Agreement No. 01 of 1977 which was updated every two years (until July 1997) whenever the collective agreement applicable to the other workers (which the Workers’ Trade Union USO had signed) was reviewed.

117. ADECO explains that it registered as a trade union with the Ministry of Labour on 20 August 1996 and, in November 1996, asked the authorities to carry out a trade union census for the purposes of collective bargaining.

118. ADECO adds that it signed an agreement with USO on 22 October 1996 stipulating that a list of claims would be drafted jointly and that an ADECO delegate would be allowed to participate as a negotiator during talks on the next collective agreement. This agreement was not respected by USO following the adoption of a decision by its assembly; the need for a trade union census was ignored (ADECO and USO were both minority unions, neither of them representing 50 per cent of the workforce), and precedence was given to USO under the collective agreement. ADECO states that USO signed an accord

with the company on 19 November 1996 and, for reasons of political expediency, granted ADECO only consultative status at the negotiating table (once talks had begun, it was excluded from the negotiations). After 17 February 1997, ADECO again asked the authorities to carry out a trade union census at the company. ECOPETROL refused to hold separate talks with ADECO; ADECO, therefore, again asked the Ministry of Labour for a census and for the establishment of an arbitration panel to rule on ADECO's demands as a minority union (and specifically on its right to bargain collectively as a minority union coexisting with USO, which while larger is still a minority union) for joint talks or, alternatively, arbitration.

119. ADECO states that USO and ECOPETROL signed a collective agreement on 27 May 1997 which is also illegally applied to members of ADECO and impairs their acquired rights in relation to wages and benefits which had been incorporated in individual work contracts of ADECO members since Agreement No. 01 of 1977. Its purpose is to destroy ADECO. On 21 October 1996, ADECO submitted a joint list of USO-ADECO claims to the enterprise which was approved initially by the joint assembly of all the company's unionized workers. ADECO also states that, before the collective agreement was signed, the registration of USO as a trade union had been cancelled by Administrative Decision No. 0040430 of 20 December 1996 following the merger of that union with another organization (ASOPETROL), and that on 16 May 1997, ADECO unsuccessfully proposed to the company an accord separate from the collective agreement ("accord ECOPETROL-ADECO") to safeguard the rights of ADECO members. ADECO emphasizes that it did not authorize USO to sign agreements on behalf of ADECO members.

120. According to ADECO, the authorities have so far not given a favourable decision on the matter of the trade union census; two appeals were lodged up to September 1997, and there has been no decision on the later appeal owing to the negligence and procrastination of the authorities. The census would be used to determine the coverage of the new collective agreement. However, the company maintains that USO took over the representative function of ADECO and therefore (unjustifiably) deducts ordinary and extraordinary subscriptions for USO from the wages of ADECO members. ADECO points out that legally, the terms of the collective agreement cannot be imposed on it. At the same time, according to ADECO, the company, through the Vice-President of Transport, shortly after the collective agreement was signed, put pressure on ADECO members to leave their organization. Resignation letters for that purpose were drawn up by company representatives, and it was made clear that those who refused to resign would lose their half-yearly bonus (which in fact subsequently occurred). This resulted in 110 resignations towards the end of May 1997. Furthermore, in implementation of the illegal collective agreement, identical rules were applied to members of ADECO as to those of USO, although the former received lower wage increases, a single scale of expenses and inferior educational benefits for children of union members, and were denied the half-yearly bonus which should have been paid on 30 May and 30 November of each year, etc. The trade union rights of ADECO were thus denied, including various union privileges, union leave and participation in joint committees. This was the reason for the resignation of 90 per cent of ADECO members (conveyed by company messengers), bringing the number of members from 300 down to 35.

121. Lastly, ADECO requests that all violations of the legislation be remedied and that the trade union census be carried out in the company, given that it is not proven that USO represents more than 50 per cent of the workers, and indicates that the labour authorities did not transmit the complaints made by ADECO of violation of freedom of association in December 1996 and in January and May 1997 and did not forward them to the Attorney-General's office.

B. THE GOVERNMENT'S REPLY

122. In its communication of 15 January 1999, the Government refers to the claims of the complainant which can be summarized under the following points: (1) the question of the validity of Agreement No. 01 of 1977 of the ECOPETROL administration and the application of its provisions to members of ADECO and to non-unionized staff employed in managerial or technical posts or in positions of trust; (2) non-discrimination (with regard to equality, freedom of association and collective bargaining) by the company against unionized workers when collective agreements are concluded or when Agreement No. 01 of 1977 is updated; (3) cessation of acts by ECOPETROL that infringe the freedom of association of ADECO, and the granting of concessions to that organization including formal recognition, without any preference being shown to other unions; (4) payment of wage increases and the half-yearly bonus, as well as of other benefits provided for in Agreement No. 01 of 1977; (5) the decision on the administrative complaints made by ADECO and concerning the trade union census requested by that union to determine the coverage of the collective agreement of 27 May 1997.

123. As regards points (1) to (4), the Government states that at the time of the communication sent to the Government by the ILO's Committee on Freedom of Association, no complaint of this kind had been presented by ADECO to the Ministry of Labour and Social Security as the body responsible for monitoring compliance with laws and conventions relating to labour and social security. Given that the source of the complaint was the information provided by the ILO, which has provided a copy of the decision of the interested party, the competent official was instructed to initiate an investigation immediately, rectifying the complainant's omission, with a view to verifying the alleged facts and imposing appropriate sanctions where necessary. Once there is a final decision to conclude the case brought by ADECO before the Committee on Freedom of Association, the Government will issue a final report on the matter.

124. As regards point (5), the Government states that it should be borne in mind that the administrative official in question, in the decision of 21 October 1998, accepted the withdrawal by ADECO on 8 October 1998 of its request, and for that reason proceeded to file the dossier relating to the application for a trade union census, a copy of which is supplied. For this reason, the Government emphatically rejects this particular point; the complainant lodged a claim and withdrew it, without informing the Committee on Freedom of Association at the time. This clearly shows that the complainant maliciously and irresponsibly sought to set in motion an international mechanism while failing to inform the national authorities of the case.

C. THE COMMITTEE'S CONCLUSIONS

125. *In the present complaint, the complainant (ADECO) alleges that in the process of collective bargaining, the trade union USO and the enterprise ECOPETROL excluded ADECO and entered into a collective agreement (the legality of which is questioned by the complainant) which is also being applied to members of ADECO, despite the fact that the other union (USO) did not represent more than 50 per cent of the workforce at the enterprise (a legal prerequisite for negotiating on behalf of all the workers). According to the complainant, this situation has caused ADECO members to lose the acquired rights which they had enjoyed under the terms of an agreement concluded in 1997 with the administration of ECOPETROL (which ADECO claims to be valid), resulted in discrimination against them in terms of the entitlements and benefits enjoyed by the other workers, led to the loss by ADECO of trade union safeguards such as various union privileges, union leave, etc., and forced members of ADECO to pay subscriptions to USO.*

At the same time, the complainant ADECO stresses that the Ministry of Labour has not conducted the trade union census which it requested to determine the representativeness of the two unions operating at the enterprise, and emphasizes that USO did not comply with an accord with ADECO which guaranteed not only that a joint list of claims for negotiation would be put forward but also that an ADECO negotiator would be allowed to participate in the talks. Lastly, ADECO alleges that when the collective agreement was signed, representatives of the company put pressure on workers to leave the union, which resulted in a large number of resignations by members.

126. The Committee notes the Government's statement that instructions have been given to start an investigation immediately into the allegations in question, given that ADECO had not made any complaints to the Ministry of Labour concerning many of the issues raised. The Committee also notes that ADECO on 8 October 1998 withdrew its request to the competent authority for a trade union census at ECOPETROL. The Committee requests the complainant to provide additional information concerning this withdrawal.

127. Under these circumstances, the Committee requests the Government to communicate without delay the outcome of the inquiry into different aspects of this case covering all of the allegations made by the complainant.

THE COMMITTEE'S RECOMMENDATIONS

128. In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:

- (a) The Committee requests the Government to communicate without delay the outcome of the inquiry conducted into the different aspects of this case which should cover all of the allegations made by the complainant.**
- (b) The Committee requests the complainant to provide additional information concerning the withdrawal of the request for a trade union census at ECOPETROL.**

III. Complaint concerning the non-observance by Colombia of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), made by delegates to the 86th (1998) Session of the Conference under article 26 of the Constitution of the ILO

A. Introduction

129. During the 86th Session of the Conference, the Director-General of the ILO received a letter dated 17 June 1998, signed by Mr. W. Brett, Workers' delegate from the United Kingdom and Chairman of the Workers' group, in his own name and in the name of the following Workers' delegates: Mr. C. Agyei (Ghana), Mr. A. Alvis Fernández (Colombia), Mr. K. Ahmed (Pakistan), Mr. L. Basnet (Nepal), Mr. M. Blondel (France), Mr. U. Edström (Sweden), Ms. U. Engelen-Kefer (Germany), Mr. R. Falbr (Czech Republic), Mr. S. Ito (Japan), Mr. Y. Kara (Israel), Mr. I. Mayaki (Niger), Mr. J. Miranda de Oliveira (Brazil), Mr. P. Mpangala (United Republic of Tanzania), Ms. P. O'Donovan (Ireland), Mr. J.C. Parrot (Canada), Mr. W. Peirens (Belgium), Mr. F. Ramírez León

(Venezuela), Mr. Z. Rampak (Malaysia), Mr. I. Sahbani (Tunisia), Mr. A. Sánchez Madariaga (Mexico), Mr. M. Shmakov (Russian Federation), Mr. G. Sibanda (Zimbabwe), Mr. L. Trotman (Barbados), Mr. T. Wojcik (Poland) and Mr. J. Zellhoefer (United States), presenting a complaint under article 26 of the Constitution, to the effect that the Government of Colombia had failed to adopt measures to ensure the satisfactory implementation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The text of this communication and its appendices are appended. The Director-General informed the Governing Body, during its 272nd Session, that he had received the complaint.

130. Article 26 of the ILO Constitution provides as follows:

1. Any of the Members shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other Member is securing the effective observance of any Convention which both have ratified in accordance with the foregoing articles.

2. The Governing Body may, if it thinks fit, before referring such a complaint to a Commission of Inquiry, as hereinafter provided for, communicate with the government in question in the manner described in article 24.

3. If the Governing Body does not think it necessary to communicate the complaint to the government in question, or if, when it has made such communication, no statement in reply has been received within a reasonable time which the Governing Body considers to be satisfactory, the Governing Body may appoint a Commission of Inquiry to consider the complaint and to report thereon.

4. The Governing Body may adopt the same procedure either of its own motion or on receipt of a complaint from a delegate to the Conference.

5. When any matter arising out of articles 25 or 26 is being considered by the Governing Body, the government in question shall, if not already represented thereon, be entitled to send a representative to take part in the proceedings of the Governing Body while the matter is under consideration. Adequate notice of the date on which the matter will be considered shall be given to the government in question.

131. The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), were ratified by Colombia on 16 November 1976 and thus have been in force for that country since 16 November 1977. All the authors of the complaint were Workers' delegates of their respective countries to the 86th Session of the Conference on the date of filing the complaint. They accordingly had the right to file a complaint, under article 26, paragraph 4, of the Constitution, if they were not satisfied that Colombia was securing the effective observance of these Conventions.

132. The authors of the complaint requested that it be referred to a commission of inquiry, as provided for in article 26, paragraph 3, of the Constitution. It is for the Governing Body to decide on this request.

**B. Text of the complaint under article 26
of the Constitution of the ILO**

133. The text of the complaint and of the corresponding appendices is reproduced below.

Mr. M. Hansenne,
Secretary-General,
86th Session of the
International Labour Conference.

Geneva, 17 June 1998

Dear Mr. Hansenne,

I have been authorized by the following Workers' delegates to the 86th Session of the International Labour Conference to submit, on their behalf, a complaint under article 26.4 of the Constitution against the Government of Colombia for non-observance of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), both of which have been ratified by Colombia:

Mr. C. Agyei,	Workers' delegate from Ghana
Mr. A. Alvis Fernández,	Workers' delegate from Colombia
Mr. K. Ahmed,	Workers' delegate from Pakistan
Mr. L. Basnet,	Workers' delegate from Nepal
Mr. M. Blondel,	Workers' delegate from France
Mr. W. Brett,	Workers' delegate from the United Kingdom
Mr. U. Edström,	Workers' delegate from Sweden
Mrs. U. Engelen-Kefer,	Workers' delegate from Germany
Mr. R. Falbr,	Workers' delegate from the Czech Republic
Mr. S. Ito,	Workers' delegate from Japan
Mr. Y. Kara,	Workers' delegate from Israel
Mr. I. Mayaki,	Workers' delegate from Niger
Mr. J. Miranda de Oliveira,	Workers' delegate from Brazil
Mr. P. Mpangala,	Workers' delegate from the United Republic of Tanzania
Ms. P. O'Donovan,	Workers' delegate from Ireland
Mr. J.C. Parrot,	Workers' delegate from Canada
Mr. W. Peirens,	Workers' delegate from Belgium
Mr. F. Ramírez León,	Workers' delegate from Venezuela
Mr. Z. Rampak,	Workers' delegate from Malaysia
Mr. I. Sahbani,	Workers' delegate from Tunisia
Mr. A. Sánchez Madariaga,	Workers' delegate from Mexico
Mr. M. Shmakov,	Workers' delegate from the Russian Federation
Mr. G. Sibanda,	Workers' delegate from Zimbabwe
Mr. L. Trotman,	Workers' delegate from Barbados
Mr. T. Wojcik,	Workers' delegate from Poland
Mr. J. Zellhoefer,	Workers' delegate from the United States.

The substantive part of the complaint is contained in the appended documents and the authors reserve the right to submit additional information in accordance with the established procedures.

Yours sincerely,

W. Brett,
Chairman of the Workers' group,
86th Session of the
International Labour Conference.

Director-General
of the International Labour Office,
Geneva.

Geneva, 12 June 1998

Dear Sir,

The undersigned Workers' delegates to the 86th Session of the International Labour Conference file a complaint under article 26 of the Constitution against the Government of Colombia for its failure to adopt appropriate measures for the satisfactory observance of Conventions No. 87 (on freedom of association and the right to organize) of 1948 and No. 98 (on the right to organize and collective bargaining) of 1949.

Colombia has been a Member of the ILO since 1919 and, as such, has been bound to comply with the Constitution of the Organization since that time. It has also been party to Conventions Nos. 87 and 98 since their ratification in 1976.

The facts underlying the complaint are as follows:

FIRST: In regard to ILO Convention No. 87 on freedom of association and protection of the right to organize

Cases reported to the Committee on Freedom of Association

Since 1988, the Committee on Freedom of Association has been informed of 26 cases of violation of this instrument. Some of these cases also involve violations of Convention No. 98.

The violations of freedom of association reported to the Committee include numerous cases of violence endangering the lives and physical integrity of union members and against their freedom and right not to be transferred.

In 1987, the Committee examined Case No. 1343. In its conclusions, it advised the Government of Colombia that trade union rights can only be exercised in a context of respect for basic human rights, "... in a climate free of violence, pressure, fear and threats of any kind".¹

¹ See 251st Report on the Committee on Freedom of Association in *Official Bulletin*, Vol. LXX, 1987, Series B, No. 2, pp. 86-92, paras. 323-333, and the 246th Report, in *Official Bulletin*, Vol. LXIX, 1986, Series B, No. 3.

Cases Nos. 1434, 1477, 1761 and 1787 likewise related to violence against trade union members.

In 1989, the Committee's 265th Report stated that "... without doubt, it finds itself confronted with one of the most serious cases it has received concerning the respect for the right to life... , and that the dramatic situation of violence facing Colombia impedes the full exercise of trade union activities".

In 1997 alone, violent action had caused the death of 156 trade union members and officials, the forced disappearance of ten, the obligatory forced transfer of 342, the kidnapping of nine and a further nine attempts against the life of trade union members and officials. The figures for the period of 1998 that has elapsed are equally discouraging. On 27 February, Jesús María Valle Jaramillo, President of the Human Rights Committee of Medellín, a well-known defender of trade union and other popular leaders, was murdered in the offices of his legal practice in that city; on 18 April the lawyer Eduardo Umaña Mendoza, who was defending a number of officials of the Workers' Trade Union (USO) who are currently being tried by the so-called faceless justice system, was murdered in his home in Bogota. A few days prior to Umaña's murder, María Arango, formerly an activist of popular causes, was murdered by hired assassins in her home; over the last three months, ten massacres have taken place, for the most part of rural workers.

In its 309th Report, corresponding to its first meeting of 1998, the Committee on Freedom of Association stated that the Colombian case (No. 1787), as it related to freedom of association, was one of the most serious in the world.

The above demonstrates that the Government of Colombia has not in fact taken the necessary and appropriate measures to guarantee the free exercise of freedom of association and has allowed crimes against trade union members and officials to go unpunished, with continued threats, forced transfers, murders, disappearances and other violations which render impossible the free exercise of this right, thereby failing to comply with its duty to provide protection and guarantees.

The observations of the Committee of Experts on the Application of Conventions and Recommendations

For over a decade, the Committee of Experts has been dealing with Convention No. 87 and has made repeated observations and direct requests with a view to encouraging the Government of Colombia to bring its domestic legislation into conformity with this instrument.

In 1987, the Committee of Experts stated that "... it would be grateful if the Government would indicate in its next report the measures it could adopt to bring the legislation into conformity with the Convention in the light of the above comments".

In 1989, the Committee of Experts "concludes that the legislation is contrary to the provisions of the Convention on many points".

In 1990, the Committee noted that "... the assurances given by the Government in its last report concerning the creation of a special committee to examine the whole of the legislation, which is now outdated in the light of its comments, in order to bring the legislation into conformity with ILO Conventions".¹

In 1991 and 1992, workers in general and the Committee of Experts were interested to learn of the promulgation of the new Constitution of the Republic of Colombia, article 53

¹ See report of the Committee of Experts on the Application of Conventions and Recommendations, General Report and observations concerning particular countries. Report III (Part 4A) of the International Labour Conference, 77th Session 1990.

of which provided for the incorporation into domestic legislation of duly ratified labour agreements, and article 93 of which stated that the instruments of international law — which could not be curtailed or suspended in states of emergency — took precedence over domestic law. However, since the Government has failed to take the necessary steps to harmonize Colombian legislation with the Conventions, the expectations engendered by the entry into force of the new Constitution have subsequently evaporated.

Despite the mandate embodied in the Constitution, national legislation has still not been brought into conformity with international law. The Bills drafted by the Government — some with the assistance of ILO technical missions — have in some cases been shelved during the legislative process in the absence of any steps by the Government to employ the instruments provided for by the Constitution to promote them. Other Bills, such as that relating to the definition of essential services in connection with the right to strike, have not been submitted to Congress for its consideration, seven years after the entry into force of the new Constitution.

The report of the Committee of Experts to the 86th Session of the Conference noted developments relating to the draft reform of the Code, prepared by the direct contacts mission in 1996, stating that “... the Committee therefore stresses the need to amend or repeal with the utmost dispatch the above-mentioned provisions of the Substantive Labour Code in order to bring the legislation into compliance with the Convention”.¹

In the light of the above, it may readily be concluded that ILO Convention No. 87 is systematically violated.

SECOND: Regarding Convention No. 98 (on the right to organize and collective bargaining)

Cases before the Committee on Freedom of Association

As stated in the first part, of the 26 cases that have been brought to the attention of the Committee since 1987, a considerable number involve violations of Convention No. 87, for which reason we will make specific reference only to Case No. 1916 and Case No. 1925 which are among those most recently examined. In the former instance, the Committee has urged the Government to reinstate 209 workers who were dismissed for participating in a strike at a municipal-level state enterprise and asked it to take measures to ensure that declarations on the legal status of strikes are made by an independent body and not by the administrative authority. Despite the fact that the Government has been aware of these decisions since early March 1998, it has failed to take the necessary steps to comply on the pretext that municipal autonomy must be respected.

This is not the first time that the Government has failed to comply with decisions of this type, as it will be possible to verify during the Commission of Inquiry.

The Government has likewise failed to take any steps to comply with the decision of the Committee in regard to Case No. 1925. Many trade union organizations in Colombia have been destroyed on the basis of the so-called “non-unionization” statute which provides better conditions to workers who are not covered by collective agreements. The Government has the duty to ensure that legislation is amended in order to prevent this practice. Likewise, it should take administrative steps with a view to imposing sanctions on employers who obstruct the right to collective bargaining.

¹ See report of the Committee of Experts on the Application of Conventions and Recommendations, General Report and observations concerning particular countries, Report III (Part 1A) to the International Labour Conference, 86th Session, 1998, pp. 171-172.

It may readily be inferred from these cases that the Colombian Government does not comply with its duty to protect and guarantee rights relating to freedom of association and collective bargaining.

The observations of the Committee of Experts

As stated in its most recent report, to the 86th Session of the Conference, the Committee of Experts has for many years been concerned by the divergence between domestic legislation and Convention No. 98, and has insisted that the appropriate steps should be taken to bring legislation into compliance. The points most frequently raised in observations and direct requests refer to the right of public servants to bargain collectively, and the right of federations and confederations to bargain collectively and to take strike action, the right to strike in public services which are not essential in the strict sense.

Despite the sustained endeavours of the Committee of Experts to urge the Colombian Government to comply with the Convention and to promote the necessary reforms, the situation today is as it was ten years ago. The Government continues to fail in its duty to adhere to Convention No. 98.

THIRD: The deliberations of the Conference

Briefly, we would like to draw attention to the fact that over the past decade, the Conference's Committee on the Application of Standards has repeatedly invited the Government to discuss difficulties in complying with Conventions Nos. 87 and 98 and has twice devoted a section specifically to the Government of Colombia, most recently in 1990. The involvement of the Conference and of the Committee of Experts have not succeeded in persuading successive governments to heed the requests of the international community in these areas to which this complaint refers.

The ILO's interest in contributing to improving the situation in regard to freedom of association has prompted it to send three direct contacts missions to Colombia over the last ten years, resulting in commitments by the Government which have subsequently not been fully carried out.

Legal basis of the complaint

The undersigned base this complaint on article 26, paragraph 4, of the Constitution and act in the capacity of delegates to the 86th Session of the Conference.

Since the Government of Colombia has ignored the recommendations of the ILO Governing Body's Committee on Freedom of Association and those of the Committee of Experts, we request that the complaint should be examined by a commission of inquiry which would draw up its report as provided in article 26, paragraph 3, of the ILO Constitution. We further request that the matters pending before the Committee on Freedom of Association and before the Committee of Experts should be dealt with by the Commission of Inquiry.

We append a 17-page appendix containing the report submitted by the Colombian workers to the 86th Session of the International Labour Conference, and which should be considered as part of the complaint.

**Report of the union confederations
to the 86th International Labour Conference
(sent as an appendix to the complaint made under
article 26 of the Constitution of the ILO)**

Introduction

The Colombian trade union delegation to the 86th International Labour Conference, composed of the Single Confederation of Workers (CUT), the Confederation of Workers of Colombia (CTC) and the General Confederation of Democratic Workers (CGTD), has agreed to submit for the consideration of the 86th Session of the International Labour Conference, a report on freedom of association in our country, which focuses on demonstrating the lack of political will on the part of the Colombian State and of commitment on the part of successive governments to complying with the obligations assumed by Colombia as a member of the International Labour Organization and as State party to Conventions Nos. 87 and 98. For many years, the Organization's supervisory bodies have issued decisions requiring the Government to take concrete action, in response to which the Government representatives to the Conference have made a commitment to take action which is never honoured.

This report focuses on the matter of the impunity of the perpetrators of violations of the rights of trade union members and officials. Violence against trade union officials and members is certainly the main factor obstructing freedom of association in Colombia, exacerbated by increasing impunity and the absence of the political will to eradicate it.

Nineteen ninety-seven marked the tenth anniversary of a painful and continuous bleeding of the trade union movement which began in 1987 with an escalation of murders, disappearances, torture and ruthless persecution of trade union members and officials. As a result, Colombia won the sad distinction of being the most dangerous country for the exercise of fundamental rights of freedom of association and collective bargaining.

Acts of violence against trade unionism may be attributed to state agents, members of paramilitary forces and action by guerrilla groups. In 1998, far from improving, the situation has deteriorated significantly.

Society as a whole has been permeated by the intolerance demonstrated by the protagonists in the prolonged armed conflict. The exercise of the right to promote the organization of workers or to be a trade union member is considered to be subversive by certain public servants or by members of the paramilitary forces who view trade unionism as an ally of insurgency, while some guerrilla groups pursue as "traitors" former sympathizers who have subsequently espoused alternative political options.

While the confluence of these circumstances make for a complex situation, it is by no means confused. We have no doubt that, if the political will existed to do so, it would be possible to identify the intellectual authors of the crimes which we have for many years denounced before the ILO supervisory bodies and before this forum of the International Labour Conference, which is the supreme authority of the Organization.

Some of us on this stage today have been threatened merely for engaging in our trade union activities. We claim our right to testify, as eye witnesses of the situation that exists in Colombia today in this regard.

In addition, our report focuses on the manner in which Colombia has ignored the requirements of the Committee of Experts on the Application of Conventions and Recommendations to adapt domestic legislation and national practice to the provisions of Conventions Nos. 87 and 98.

The country: Location and characteristics

The State of Colombia is situated at the north-western end of South America, and borders with Venezuela, Brazil, Peru, Ecuador and Panama. The Atlantic Ocean lies to the north and the Pacific Ocean to the west. According to the Constitution adopted in 1991, Colombia is a lawful societal State organized in the form of a unitary republic.¹ Public power is divided among the executive, judicial and legislative branches.

Colombia has a surface area of 1,141,748 km² with a population of approximately 35 million inhabitants. Under 8 per cent of the economically active population (EAP) is unionized.

As we stated last year, the fact that the confederations' report centres on freedom of association does not mean that the Colombian Government is complying fully with the other Conventions to which it is party. We have decided to concentrate on the violations of freedom of association because we believe that if this right is not guaranteed, then other workers' rights cannot be fully defended by their representatives.

In Colombia, over the last decade, violence has been brought to bear on trade union members and officials because of their activities, as the supervisory bodies of the ILO and other international entities are aware. Colombian labour legislation, which was enacted prior to the promulgation of the Constitution of 1991 restricts the exercise of the population's rights, while the legal structure is not ideally suited to settling the problem of the impunity protecting those who have engaged in violence against persons exercising their trade union rights and against the population as a whole.

A different report: The situation of trade union leaders and members continues to deteriorate and the Government remains indifferent

Unlike the previous reports submitted by Colombian trade union confederations to the International Labour Conference, our report today does not contain a detailed list of events since the last Conference. We consider that it serves no purpose endlessly to recount in detail the dramatic events which prevent the full exercise of freedom of association in Colombia when the Colombian State, over and above the Government in power, has demonstrated no will to resolve the divergence between practice and international obligations in this sphere, just as it has failed to show the will to bring domestic legislation into conformity with the provisions of Conventions Nos. 87 and 98, despite the insistence of the ILO and of the international community as a whole.

We do not exaggerate when we state that the representatives of the Colombian Government have, for the last ten years, systematically deceived the international community year after year, making promises that they fail to keep.

This year we wish to draw the attention of the International Labour Conference to the most serious aspects of the complex situation of freedom of association violations in Colombia, namely:

- (a) impunity of the perpetrators of murder, disappearances, torture and other crimes against trade union members and leaders in Colombia;
- (b) absence of the political will to bring legislation into conformity with the provisions of Conventions Nos. 87 and 98.

¹ Constitution: "Article 1. Colombia is a lawful societal State democratic, participative and pluralistic, organized in the form of a unitary republic, decentralized with the autonomy of its territorial units, based on respect of the human dignity, on the work and solidarity of the individuals who belong to it, and the prevalence of the general interest."

For this purpose, we will list the ILO's requirements and actions over the last ten years and compare them to the actions of the Colombian Government.

Colombia: A long history of impunity and contempt of the ILO

Since 1987, over 2,000 trade union members and officials have been murdered in Colombia. In 1997, 156 were murdered; nine were the targets of attempted murder; nine were kidnapped; 342 were subject to obligatory transfer; ten disappeared and torture has been reported.¹

In drafting this report, we have reviewed the cases reported to the Committee on Freedom of Association, in conjunction with the observations of the Committee of Experts since 1987, using official ILO source documents.

1987: The Committee on Freedom of Association requests that criminals be punished

As far back as 1987, in examining Case No. 1343, in the light of the Government's claim that criminal proceedings had been brought "... and that in certain cases the provisional filing of the dossier had been ordered because the guilty parties could not be identified", the Committee's conclusions expressed "... the hope that it will be possible to conclude these proceedings in the near future and that they will make it possible to identify and punish those responsible for the crimes. The Committee wishes to refer to the general conclusions which it formulated regarding the present case on a previous occasion [246th Report, Case No. 1323, para. 408], and in which it stated that "all appropriate measures should be taken to guarantee that trade union rights can be exercised in normal conditions, with respect for basic human rights and in a climate free of violence, pressure, fear and threats of any kind".² In its 248th Report, the Committee likewise expressed the hope that "the investigations undertaken will make it possible to determine who is responsible, punish those who are guilty and establish the whereabouts of those who have disappeared" and, in connection with Case No. 1376, it deeply deplored the death of a trade union member and the disappearance of a further two and asked the Government for information on the inquiries instituted.

For over a decade, appropriate conditions have not existed in Colombia for the exercise of trade union freedoms. Civil and political rights of the Colombian population and of trade union members and leaders in particular, such as the right to life, integrity and personal liberty are violated with impunity. The mere exercise of the legitimate right to establish trade unions and actively to participate in them and of the right to collective bargaining, are sufficient reason for shady hired assassins to make attempts upon the life of those who exercise them or to deprive them of their personal liberty.

1989: The Cahier mission and the Committee on Freedom of Association call for the disbanding of paramilitary groups

In its 259th Report, the Committee's conclusions on Case No. 1434 stated:

However, the Committee notes that the measures adopted by the authorities to eradicate violence have not met with the desired results. On the contrary, the situation as regards the protection

¹ Source: Escuela Nacional Sindical. "Los derechos humanos de los trabajadores en 1997", Cuaderno de Derechos Humanos No. 5, ENS, Medellín, 1998. See table No. 2, p. 27. According to the same source, between 1991 when the new Colombian Constitution was promulgated and 1997, 1,083 workers were murdered, 865 of whom were trade union officials.

² See 251st Report in *Official Bulletin*, Vol. LXX, 1987, Series B, No. 2, pp. 86-92, paras. 323-333. The 246th Report was published in *Official Bulletin*, Vol. LXIX, 1986, Series B, No. 3.

of the right to life has worsened considerably since the last direct contacts mission in 1986, and the number of murdered trade unionists and trade union leaders has increased considerably.

At that time, in line with the Cahier mission report, the Committee requested “vigorous measures to dismantle the paramilitary groups, and a radical strengthening of the financial and human resources of the judiciary”.¹ The Cahier report, which is appended to the examination of the case in question, states that “the main reproach levelled at the Government is its failure to act. The authorities have recently stated in public their commitment to peace and their desire to enforce the law. But this does not seem to lead to action with any convincing results. As regards justice, the trade unions have repeatedly stressed the fact that investigations yield no results and that no legal action is taken against persons guilty of committing crimes. Everyone I met emphasized the impunity with which the murderers operate. This impunity generates more violence”.²

Indeed, violence has since escalated in Colombia and the number of victims who are trade union members or officials has continued to rise.

Colombia: One of the most serious cases in regard to the right to life. The Committee expresses its disappointment at the Government's inaction

Still in 1989, in its 265th Report in which it examined Case No. 1477, the Committee “pointed out that, without doubt, it found itself confronted with one of the most serious cases it had received concerning the respect for the right to life, and that the dramatic situation of violence facing Colombia impeded the full exercise of trade union activities”.

Consequently, the Committee expressed “its disappointment, reiterates the conclusions and recommendations it reached at its November 1988 meeting and is obliged to conclude at its present meeting that the Government has not yet adopted all the necessary and appropriate measures required from it to guarantee the right to life to trade union leaders and unionists, which is a fundamental prerequisite for the exercise of the rights contained in Convention No. 87”.³

Ten years have subsequently elapsed and none of the governments in power during that period has taken appropriate measures to protect the life of trade unionists, trade union leaders and social activists and, far from dismantling and controlling paramilitary groups, as demanded during that period, they have grown stronger and larger, particularly in areas with a substantial military presence, and they have extended their geographical presence to virtually the entire country.

The need for measures to eradicate paramilitary activity, to identify and punish the murderers of trade unionists and to avoid a repetition of violent acts against trade union members and leaders

The Committee on Freedom of Association has taken timely, persistent, repeated and energetic action against impunity in Colombia. The Government has continued its traditional stance of paying lip-service to action but, in practice, it shows no political will to remedy the serious matter of the impunity of the murderers of trade union members and trade union leaders and, instead of effectively combating paramilitary activity, it has

¹ See *Official Bulletin*, Vol. LXXI, 1988, Series B, No. 3, pp. 236 ff., paras. 653-655.

² See report by Professor Philippe Cahier regarding the mission to Colombia on 31 August-7 September 1988, published in *Official Bulletin*, Vol. LXXI, 1988, Series B, No. 3, pp. 255 ff. as appendix of the 259th Report.

³ See 265th Report, in *Official Bulletin*, Vol. LXXII, 1989, Series B, No. 2, p. 150, paras. 491 and 493.

allowed it to increase, to the point where today members of paramilitary groups exercise their criminal activities throughout virtually the entire country.

In its third meeting in 1990, the Committee re-examined the situation of violence and impunity in Colombia, in the context of its study of Cases Nos. 1434 and 1477. In the recommendations contained in its 275th Report it stated that:

... the Committee must express its deepest concern at the large number of trade union leaders and trade unionists who have been murdered or who have disappeared and conclude that, despite the reduction in the number of murders and disappearances as compared to 1987 and 1988, the situation continues to be extremely serious and incompatible with the provisions of the Conventions on freedom of association ratified by Colombia. Given that the measures adopted put an end to the violence affecting the trade union movement have been clearly insufficient, the Committee once again urges the Government to continue to adopt measures for the total eradication of the paramilitary or self-defence groups and to strengthen the staff and means available to the judiciary ...¹.

Moreover, on that occasion, the Committee expressed its concern because, according to the Colombian Government itself, “only with very rare exceptions have the judicial inquiries undertaken since 1986 made it possible to identify or condemn the persons allegedly responsible for the murders and disappearances”.²

In its examination of Cases Nos. 1434 and 1477 during its first meeting of 1993, the Committee regretted the difficult situation affecting the country and “deeply deplores once again the serious nature of the allegations concerning the death and disappearance of trade union officials and trade unionists” and “urges the Government to inform it whether judicial inquiries have been opened with the intention of clarifying the facts and judging and sentencing the guilty parties in order to prevent a recurrence of such situations”.³

In 1994, during its examination of Case No. 1686 against the Government of Colombia, the Committee in its 294th Report stated in paragraph 296 that “as regards the alleged murder of trade union officials and trade unionists, the Committee expresses its deep concern at the serious nature of these events which it deplores and repudiates”. The Committee recalled that “trade union rights can only be exercised in a climate that is free from violence, pressure or threats of any kind against trade unionists; it is for governments to ensure that this principle is respected” [see *Digest of decisions and principles of the Freedom of Association Committee*, 1983, 3rd edition, para. 70].

In 1995, when the Committee re-examined Case No. 1761 and Case No. 1787, as stated in its 297th Report, the Committee urged the Government “to take steps to ensure that judicial inquiries are carried out immediately to clarify all the alleged facts [crimes against trade unionists and trade union officials], determine responsibilities and punish the authors of the assassination of the trade union officials ...” which it went on to list.⁴

The Committee reminded the Colombian Government that “it is the responsibility of governments to guarantee respect” for the principle that “the rights of workers’ and employers’ organizations can be exercised only in a climate that is free from violence, pressure or threats of any kind”.

On that occasion, the Committee noted “that in previous cases judicial investigations were unable to identify the guilty parties in the case of acts of violence similar to those alleged” and that therefore the Committee “expresses the hope that in this case the facts will be clarified and the guilty parties punished” and reminded the Government that “the absence of judgements against the guilty parties creates in practice a situation of impunity

¹ See 275th Report, in *Official Bulletin*, Vol. LXXIII, 1990, Series B, No. 3, p. 67, para. 203(a).

² See 275th Report, in *Official Bulletin*, Vol. LXXIII, 1990, Series B, No. 3, p. 67, para. 203(b).

³ See 286th Report, in *Official Bulletin*, Vol. LXXVI, 1993, Series B, No. 1, para. 359.

⁴ See 297th Report, in *Official Bulletin*, Vol. LXXVIII, 1995, Series B, No. 1, paras. 464 and 483.

which reinforces the climate of violence and insecurity ...” [see 292nd Report, Cases Nos. 1434 and 1477 (Colombia), para. 255].¹

***The Government of Colombia: Between indifference and inaction.
Impunity continues***

In 1997 and 1998, the Committee once more examined the case of violence against trade union members and trade union leaders in Colombia. In 1997, in paragraph 294(b) and (c) of its 306th Report, the Committee stated:

- (b) The Committee wishes to express its serious concern at the allegations which refer to a great extent to the violent death, disappearances and other acts of violence ... although the Committee notes that the Government has taken a series of measures to combat the violence and put an end to the impunity, the mission report reveals that the number of victims of the violence is extremely high and that the judicial proceedings to cast light on the events are characterized by an extremely high level of impunity;
- (c) Noting with extreme concern that the present increase in the number of paramilitary or self-defence groups in many sectors of the country, whose acts of violence primarily affect trade unionists in many regions of the country, the Committee requests the Government to take the necessary measures to dismantle the paramilitary groups which prevent the normal development of trade union activities in the various areas of the country.²

The Colombian Government’s indifference prompted the Committee to draw the attention of the Governing Body of the International Labour Office to the Colombian situation, (in particular, Case No. 1787), as being one of the three most serious cases in regard to freedom of association, together with Nigeria and Sudan.³

The Committee took note of the Government’s communications of 29 May and 24 July 1997 and concluded: “First, before analysing the allegations and observations communicated by the Government, the Committee once again wishes to express its grave concern at the allegations which refer to a large number of murders, disappearances, as well as physical aggression, detentions and death threats against trade union officials, members and their families, as well as raids on trade union headquarters and trade union members’ homes. In this respect, the Committee notes with alarm that for practically the whole of 1997 the complainants have presented allegations of violent acts against trade union leaders and members. The Committee deplores that in spite of the seriousness of the situation the Government’s replies have been limited to a very reduced number of allegations. The Committee requests the Government to take steps to remedy this situation”.⁴

Subsequently, in paragraphs 84, 85 and 86, the Committee refers to the grave situation of impunity and calls for concrete action by the Government to remedy it. The Committee stated:

84. The Committee deplores that all factors that anti-union violence has not decreased and that those who commit these acts of violence against trade union officials or members continue in impunity, as the Government, since the last examination of this case in November 1996, has not provided information on one single case of detention, trial and judgement of those responsible for these acts.

85. Taking into account the nature of the allegations and that it was mentioned in the report of the last direct contacts submission that the Public Defender in his 1996 Report to Congress affirmed

¹ See 297th Report, in *Official Bulletin*, Vol. LXXVIII, 1995, Series B, No. 1, paras. 477 and 478.

² See 306th Report, in *Official Bulletin*, Vol. LXXX, 1997, Series B, No. 1, para. 294.

³ See para. 9 of the 309th Report, adopted by the Governing Body in March 1998.

⁴ See para. 82 of the 309th Report.

that “there are still people in the armed forces and police who commit illegal and arbitrary acts in the course of their military and police activities” and “today thousands of Colombians are still terrorised by paramilitary groups” [see 306th Report, p. 85 of the English version], the Committee, observing that the situation has not improved since that time, points out that it is the responsibility of the Government to guarantee the correct comportment of its security forces, which, in any event at all times, must respect human rights. The Committee requests the Government to ensure respect for this principle.

86. Thus, the Committee emphasises that “the killing, disappearance or serious injury of trade union leaders and trade unionists requires the institution of independent judicial enquiries in order to shed full light, at the earliest date, on the fact and the circumstances in which such actions occurred and in this way, to the extent possible, to determine where responsibilities lie, punish the guilty parties and prevent the repetition of similar events” and “the absence of judgements against the guilty parties creates, in practice, a situation of impunity, which reinforces the climate of violence and insecurity, and which is extremely damaging to the exercise of trade union rights” [see *Digest of decisions and principles of the Freedom of Association Committee*, 4th edition, 1996, paras. 51 and 55].

These paragraphs, which are cited from the most recent examination of Case No. 1787 against the Government of Colombia demonstrate that the Government’s indifference and inaction have played their part in exacerbating the impunity that reigns in Colombia. In Colombia today, the exercise of trade union activities poses a serious threat to life and personal integrity, despite the fact that the Constitution currently in force recognizes and guarantees the rights of freedom of association.

Taking stock of the past year: Facts bear out the Committee’s conclusions

In giving a brief overview of the events of the past year, we must begin with a recent occurrence. On Saturday, 18 April, the lawyer Eduardo Umaña Mendoza was murdered in his home; he was not only a prominent defence counsel for political prisoners, having devoted his professional life to bearing the banner of human rights, but at the time of his death he was also defence counsel for members of the Workers’ Trade Union (USO) who were being tried by the faceless courts. In 1997, he succeeded in proving that some of the cases had been based on false testimony by witnesses who testified several times as though they were different people, which was made possible by the fact that their identity was not revealed. The cowardly manner in which Umaña was murdered denotes the level of criminal involvement and intent which has generated increasing terror in the country.

Two days prior to Umaña’s murder, a former popular activist who had ceased her involvement in organizational activities some years previously, was murdered in her home in Bogotá. On 27 February, the President of the Human Rights Committee of Medellín, Jesús María Valle Jaramillo, was murdered in his office; he was a well-known defence counsel for political prisoners and popular activists in his region.

A further ten massacres have occurred in the past four months, most of them directed against rural workers. On 16 May, 12 individuals were massacred in the urban area of the oil centre of Barrancabermeja and 34 persons disappeared during the same attack by paramilitary forces. That event gave rise to a strike by oil workers, in the broader context of a civic strike which received the general support of the citizens of Barrancabermeja.

Human rights violations against trade union members and leaders during 1997 are briefly outlined in Chapter III of this report.

The divergence between national legislation and Conventions Nos. 87 and 98

The Substantive Labour Code entered into law in 1950. It is clear that a restrictive approach to freedom of association rights prevailed in the minds of the authors of the initial

draft. For instance, standards relating to trade union membership and collective bargaining were not applicable to “public servants” simply because they were public servants, regardless of their level of responsibility in the state administration; trade unions were not permitted to engage in political activity in federations and confederations; they were denied the right to call or declare strikes and strikes were banned in “public services” which were understood in the broadest sense. The authors of the Code drafted legislation in such a way as to accommodate excessive interference by the administrative authorities in the establishment and activities of trade unions.

This restrictive attitude on the part of the first authors became more marked during the years of the military government (1953-57) which employed its powers under a state of emergency to introduce numerous amendments to trade union legislation, including the attribution to the administrative authority of decisions regarding the legality of strikes (Ministry of Labour), which had formerly been exercised by labour judges. Colombia lived for over 40 years under martial law in a state of emergency, and the civilian governments which succeeded the dictatorship adopted the method of introducing reforms to the Code under emergency powers. This entire body of regulations, which had originally been intended to serve an interim purpose, was subsequently adopted without further democratic discussion as permanent legislation.

In 1991, the new Constitution sought to remedy the contradictions between domestic legislation and international labour conventions. Article 53 of the Constitution provided that duly ratified international labour conventions were part of domestic law.¹

It would be only logical to conclude that any legal provisions which were contrary to the Conventions to which Colombia was party were relegated, or more accurately, replaced under the above-mentioned constitutional mandate. But the State did not view the matter in this light. The Ministry of Labour and Social Security continues to take the standards embodied in the Code as its reference, the judges of the Republic continue to treat the provisions which are contrary to the conventions as applicable and employers cling to many of the laws and decrees which are contrary to the body of international standards.

(a) The Committee of Experts on the Application of Conventions and Recommendations

This divergence between the law and practice, and Conventions Nos. 87 and 98 has been known to the Committee of Experts on the Application of Conventions and Recommendations for over ten years, and it has addressed observations and direct requests to the Colombian Government which have not been complied with by any of the three Governments in power between 1987 and 1998.

The requirements of the Committee of Experts in 1987

We will continue the approach adopted in the first part and review the main observations of the ILO’s Committee of Experts since 1987, in order to demonstrate how the Colombian authorities, which should have been responsible for acting on these observations, in fact ignored them.

In 1987, the Committee of Experts made observations which primarily related to those aspects of national legislation which implied interference in the internal administration of trade unions and those which hampered the right of trade unions to promote and defend the interests of workers, on the basis that such provisions were contrary to Convention No. 87.

¹ Constitution, article 53, paragraph 4: “International labour agreements duly ratified are part of domestic legislation.”

In regard to interference in the internal administration of trade unions, the observation of 1987 stated: "The Committee has referred to the following points:" and went on to mention that the provisions of the Substantive Labour Code and associated standards which, among other things, allowed the Ministry of Labour to approve or reject amendments to the constitutions of unions, those under which public servants may exercise control over the internal management of trade unions, the strict regulation of trade union meetings, the presence of authorities at general assemblies convened to vote the calling of a strike, the obligation to be Colombian for election to trade union office, the requirement that the Ministry of Labour must approve the election of trade union officers, the suspension, with loss of trade union rights, of leaders who have been responsible for the dissolution of a union, etc. In conclusion on this point, having noted the statement by the Government relating to the scope of articles 485 and 486 of the Substantive Labour Code, "the Committee considers that section 486 confers on public officials excessively wide powers of intervention in trade union affairs, contrary to Article 3, paragraph 2, of the Convention, which provides that the public authority shall refrain from any interference which would restrict the rights recognised in the Convention", ending with the statement that "the Committee repeats its comments on the other provisions, to which the Government does not refer".

In regard to the restrictions on trade unions in promoting and defending the interests of workers, the Committee of Experts stated: "The Committee would also refer again to the following provisions on which it has already commented but which are not mentioned in the report of the Government" and went on to list, among others, the prohibition on trade unions from holding meetings on political matters, the prohibition of federations and confederations from calling a strike, the prohibition of strikes in non-essential services, the power of the President to order the termination of a strike affecting the interests of the national economy and to submit disputes to arbitration, the automatic dismissal of trade union leaders who have intervened or participated in an illegal strike.

It closed its observation by stating that: "the Committee would be grateful if the Government would indicate in its next report the measures it could adopt to bring the legislation into conformity with the Convention in the light of the above comments".¹

It is clearly apparent from the substance of the observation that the Committee of Experts had been studying these matters prior to 1987.

Observations by the Committee of Experts between 1989 to 1991

In the light of the promulgation of the new Constitution in 1991, we will jointly review the statements of the Committee of Experts between 1989 and 1991 inclusive, given that the Committee issued no observations on Colombia in regard to the Conventions on freedom of association (Nos. 87 and 98) in 1988.

In 1989, the Committee of Experts not only took note of the Government's statement, but also of the comments by the CUT, the Government's response to the comments, and also the 259th Report of the Committee on Freedom of Association.

On that occasion, the Committee of Experts supported the Committee on Freedom of Association's report. In regard to the murders and atmosphere of violence, "it refers to the conclusions of the Committee on Freedom of Association" and "in particular, the Committee of Experts, as the Committee on Freedom of Association has already done,

¹ See the report of the Committee of Experts on the Application of Conventions and Recommendations, General Report and observations concerning particular countries. Report III (Part 4A) to the International Labour Conference, 73rd Session, 1987. All the quotations in this chapter correspond to pp. 160-162 of this document.

expresses its deep concern at the alarmingly violent situation confronting Colombia, which in general makes it impossible for the normal living conditions of the population to be maintained and prevents the full exercise of trade union activities".¹

The second part of the Committee's comments appears under the title "Provisions of the legislation criticized by the Committee in previous comments",² with the observation divided into the two groups of standards identified in the observation of 1987, and covering the same points originally noted.

In 1989, the Committee of Experts "concludes that the legislation is contrary to the provisions of the Convention on many points" and, "requests the Government to consider the in-depth reform of the trade union legislation that is in force in order to bring it into conformity with the requirements of the Convention and to report on any measures that it adopts in this respect".³

In the same year, the Committee of Experts examined Convention No. 98 and asked the Government: "to take measures to amend the legislation (sections 414 and 416 of the Labour Code) in order to grant public servants who are not engaged in the administration of the State the guarantees set out in the Convention, which include the negotiation of collective agreements and adequate protection against acts of anti-union discrimination".⁴

In 1990, the Committee of Experts examined Convention No. 87 *in extenso* and, using the formula "... the Committee recalls the divergences existing between the national legislation and the Convention:", and goes on to repeat all the points mentioned above, including reference to the violation of the Convention inherent in the requirement that 75 per cent of members of a trade union should be Colombian.

On that occasion, the Committee of Experts, "notes that the assurances given by the Government in its last report concerning the creation of a special committee to examine the whole of the labour legislation, which is now outdated in the light of its comments, in order to bring the legislation into conformity with ILO Conventions" and concludes by stating that the Committee "trusts that the revision of the legislation that has been announced will make it possible to achieve firm results as regards all the points that have been raised".⁵

As early as 1991,⁶ the Committee of Experts was pleased to know that Act No. 50 of 1990 had "made a number of improvements to the previous provisions as regards freedom of association and collective bargaining", which it went on to list. "Nevertheless, the Committee regrets that Act No. 50 has omitted to take into account certain comments that the Committee has been making for many years on the provisions of the legislation that are incompatible with the Convention. These comments concern the following points:" and the report goes on to list all the observations made in previous years, with the addition of a major discrepancy with the Convention which Colombia had used to sanction social protest, namely "the prohibition of strikes when they are called for the purpose of requiring the public authorities to take action in relation to matters which fall within their exclusive preserve".

¹ See report of the Committee of Experts on the Application of Conventions and Recommendations, General Report and observations concerning particular countries. Report III (Part 4A) to the International Labour Conference, 76th Session, 1989, pp. 142-143.

² *op. cit.*, p. 144.

³ *op. cit.*, pp. 145-146.

⁴ *op. cit.*, p. 268.

⁵ For all references to 1990, see report of the Committee of Experts on the Application of Conventions and Recommendations, General Report and observations concerning particular countries. Report III (Part 4A) to the 77th Session of the International Labour Conference, 1990.

⁶ For all references to 1991, see report of the Committee of Experts on the Application of Conventions and Recommendations, General Report and observations concerning particular countries. Report III (Part 4A) of the International Labour Conference, 78th Session, 1991.

It emphasized that there remained “many provisions that are still not in accordance with the Convention” and invited the Government to “take the necessary measures as soon as possible to bring the law and practice into full conformity with the Convention”.

In respect to Convention No. 98, the Committee of Experts repeated the importance of the right to collective bargaining and protection for public servants.

From the new Colombian Constitution to 1997, six years of discrepancy between national legislation and practice and Conventions on freedom of association

In 1992,¹ the Committee noted the Government’s report, the discussions at the Conference in 1991 and the report of the direct contacts mission in 1991. It noted with interest the provisions of the new Constitution and the repeal of particular legal provisions which were contrary to Convention No. 87.

However, it also emphasized those provisions of the legislation which remained in force and were incompatible with the Convention. In keeping with the usual manner in which it grouped its observations regarding Colombia in connection with Convention No. 87, it made reference, among others, to the following: the requirement that two-thirds of the members should be Colombian to establish a trade union; the supervision of the internal management and meetings of unions by public servants; the presence of the authorities at general assemblies convened to vote on the calling of a strike; the prohibition on federations and confederations from calling a strike; the prohibition of strikes in non-essential services; the possibility of dismissing trade officers who have intervened or participated in an illegal strike.

It urged the Government to continue to take measures to adapt its legislation to the requirements of the Convention.

In 1992, the central issue in connection with Convention No. 98 continued to be collective bargaining by public servants and the protection against persecution, for trade union activity in the same sector.

The following year,² the Committee of Experts noted that there had been some progress in 1992, “but pointed out that there were still a number of provisions which were not in conformity with the Convention” and listed those which it had previously indicated in earlier years and which, despite the introduction of the new Constitution in 1991, continued to be implemented, and it repeated its request to the Government to continue to take measures with a view to adapting legislation to the Convention.

In 1994,³ the Committee of Experts confined its attention regarding freedom of association to the submission of observations to Colombia regarding Convention No. 98, emphasizing the right of public employees who were not engaged in the direct administration of the State to negotiate collectively and to protection against acts of discrimination. It asked the Government in its next report “to provide information on any changes in the legislation in this respect”.

¹ For all references to 1992, see report of the Committee of Experts on the Application of Conventions and Recommendations, General Report and observations concerning particular countries, Report III (Part 4A) to the International Labour Conference, 79th Session, 1992.

² For all quotations referring to 1993, see report of the Committee of Experts on the Application of Conventions and Recommendations, General Report and observations concerning particular countries, Report III (Part 4A) to the International Labour Conference, 80th Session, 1993.

³ For all references to 1994, see the report of the Committee of Experts on the Application of Conventions and Recommendations, General report and observations concerning particular countries, Report III (Part 4A) to the International Labour Conference, 81st Session, 1994.

In 1995 and 1996, the Committee of Experts made further observations on the discrepancies between domestic legislation and Conventions Nos. 87 and 98. In 1995,¹ its observation related to Convention No. 87 and repeated what it had been saying since 1987, stating that “the Committee again expresses the hope that the Standing Tripartite Committee provided for in the National Constitution will be set up in the near future”, and “asks the Government to ensure that the amendments made to labour legislation by the above Committee takes account of all the comments that the Committee of Experts has been making for many years”. In 1996,² the Committee’s observation dwelt on Convention No. 98 and restated the right of public servants to negotiate their working conditions collectively.

In 1997, after reviewing its earlier comments,³ the Committee of Experts noted with interest the Government’s statement that “it has prepared a Bill envisaging the repeal or amendment of various provisions of the Substantive Labour Code criticized by the Committee, and that the authorities of the Ministry of Labour have undertaken to submit this Bill to the Congress of the Republic during the current legislative period”.

In connection with Convention No. 98, the Committee restated the right of public employees who were not engaged in the administration of the State to benefit from collective bargaining. “The Committee expresses the firm hope that the Congress will adopt the Bill as soon as possible to bring the legislation into conformity with the Convention.”

On how the Bills passed by the Government to adapt legislation to the Conventions on freedom of association were shelved

In its report to the 86th Session of the Conference, the Committee of Experts recalled that in its previous observation it had noted that the Government had prepared a Bill with the assistance of the ILO mission on freedom of association which visited the country in October 1996, and identified the provisions to be repealed or amended under that Bill. It also recalled that the Government had prepared a preliminary draft of a Bill defining the concept of essential public services and containing other provisions for the peaceful settlement of collective labour disputes with a view to adapting legislation to international standards.

On that occasion “the Committee notes that the Government has indicated that the Congress of the Republic decided to shelve the above-mentioned Bill and that, in these circumstances, the Ministry of Labour is studying the possibility of submitting to Congress the Labour Statutes referred to in article 53 of the Constitution and to include in it the amendments embodied in the shelved Bill. The Committee therefore stresses the need to amend or repeal with the utmost dispatch the above-mentioned provisions of the Substantive Labour Code in order to bring the legislation into compliance with the Convention”.⁴

¹ For all references to 1995, see report of the Committee of Experts on the Application of Conventions and Recommendations, General Report and observations concerning particular countries, Report III (Part 4A) to the International Labour Conference, 82nd Session, 1995.

² For all references to 1996, see report of the Committee of Experts on the Application of Conventions and Recommendations, General Report and observations concerning particular countries, Report III (Part 4A) to the International Labour Conference, 83rd Session, 1996.

³ For all references to 1997, see report of the Committee of Experts on the Application of Conventions and Recommendations, General Report and observations concerning particular countries, Report III (Part 1A) to the International Labour Conference, 85th Session, 1997.

⁴ See report of the Committee of Experts on the Application of Conventions and Recommendations, General Report and observations concerning particular countries, Report III (Part 1A) to the International Labour Conference, 86th Session, 1998, pp. 171-172.

With regard to the preliminary draft on essential public services, the Committee “observes that the Government has not mentioned in its report whether the preliminary draft Bill in question has been finally drafted with the aim of presenting it to the Congress of the Republic”. The Government naturally made no mention of this draft since it was never presented to Congress.

With respect to Convention No. 98, the “Committee recalls that for many years it has been emphasizing the need for public employees who are not engaged in the administration of the State to benefit from the right to collective bargaining, and that in its previous observation it noted that a Bill guaranteeing this right for public employees had been submitted to the Congress of the Republic” and “in this respect, the Committee regrets to note that the Government states that the Congress of the Republic decided to shelve the Bill in question”.¹

“The Committee expresses the hope that the Government will, as soon as possible, take measures to bring the legislation into conformity with the Convention.”

Furthermore, it recalled that it had previously requested the Government to keep it informed regarding the need for industrial or branch unions to comprise more than 50 per cent of the workers in an enterprise in order to be able to bargain collectively and on the right for federations and confederations to bargain collectively. It observes that the Government had not responded to that observation and requested it to take measures to amend the legislation so as to guarantee industrial or branch unions which did not compromise more than 50 per cent of the workers concerned the possibility to bargain collectively.

The International Labour Conference of 1997. Colombia: Promises that are not kept

The discussions within the Conference’s Committee on the Application of Standards over the last ten years in examining Colombia’s failure to comply with Conventions Nos. 87 and 98 regarding freedom of association might likewise be reviewed. However, the discussion will be confined to the debate which occurred during the 85th Session, 1997.

In connection with the draft Bill drawn up with assistance of the mission which visited the country in 1996, a Government representative stated that “the Bill was not an isolated act of the Government, much less a simple announcement as a way to escape criticism in this forum. On the contrary, it was an indication of a government policy oriented towards the promotion and respect of human rights, with special emphasis on the international labour Conventions which Colombia would fulfil”.²

The speaker also referred to the punishment of social protest and indicated that a committee had been established to revise of the penal laws and to lift summary discretion concerning certain penal processes related to workers. He went on to refer to a Bill on collective bargaining and collective contracts in the public sector, 18 articles which had been agreed upon by the social partners.

In fact, the Bills referred to by the Government representative of Colombia were shelved by the Congress of the Republic. Despite the fact that the Government had at its disposal constitutional instruments to urge the Congress to discuss and approve the Bills,

¹ See report of the Committee of Experts on the Application of Conventions and Recommendations, General Report and observations concerning particular countries, Report III (Part 1A) to the International Labour Conference, 86th Session, 1998, pp. 229-230.

² See International Labour Conference, 85th Session, *Provisional Record*, p. 19/81.

the Government failed to do so, abandoning them and failing to show the interest claimed in the discussion before the Conference's Committee on the Application of Standards.

In addition, a full year elapsed during which the Bill on essential services and the right to strike was not submitted for discussion by the Congress of the Republic.

Lastly, while it is true that a committee exists that is responsible for reviewing provisions punishing social protest, the fact of the matter is that after 11 months of work, the trade union federations and human rights NGOs left the negotiating table on account of the Government representatives' determination to scupper all progress and agreements achieved, thereby returning to square one. This breakdown of talks happened in March, and the Government has made absolutely no sign that it wishes to recognize the progress achieved previously or to clarify with the trade union movement the differences set down in writing.

The numerous endeavours of the ILO

It should be made clear that, in addition to the action taken by the supervisory bodies of the ILO, as mentioned, the International Labour Office has made numerous attempts to assist the Government of Colombia in bringing legislation into conformity with international labour Conventions and, in so doing, to comply with the mandate of article 53 of the Constitution.

Hence, over the last ten years, the following direct contacts missions on the subject of freedom of association have been made to Colombia:

- mission of 31 August to 7 September 1988;
- mission of 16 to 20 September 1991;
- mission of 7 to 11 October 1996.

The reports of the missions were duly reviewed by the supervisory bodies.

In addition, the Lima Regional Office has always been available to provide advisory assistance to the Colombian Government.

Conclusions

On the basis of the contents of this report, we may conclude in summary that:

1. Over the last 11 years violence has been the main obstacle to the exercise of freedom of association, taking over 1,500 lives and causing several thousand obligatory geographical transfers and several hundred disappearances of workers.
2. The main problem in connection with the exercise of freedom of association in Colombia lies in the impunity protecting criminals who murder, cause to disappear, torture, impose geographical transfer and harass trade union members and leaders. This impunity has long existed and the State has taken no effective measures to eliminate it. The Government has shown no genuine political will to promote the identification, prosecution, trial and punishment of the criminals involved.
3. Colombian labour legislation and certain provisions of the Penal Code are contrary to Conventions Nos. 87 and 98.
4. The Colombian State, represented by the Government, does not honour the international commitments ensuing from its position as a Member of the International Labour Organization and, ignoring the principles of international law of *pacta sunt servanda* and good faith, fails to abide by the decisions and recommendations of the supervisory bodies.

C. Decisions taken by the Governing Body at its 273rd Session (November 1998)

134. At its 273rd Session (November 1998), the Governing Body considered that it would be inconsistent with the judicial nature of the procedure provided for in article 26 and the following articles of the Constitution that there should be any discussion in the Governing Body on the merits of the complaint while a proposal to refer the complaint to a commission of inquiry is pending before the Governing Body and until the Governing Body has before it the contentions of the government against which the complaint is filed, together with an objective evaluation of these contentions by an impartial body.

135. The Governing Body observed that the Committee on Freedom of Association has been examining a number of complaints submitted by workers' organizations alleging violation of union rights in Colombia. In some of these cases, the Governing Body has approved the provisional conclusions drawn up by the Committee. Other cases have been held in abeyance by the Committee to await the contentions of the Government. It recalled that the Committee of Experts on the Application of Conventions and Recommendations recently drafted observations to the Government of Colombia regarding the observance of the Conventions referred to in the complaint submitted under article 26 of the Constitution and that in 1998 the Committee on the Application of Standards of the Conference discussed some matters relating to the observance, in practice and under law, of Convention No. 87.

136. The Governing Body recalled that it had previously agreed (154th Report of the Committee on Freedom of Association, paragraph 33) that, in cases such as the present one, where various complainants have had recourse to the different procedures established by the Organization concerning the implementation of Conventions and the protection of freedom of association, it would be desirable to coordinate these procedures and to take account of the Committee's mandate to examine complaints in this connection. In the present case, the Governing Body observed that the complaint filed by a number of delegates to the Conference, under article 26 of the Constitution, largely concerned matters which were already before the Committee in the context of the special freedom of association procedure. It considered that in deciding on the appropriate measures to be taken regarding this latest complaint, it would be useful if it had the recommendations of the Committee on the pending cases and on the complaint submitted under article 26.

137. The Governing Body therefore took the following decisions at its November 1998 meeting:

- (a) *the Government of Colombia, as the Government against which the complaint has been filed, should be requested by the Director-General to communicate its observations on the complaint so as to reach him not later than 15 January 1999;*
- (b) *that the Governing Body, during its 274th Session, should decide, in the light of:*
 - (i) *the information provided by the Government of Colombia in connection with the complaint; and*
 - (ii) *the recommendations of the Committee on Freedom of Association regarding the complaint and the cases which are still pending, whether they should be referred as a whole to a commission of inquiry.*

138. Furthermore, the Governing Body considered that, in the event of a commission of inquiry being appointed, its members would be designated in accordance with the same criteria, and would serve in the same conditions, as the members of commissions previously appointed under article 26 of the Constitution. They would serve as individuals in their personal capacity, would be chosen for their impartiality, integrity and standing, and would undertake by a solemn declaration to carry out their tasks and exercise their powers as members of the Commission "honourably, faithfully, impartially and

conscientiously". A solemn declaration in these terms would be in the nature of that made by judges of the International Court of Justice. The Officers will make proposals concerning other arrangements at the appropriate stage.

D. The Government's reply

139. In a communication dated 15 January 1999, signed by Mr. Camilo Reyes Rodríguez, Ambassador and Permanent Representative of Colombia to the United Nations Office and other international organizations at Geneva, the Government submitted the observations and information requested by the Governing Body. The Government's observations about the complaint concerning the non-observance by Colombia of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), made by delegates to the 86th (1998) Session of the Conference under article 26 of the Constitution of the ILO are reproduced in full below.

Background

1. During the 86th Session of the International Labour Conference, Workers' delegates from 26 countries made a complaint under article 26 of the Constitution of the ILO.
2. At its 273rd Session (November 1998) the Governing Body decided to ask the Government of Colombia to communicate its observations on the complaint not later than 15 January 1999. It also requested the recommendations of the Committee on Freedom of Association regarding the complaint and the cases which were still pending, and whether they should be referred as a whole to a commission of inquiry.
3. In a communication dated 23 December 1998, the Chief of the Freedom of Association Branch of the International Labour Office informed the Government of Colombia that the cases still pending before the Committee on Freedom of Association were the following: 1787, 1948, 1955, 1962, 1964, 1973, 1916 and 1925.

Content and scope of the complaint

The complaint filed by Workers' delegates to the 86th Session of the International Labour Conference was based on the one hand on the cases pending before the Committee on Freedom of Association and on the other on the observations made to the country by the Committee of Experts on the Application of Conventions and Recommendations owing to the failure of the Government of Colombia "to adopt appropriate measures for the satisfactory observance of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98)".¹

The complaint centres on the idea that the State of Colombia is persecuting the trade union movement and trying to eradicate it. The workers consider there to be two facets to the policy being pursued. Firstly, there is the violent persecution and physical elimination of workers and trade union officials because of their activities: the complaint alleges that "in Colombia, over the last decade, violence has been brought to bear on trade union members and officials because of their activities".² It also notes that "acts of violence against trade unionism may be attributed to state agents, members of paramilitary forces and action by guerrilla groups".³

¹ GB.273/15/2, 273rd Session, Geneva, Nov. 1998.

² *op. cit.*, p. 12.

³ *op. cit.*, p. 11.

At the same time, there is the use of impunity as a way of facilitating and perpetuating the policy of physical extermination: “The Government has shown no genuine political will to promote the identification, prosecution, trial and punishment of the criminals involved.”¹ “Violence against trade union officials and members is certainly the main factor obstructing freedom of association in Colombia, exacerbated by increasing impunity and the absence of the political will to eradicate it.”²

The second facet of this macabre policy is the alleged lack of political will to bring national legislation into conformity with the international labour Conventions ratified by the country and in particular Conventions Nos. 87 and 98. “In addition, our report focuses on the manner in which Colombia has ignored the requirements of the Committee of Experts on the Application of Conventions and Recommendations to bring domestic legislation and national practice into conformity with the provisions of Conventions Nos. 87 and 98.”³ “This year we wish to draw attention to the most serious aspects of the complex situation of freedom of association violations in Colombia, namely ... (b) absence of the political will to bring legislation into conformity with the provisions of Conventions Nos. 87 and 98.”⁴ Rather than being directed at the physical disappearance of individuals, this aspect of the policy targets the trade union movement in general, by applying legislation which, being contrary to the Conventions in question, serves essentially to prevent it from operating.

Legal basis of the complaint

“... we request that the complaint be examined by a commission of inquiry which would draw up its report as provided in article 26, paragraph 3, of the ILO Constitution ...”.⁵

Content and scope of the declarations by the Government of the Republic of Colombia

The Government of the Republic of Colombia makes the following basic declaration.

With respect to the allegations concerning the death of workers and trade union officials it declares:

In Colombia there is no government policy of persecution, either against workers and trade union officials or against the trade union movement. The structure of the Colombian State, its institutions and the supervisory mechanisms of the public authorities make it impossible for a policy which represses the rights and freedoms of citizens to exist or to be implemented. The acts of violence against workers and trade union officials are the result of the complex climate of violence in the country, to which the State has been responding with significant measures in the areas where the violence originates. We do not claim ignorance of the problem of violence that is ravaging the country. On the contrary, all the measures taken by the State, and in particular by the present Government, with respect to the peace process are specifically aimed at broadening areas for consultation and dialogue in order to achieve peace and allow Colombians, including, of course, workers and trade union officials, to live together in peace.⁶

The peace process in which the Government of Colombia is currently engaged therefore constitutes irrefutable evidence of an ongoing state policy to achieve the peaceful coexistence for Colombians that is so eagerly sought. Achieving this peace would no doubt

¹ *op. cit.*, p. 25.

² *op. cit.*, p. 11.

³ *op. cit.*, p. 11.

⁴ *op. cit.*, p. 12.

⁵ *op. cit.*, p. 10.

⁶ The appended document: “Violence in Colombia: Context and complexity. Implications for fundamental rights and international humanitarian law” (from now on referred to as Appendix I) provides information on the characteristics of the violence prevalent in Colombia.

contribute significantly to the full application of human rights given that it would imply the disappearance of not the only but certainly one of the principal causes for the transgression of those rights. The fact that this is a state policy can be seen in the various peace processes pursued in the past which resulted in a number of insurgent movements being incorporated into civilian life. The Government refers to these in Appendix I.

From a standpoint that does not take due account of all the factors contributing to the complexity of the problem, the violence is attributed to the Government of Colombia and it is asked to stop any further violence against the Colombian people. This results in inappropriate diagnoses and solutions. We are heartened by the conviction that the Committee on Freedom of Association and the Governing Body will recognize the complexity of the problem of violence and will understand the Government's clarifications in this respect.

As regards the divergence between domestic legislation and international labour Conventions, and in particular Conventions Nos. 87 and 98 that are the focus of the complaint, the Government states that it has been and that it continues to be state policy to comply with the Constitution of the International Labour Organization and the international Conventions ratified by the country. In addition, naturally, to also complying with the requests of the supervisory bodies, as long as they are in keeping with the provisions of the Conventions and the political and legal structure of Colombia.

Colombia has consistently pursued this policy, not as an act of liberality of successive governments, but as an expression of the country's political, institutional and legal structure, which obliges the State to promote and respect the rights and freedoms of its citizens.

The most representative advances in its legislation occurred with Act No. 50 of 1990. The Committee of Experts recognized the magnitude of the results by describing Colombia, in various parts of its General Survey of 1994, as one of the few "cases of progress" throughout the world with respect to these Conventions.

Allegations relating to the death of workers and trade union officials

The complainants' claims

The following quotations from the submitted complaint serve to summarize it:

"In Colombia, over the last decade, violence has been brought to bear on trade union members and officials because of their activities."¹

"Acts of violence against trade unionism may be attributed to state agents, members of paramilitary forces and action by guerrilla groups."²

"This report focuses on the matter of the impunity of the perpetrators of violations of the rights of trade union members and officials. Violence against trade union officials and members is certainly the main factor obstructing freedom of association in Colombia, exacerbated by increasing impunity and the absence of the political will to eradicate it."³

"Society as a whole has been permeated by the intolerance demonstrated by the protagonists in the prolonged armed conflict."⁴

"Civil and political rights of the Colombian population and of trade union members and leaders in particular, such as the right to life, integrity and personal liberty, are violated with impunity."⁵

¹ op. cit., p. 12.

² op. cit., p. 11.

³ op. cit., p. 11.

⁴ op. cit., p. 11.

⁵ op. cit., p. 13.

The Government's declaration

The Government reiterates the complexity of the problem of violence in Colombia which the following conclusions serve to illustrate. These conclusions should be carefully examined and evaluated within their particular social, economic and military context. The corresponding figures have been taken from national statistics.

- A serious internal armed conflict is raging in Colombia, which is complicated by the presence of various types of violence (crime) which have damaged fundamental rights in a number of sectors of civil society.
- The various types of violence (murders, abductions, physical injury, torture and other forms of assault) committed against workers belonging to trade union organizations are one of the manifestations of the current situation of internal armed conflict in the country, although not the only one, given the various types of violence that come under the heading of ordinary crime.
- There is no direct or immediate correlation between the forms of violence mentioned against trade unionists in Colombia, on the one hand, and trade union rights and freedom of association, on the other, since the aim of the acts of violence mentioned is not to create obstacles to prevent or restrict the exercise of trade union rights, per se, but to remove alleged political and/or military adversaries who would otherwise cause situations of panic or terror among the population or destabilize the democratic institutions as a way of achieving other political objectives.
- It can be seen from the above two conclusions that the assaults on trade union members are not intended to damage the labour rights of the Colombian population, and that they are not being perpetrated by the State, but instead come under the heading of infringements against fundamental rights (life, individual freedom, personal safety, political freedom) that are being suffered by the entire population and are the result of criminal activities.
- For these reasons, offences against fundamental rights do not selectively or exclusively affect trade union members, neither is their cause or motivation the membership of a trade union organization or the exercise of the rights involved in freedom of association. The victims of acts of aggression against fundamental rights belong to different levels or strata of the population — farmers, businessmen, professionals, tradesmen, independent workers, political leaders and public officials — who are assaulted on the basis of their political affiliation, their active or passive participation in the armed conflict or the simple fact that they live in a violent area.
- The violations of fundamental rights perpetrated against different social sectors in various strata have a knock-on effect, which nevertheless forms an inherent part of the immediate criminal objective, on other fundamental rights of the population, such as freedom of thought, economic wealth, freedom of enterprise, freedom of association, freedom to choose a place of residence, freedom of movement, etc. However, given that the primary objective of the violence is not to infringe these and other rights, and that it does not specifically target these individual rights, action taken to counteract these repercussions of the situation of violence should be designed to tackle the principal underlying cause (the internal armed conflict) and to consider the true nature of the acts of violence committed (assaults on fundamental rights and infringements of international humanitarian law). Only in this way will a rational balance be achieved in dealing with the problem, the means available to control it and the objectives pursued in order to protect citizens' rights.
- The perpetrators of the acts of violence against the law and against fundamental rights vary widely, they profess different ideologies and have a variety of political, social

and economic interests. The means they use to achieve their objectives are contrary to the constitutional and legal framework of Colombia, to the principles of humanity and justice, and to the institutional policies of the democratically elected governments of Colombia.

- State agents are occasionally involved in violations of fundamental rights, this is contrary to the responsibilities inherent in their posts, to the instructions of their superiors and to state policies. Although already low, this involvement has fallen in recent years as the result of the many parallel actions the Colombian Government has been taking to stop it through prevention, prosecution and suppression. Evidence of this can be seen in the number of complaints received by the Office of the Attorney-General of the Nation — Human Rights Delegate — of which there were 2,000 in 1996 and only 463 in 1997.
- From the point of view of international law, the acts of violence perpetrated against various social sectors to which this document refers come under international human rights law and the armed conflict comes under international humanitarian law. Consequently, investigating and evaluating them corresponds to the mandate of specific specialized international organizations.
- Those principally responsible for the violations of the Colombian population's fundamental rights, and for the subsequent damage to other citizens' rights, including freedom of association and trade union rights, are: armed groups of (a) either extreme right or so-called "private justice" groups, which sometimes call themselves "self-defence" groups (wrongly called "paramilitary" groups by some sources); (b) extreme left guerrilla forces; and (c) drug traffickers.
- The Colombian Government, despite the financial restrictions it faces owing to numerous national and international economic factors, and at a time when it is having to confront a conflict of huge proportions unleashed by forces with considerable military and economic strength, is taking every reasonably possible measure to control the outbreaks of violence.
- Among the measures it has taken, that of reaching political peace and reconciliation agreements with the perpetrators of the violence has become a priority option which has the backing of the civilian population and the international community.
- If political peace agreements could be reached with the principal perpetrators of the violence, whose actions are politically motivated, it would spell an end to the infringements of the fundamental rights of the population which are being contravened as a result of the internal armed conflict, and would also end the assaults on other citizens' rights indirectly prejudiced by the internal armed conflict, including freedom of association and trade union rights.
- The international community, in keeping with the principle of non-intervention in the internal affairs of other countries and guided by the principle of international cooperation, is supporting and helping to develop the peace process in the three following ways: (i) given the fragile nature of a peace process which has only just begun and the complexity of the conflict, the international community is working with the utmost care, in the knowledge that its actions could be used politically by one of the parties to the conflict, and that an insufficiently considered action or one adopted on insufficient grounds could thwart or hinder the peace process; (ii) the political initiative in the negotiations depends on the Colombian Government, therefore the international community should only provide assistance when requested by the Colombian Government and in accordance with the dynamics of the process; (iii) under international law, human rights and international humanitarian law come under the competence of both conventional and non-conventional specialized bodies,

in the framework of the United Nations and the American regional system. Thus Colombia, as a party to the principal international human rights instruments, is in permanent contact with the Human Rights Committee, the Interamerican Human Rights Commission and Court, as well as with the experts and working groups of the United Nations Commission on Human Rights, including in particular the Working Group on Enforced or Involuntary Disappearance, the Working Group on Arbitrary Detention, the Special Rapporteurs on extrajudicial, summary or arbitrary execution and on torture, as well as the Working Group on Communications of the United Nations Subcommission on Prevention of Discrimination and Protection of Minorities. Special mention should be made of the Office of the High Commissioner for Human Rights established in Colombia in April 1997 on the Government's initiative, whose advisory role relates not only to the human rights sphere but also to infringements of international humanitarian law which come under the competence of the United Nations High Commissioner for Human Rights and the Interamerican Human Rights System of the Organization of American States (OEA). In the first of the cases mentioned, this Office has been requested by the Colombian Government to take action, whilst in the second it is the Government of Colombia which has voluntarily submitted to its jurisdiction.

- The main conclusion to be drawn from an acknowledgement of the complexity of the Colombian internal armed conflict, the country's crime problem and the infringements of international humanitarian law, is that these problems, which are the culmination of over 50 years of continuous violence, cannot be solved overnight, and it will take more than just willpower to put an end to them.

To conclude this section the Government would like to recall the words of the ILO direct contacts mission to Colombia in 1996 which stated in its report:

Violence that is this persistent in time and this widespread over space must have deep and extensive roots in the society in which it prevails. But violence that is this prone to fluctuate and change over time and from one geographical area to another must also be affected by factors that vary over time and space. There is a single violence in Colombia just as there are many forms of violence. The factors or "causes" of violence are also therefore both one and many, just as the solutions that will be needed to eliminate it are both one and many.

Allegations relating to the legislative disparities between domestic legislation and Conventions Nos. 87 and 98

The complainants' claims

The following quotations from the complaint serve to summarize this point:

"Colombia has ignored the requirements of the Committee of Experts on the Application of Conventions and Recommendations to bring domestic legislation and national practice into conformity with the provisions of Conventions Nos. 87 and 98."¹

"Despite the sustained endeavours of the Committee of Experts to urge the Colombian Government to comply with the Convention and to promote the necessary reforms, the situation today is as it was ten years ago."²

The Government's declaration

In 1976 Colombia ratified Conventions Nos. 87 and 98, thereby confirming its position vis-à-vis the ILO's international standards.

¹ op. cit., p. 11.

² op. cit., p. 10.

The ratification of Conventions is subject to two provisos: first, that the process of adapting legislation shall take the necessary time for institutions, particularly socio-industrial ones that are so sensitive to change, to assimilate the amendments, adapt themselves and in this way guarantee that they last.

The second premise lies in the conviction that the commitments entered into when ratifying an instrument are contained in the text of that instrument.

As regards the first proviso, the executive branch and the international community understand that the process of amending legislation is a permanent, continuous and time-consuming one, which is not due to the legislative or executive branches' lack of political will — although it is relatively easy to present and sell this idea — but because of the actual nature of law as a science.

Article 19, paragraph 5(d), of the Constitution of the ILO makes provision for the fact that adjustment processes do not all take place at one specific time when all relevant changes are made and after which the law is frozen. If we also consider the work of the supervisory bodies, in particular the Committee of Experts, we find that the number of countries on which comments have been made with respect to Conventions Nos. 87 and 98 has grown disproportionately. Comments have risen by 260 per cent for Convention No. 87 and by 755 per cent for Convention No. 98. The increase cannot be put down to the number of ratifications over the same period, which was only 65 per cent for Convention No. 87 and 69 per cent for Convention No. 98.

It can be concluded from the above that disparities between national legislation and Conventions do not necessarily and irremediably prove the existence of a state policy to repress the trade union movement, as the complainants insinuated in their complaint. If this were the case, a shadow of doubt would hover not only over all the Members cited in Report III of the reports prepared by the Committee of Experts, particularly those on which some type of comment has been made concerning Conventions Nos. 87 and 98, but also over the effectiveness of the Organization's international cooperation. There are even less grounds for such a rash conclusion if the results achieved, by a country during the process of adapting its legislation have been recognized by the Organization itself as "cases of progress". This is exactly what has happened with Colombia.

Three points illustrate the Colombian policy of compliance with the ILO: (a) the results achieved through the enactment of legislation over the past decade to overcome the discrepancies between domestic legislation and Conventions Nos. 87 and 98; (b) the efforts made by the executive branch to obtain parliamentary approval of bills submitted to promote the harmonization of legislation; (c) the current Government's intention to submit a bill with the same objective to the Congress of the Republic.

Results achieved through the enactment of legislation to overcome the legislative discrepancies with Conventions Nos. 87 and 98, with particular reference to Act No. 50 of 1990

Guided by the terms with which the Committee of Experts recognized the progress achieved through the enactment of Act No. 50 of 1990, describing Colombia in its 1994 Survey on freedom of association as one of the major "cases of progress" in the world in 1983-93 with respect to Conventions Nos. 87 and 98, we can state that considerable results have been achieved in the process of adjustment to international labour legislation, and that these results are a tangible reflection of a state policy of recognition of and respect for trade union rights. In other words, it is clear that Colombia has fulfilled its obligations with

respect to the adoption of measures to give effect to the provisions of these Conventions, as will be shown below.

The Committee has on numerous occasions noted with satisfaction the progress made by Colombia, but it appears that these statements were not given sufficient attention by the complainants when they prepared and drafted their complaint. Here are some examples:

(1) *“The Committee noted with satisfaction the repeal of the provisions which required ministerial approval of amendments to the rules of first-level trade unions, federations and confederations”* (p. 50, para. 111); (2) *“The Committee noted with satisfaction that the provisions making the election of officials subject to approval by the administrative authorities had been repealed”* (p. 51, para. 115); (3) *“The Committee noted with satisfaction the repeal of provisions which regulated trade union meetings too strictly”* (p. 57, para. 128); (4) *“In the case of Colombia, the Committee noted with satisfaction the repeal of s. 379(a) of the Substantive Labour Code which prohibited trade unions from intervening in political matters”* (p. 58, para. 130); (5) *“The Committee noted with satisfaction that s. 39 of Act No. 50 of 1990 increased the amount of sanctions applicable in the event of acts that interfere with the right of association”* (p. 100, para. 222); (6) *“Significant improvements have also been achieved in other areas: (...) establishment of organizations without prior authorization (...) and to organize their administration and their meetings freely”* (both these cases are referred to as examples of Colombia) (p. 122, para. 268); lastly, the statement made with respect to Convention No. 98 that *“These cases of progress mainly concern measures strengthening the protection against anti-union discrimination”*, where Colombia is cited as an example (p. 125, para. 278) (emphasis added).

The Government of Colombia is very surprised at the complainants' insistence on the need to reform domestic legislation in the areas underlined in the above paragraph, which were amended in 1991 as the Committee of Experts itself notes.

In addition to the above reforms, Act No. 50 of 1990 established the automatic recognition of the legal status of trade unions (section 364 of the Substantive Labour Code and article 39 of the Constitution); eliminated the possibility of cancelling or suspending the legal status of trade unions, with these procedures only being possible through legal means (section 380(2) of the Substantive Labour Code and article 39 of the Constitution); eliminated the restriction on the right of enterprise management staff to form associations and extended the guarantee of trade union immunity (section 406 of the Substantive Labour Code); permitted the establishment of mixed unions made up of public officials and state employees (section 414 of the Substantive Labour Code); repealed the provisions that regulated trade union accounting (former section 397 of the Substantive Labour Code) and made it a requirement to issue reports on money management (former section 427 of the Substantive Labour Code).

Also, and in order to guarantee freedom of negotiation, relevant changes were made such as eliminating the mediation stage which required the Ministry of Labour to be involved in out-of-court settlements between the parties, and extending the direct settlement stage (section 434 of the Substantive Labour Code); allowing the presence at the negotiating table of up to two advisers from second- and third-level trade union organizations (section 434(2) of the Substantive Labour Code). These amendments also reflect the intention of the Colombian Government to expand and guarantee trade union rights in keeping with the spirit of the Conventions.

As regards the strengthening of the right to negotiate, it is important to note the provision that prohibits the existence of collective agreements in enterprises where more than a third of the workers belong to the trade union (section 70 of Act No. 50 of 1990).

Particular mention should be made of the special protection accorded to trade union immunity under article 39 of the Constitution, which now also protects all workers who have submitted a list of claims, further guaranteeing the right to negotiate by establishing that such workers "... shall not be dismissed without proven just cause from the date the list is submitted and during the time fixed by law for each of the stages of dispute settlement", according to the interpretation given to section 25 of Decree No. 2351 of 1965 by the Labour Division of the Supreme Court of Justice in its decision of 5 October 1998.

The legal institution of trade union immunity, inter alia, makes it impossible to pursue a policy of suppression of the trade union movement.

Likewise, the workers state in their complaint, with respect to a draft bill pertaining to "essential services" that: "The Government naturally made no mention of this draft since it was never presented to Congress."¹ It is impossible that workers are unaware of the existence of the numerous laws that have been enacted to define and regulate the essential services: Act No. 31 of 1992, Act No. 100 of 1993, Act No. 142 of 1994, Act No. 270 of 1996, inter alia. Also, a judicial decision handed down by the Constitutional Court coincided with the views of the Committee of Experts by stating that "whether a public service is essential or not can be seen if the activities constituting it contribute directly to the protection of property, the satisfaction of interests or the fulfilment of values associated with the respect, observation, exercise and effectiveness of fundamental rights and freedoms" (decision of 27 October 1994).

Furthermore, and subject to its inclusion in the next report on Convention No. 98, the Government refers to the enactment of Decree No. 801 of 1998 in accordance with which the decision to opt for arbitration courts, in the case of trade unions of which less than half of the workers in an enterprise are members "... will be taken by an absolute majority of the workers of the enterprise who are members of this or these trade unions ..." (section 1(2)).

We repeat that the nature and extent of these measures were noted by the Committee of Experts in its 1994 Survey in the following terms: "These cases of progress mainly concern measures strengthening the protection against anti-union discrimination." If this is the case then is it conceivable to claim the existence of a policy to eliminate the trade union movement and its leaders or to declare that the Colombian Government is indifferent to the principles established in Conventions Nos. 87 and 98?

Allow us to emphasize the significance of Colombia's achievements in this area. In the case of Convention No. 87, only 41 cases were recognized in the Committee of Experts' survey as cases of progress. As for Convention No. 98, the number was even lower, just 18 countries were mentioned.

Efforts by the Colombian Government to obtain parliamentary approval of bills submitted to promote the harmonization of legislation

The policy of compliance with the ILO is also reflected in government efforts to gain National Congress approval of bills submitted to it for this purpose. In order to avoid hasty judgements which could lead to mistaken conclusions, these efforts must be viewed within the limits imposed by the actual structure of a State where power is shared between three branches, and where the legislative branch has the autonomy to approve such bills or not.

The Government's involvement in this respect is in preparing the bills — the ILO has provided technical assistance to Colombia in this area — in presenting them to the

¹ op. cit., p. 23.

Congress of the Republic and in the attention that the ministers have given to requests made by its committees to explain the scope, nature and relevance of the bills.

It is therefore wrong to state “in the absence of any steps by the Government to employ the instruments provided for by the Constitution to promote them”.¹ “In the light of the above, it may readily be concluded that ILO Convention No. 87 is systematically violated.”²

The current Government's political will to submit a bill to the Congress of the Republic to promote the harmonization of legislation

In order to give continuity to the state policy of compliance with the ILO and also that of promoting trade union rights and freedoms, the Government of President Andrés Pastrana will submit for consideration by the Congress of the Republic, at the first constitutional opportunity, a bill that we will describe below.

Nevertheless, the Government does not wish a significant and in fact exceptional fact to be overlooked which is that Colombia has incorporated into its Constitution, in article 53, a provision whereby “International labour agreements duly ratified are part of domestic legislation”.

While it is clear from a legal point of view, as stipulated in that article, that ILO Conventions are part of legislation and consequently individuals could request their immediate application without the need for an act or decree to enact them, or to become embroiled in the legal inefficiency involved in the application of conflicting legislation by the judges or administrative authorities who are responsible for settling disputes or requests to which these standards apply, it is also clear that the Government, as a reflection of its desire to comply with the ILO, has accepted the position of the Committee of Experts which advocates the explicit and formal harmonization of national legislation with Conventions, and the express repealing or amending of all legislation that does not comply in order to pave the way for social justice.

This is an additional reason why the Government has prepared the above-mentioned bill, in which it explicitly takes up the recommendations of the Committee of Experts which have not yet been incorporated into the various parts of the Substantive Labour Code.

Conclusions

The Government of Colombia does not understand the profound contradiction contained in the complaint submitted by the Workers' delegates. According to their statements, the policy of persecuting the trade union movement has appeared and become increasingly acute over the last decade: “In Colombia, over the last decade, violence has been brought to bear on trade union members and officials because of their activities.”³ What is unclear to anyone reading the complaint with care is why precisely this coincides with the very decade when the greatest progress has been made in the area of legislative harmonization, as the actual complaint begrudgingly recognizes when it refers to the progress described by the Committee of Experts in respect of Act No. 50 of 1990.

That was in fact the year when, in the throes of one of its worst periods of violence and on the Government's initiative, the Congress of the Republic approved Act No. 50 which

¹ op. cit, p. 8.

² op. cit., p. 9.

³ op. cit. p. 12.

led to extensive amendments to earlier legislation and which incorporated numerous observations that the Committee of Experts had made about the country.

In view of the above, we are compelled to conclude that the claims with which the workers end the sections relating to the alleged violations of Conventions Nos. 87 and 98 are false: "In the light of the above, it may readily be concluded that ILO Convention No. 87 is systematically violated."¹ "Despite the sustained endeavours of the Committee of Experts to urge the Colombian Government to comply with the Convention (No. 98) and to promote the necessary reforms, the situation today is as it was ten years ago (1989). The Government continues to fail in its duty to adhere to Convention No. 98."²

E. Text of the annexes to the Government's observations

140. The text of the annexes sent by the Government is given below.

Annex I

**Violence in Colombia: Context and complexity;
implications for basic rights and international
humanitarian law**

Introduction

1.1. The purpose of this document is to describe the context of the situation of internal armed conflict affecting Colombia and which above all is an indispensable framework of reference for understanding the events which have resulted in acts of violence being carried out against unionized workers in the country, a matter which has come to the attention of the Committee on Freedom of Association of the International Labour Organization (ILO) because of the supposed relationship between these events and international labour Conventions Nos. 87 and 98 ratified by the Colombian State. The description and analysis of the social, political, economic and military context of the present situation in the country are intended to offer an integrated and more objective vision of the problem of violence in Colombia.

1.2. The central purpose of this document is to show that there is no state policy to encourage violence against social organizations and movements in Colombia. It also emphasizes the need to explain the extreme complexity of the phenomenon of violence affecting the Colombian nation, which is indispensable to an interpretation of the situation as a whole, as well as the factors contributing to the infringement of basic rights, the identity and the role of those responsible for such violations, the role of the Colombian State in this context and the possible responses and actions to bring an end to all these acts of abuse, including those which indirectly affect the freedom of association and trade union rights of Colombian workers.

1.3. An explanation and evaluation of the Colombian case in the above-mentioned terms will furthermore enable a series of conclusions to be drawn about the nature of the acts of violence which have come to the attention of the ILO. These conclusions, which are based on a comprehensive review of the origins of these acts, provide a basis for determining the responsibilities involved. The conclusions, the reasons for which are contained in the following pages, can be listed as follows:

¹ op. cit., p. 9.

² op. cit., p. 10.

- A serious internal armed conflict is raging in Colombia, which is complicated by the presence of various types of violence (crime) which have damaged fundamental rights in a number of sectors of civil society.
- The various types of violence (murders, abductions, physical injury, torture and other forms of assault) committed against workers belonging to trade union organizations are one of the manifestations of the current situation of internal armed conflict in the country, although not the only one, given the various types of violence that come under the heading of ordinary crime.
- There is no direct or immediate correlation between the forms of violence mentioned against trade unionists in Colombia, on the one hand, and trade union rights and freedom of association, on the other, since the aim of the acts of violence mentioned is not to create obstacles to, prevent or restrict the exercise of trade union rights per se, but to remove alleged political and/or military adversaries who would otherwise cause situations of panic or terror among the population or destabilize the democratic institutions as a way of achieving other political objectives.
- It can be seen from the two previous conclusions that the assaults on trade union members are not intended to damage the labour rights of the Colombian population, and that they are not being perpetrated by the State, but instead come under the heading of infringements of fundamental rights (life, individual freedom, personal safety, political freedom) that are being suffered by the entire population and are the result of criminal activities.
- For these reasons, offences against fundamental rights do not selectively or exclusively affect trade union members, neither is their cause or motivation the membership of a trade union organization or the exercise of the rights involved in freedom of association. The victims of acts of aggression against fundamental rights belong to different levels or strata of the population — farmers, businessmen, professionals, tradesmen, independent workers, political leaders and public officials — who are assaulted on the basis of their political affiliation, their active or passive participation in the armed conflict or the simple fact that they live in a violent area.
- The violations of fundamental rights perpetrated against different social sectors in various strata have a knock-on effect, which nevertheless forms an inherent part of the immediate criminal objective, on other fundamental rights of the population, such as freedom of thought, economic wealth, freedom of enterprise, freedom of association, freedom to choose a place of residence, freedom of movement, etc. However, given that the primary objective of the violence is not to infringe these and other rights, and that it does not specifically target these individual rights, action taken to counteract these repercussions of the situation of violence should be designed to tackle the principal underlying cause (the internal armed conflict) and to consider the true nature of the acts of violence committed (assaults on fundamental rights and infringements of international humanitarian law). Only in this way will a rational balance be achieved in dealing with the problem, the means available to control it and the objectives pursued in order to protect citizens' rights.
- The perpetrators of the illegal acts of violence which violate fundamental rights vary widely, they profess different ideologies and have a variety of political, social and economic interests. The means they use to achieve their objectives are contrary to the constitutional and legal framework of Colombia, to the principles of humanity and justice, and to the institutional policies of the democratically elected governments of Colombia.
- State agents are occasionally involved in violations of fundamental rights: this is contrary to the responsibilities inherent in their posts, to the instructions of their

superiors and to state policies. Although already low, this involvement has fallen in recent years as the result of the many parallel actions the Colombian Government has been taking to stop it through prevention, prosecution and suppression. Evidence of this can be seen in the number of complaints received by the Office of the Attorney-General of the Nation — Human Rights Delegate — of which there were 2,000 in 1996 and only 463 in 1997.

- From the point of view of international law, the acts of violence perpetrated against various social sectors to which this document refers come under international human rights law and the armed conflict comes under international humanitarian law. Consequently, investigating and evaluating them corresponds to the mandate of specific specialized international organizations.
- Those principally responsible for the violations of the Colombian population's fundamental rights, and for the subsequent damage to other citizens' rights, including freedom of association and trade union rights are: armed groups of (a) either extreme right or so-called "private justice" groups, which sometimes call themselves "self-defence" groups (wrongly called "paramilitary" groups by some sources); (b) extreme left guerrilla forces and (c) drug traffickers.
- The Colombian Government, despite the financial restrictions it faces owing to numerous national and international economic variables, and at a time when it is having to confront a conflict of huge proportions unleashed by forces with considerable military and economic strength, is taking every reasonably possible measure to control the outbreaks of violence.
- Among the measures it has taken, that of reaching political peace and reconciliation agreements with the perpetrators of the violence has become a priority option which has the backing of the civilian population and the international community.
- If political peace agreements could be reached with the principal perpetrators of the violence, whose actions are politically motivated, it would spell an end to the infringements of the fundamental rights of the population which are being contravened as a result of the internal armed conflict, and would also end the assaults on other citizens' rights indirectly prejudiced by the internal armed conflict, including freedom of association and trade union rights.
- The international community, in keeping with the principle of non-intervention in the internal affairs of other countries and guided by the principle of international cooperation, is supporting and helping to develop the peace process in the three following ways: (i) given the fragile nature of a peace process which has only just begun and the complexity of the conflict, the international community is working with the utmost care, in the knowledge that its actions could be used politically by one of the parties to the conflict, and that an insufficiently considered action or one adopted on insufficient grounds could thwart or hinder the peace process; (ii) the political initiative in the negotiations depends on the Colombian Government, therefore, the international community should only provide assistance when requested by the Colombian Government and in accordance with the dynamics of the process; (iii) under international law, human rights and international humanitarian law come under the competence of both conventional and non-conventional specialized bodies, in the framework of the United Nations and the American regional system. Thus Colombia, as a party to the principal international human rights instruments, is in permanent contact with the Human Rights Committee, the Interamerican Human Rights Commission and Court, as well as with the experts and Working Groups of the United Nations Commission on Human Rights, including in particular the Working Group on Enforced or Involuntary Disappearance, the Working Group on Arbitrary

Detention, the Special Rapporteurs on extrajudicial, summary or arbitrary execution and on torture, as well as the Working Group on Communications of the United Nations Subcommission on Prevention of Discrimination and Protection of Minorities. Special mention should be made of the Office of the High Commissioner for Human Rights established in Colombia in April 1997 at the Government's initiative, whose advisory role relates not only to the human rights sphere but also to infringements of international humanitarian law which come under the competence of the United Nations High Commissioner for Human Rights and the Interamerican Human Rights System of the Organization of American States (OEA). In the first of the cases mentioned, this Office has been requested by the Colombian Government to take action, whilst in the second it is the Government of Colombia which has voluntarily submitted to its jurisdiction.

- The main conclusion to be drawn from an acknowledgement of the complexity of the Colombian internal armed conflict, the country's crime problem and the infringements of international humanitarian law, is that these problems, which are the culmination of over 50 years of continuous violence, cannot be solved overnight, and it will take more than just willpower to put an end to them.

Characteristics of the violence in Colombia

2.1. The country is beset simultaneously by different kinds of violence which require various kinds of parallel action by the Colombian State. The existing kinds of violence can be classified according to their type or scope as follows: (1) violence due to ordinary crime; (2) violence in everyday life; (3) violence of a political kind; (4) violence resulting from drug trafficking. These therefore are the four main sources of violence affecting the Colombian nation and which must be dealt with by the State with its limited financial, material and human resources. However, as will be explained below, there are links at different levels between the various forms of violence and the authors of such acts, which make it more difficult to reduce them.

2.2. Taken together, the various kinds of violence noted above in the seven main cities of the country occurred at a rate of 2,960 conflicts per 100,000 inhabitants in 1997, according to the National Household Survey carried out in that year.¹ Of these, in the 11.9 per cent of households affected by such conflicts, 84.6 per cent were of a more serious nature since they involved acts of a criminal kind, whereas only 3.2 per cent concerned labour disputes.² This last figure is emblematic of the Colombian situation, indicating a very low rate of labour disputes, as compared to matters of a criminal kind which normally concern acts of violence, where the indicators are very high. This reflects a fairly peaceful labour situation, although there are also serious problems due to the criminal nature of most of the conflicts and the way in which they are resolved (by violence), all of which is consistent with the situation of internal armed conflict and rampant crime. There is little doubt about the link between the conflicts of a criminal kind and violence as an explicit phenomenon. Although some of the criminal offences do not involve acts of violence, the offences which are most frequently carried out in Colombia do involve the use of violence.³

The crime situation is even more serious, especially since the above-mentioned data from the National Household Survey refer to an urban area (the seven main cities) and not

¹ Republic of Colombia, Superior Council of the Judicature: *Indicadores de la justicia*, Santafé de Bogotá, Consejo Superior de la Judicatura Sala Administrativa, 1998, p. 96.

² 2.9 per cent were administrative and 8.8 per cent were family related. See in this connection Republic of Colombia, Superior Council of the Judicature: *Indicadores ...*, op. cit., p. 97.

³ These crimes are those of murder, physical assault, abduction and aggravated robbery. Source: national police.

to the rural areas, where crime is rife. Here, because of the nascent state of industrialization, labour disputes are few and far between.¹

As regards the settlement of labour disputes, special importance is attached to the development of protective action (protection under the Constitution) as an effective and efficient mechanism for safeguarding basic rights. The statistics of the Constitutional Court concerning the settlement of cases of this kind show that in 1997 citizens made use of this instrument mainly to seek protection of their rights of petition (13,746 cases, equal to 26.25 per cent of the total), equality (6,859 cases, equal to 13.10 per cent of the total), due process (6,227 cases, equal to 11.89 per cent of the total), and work (5,939 cases, equal to 11.34 per cent of the total). Social security and the payment of pensions and wages also played an important role (2,515 and 1,080 cases, respectively, equal to 4.8 per cent and 2.6 per cent of the total), while one of the rights least invoked was that of freedom of association (393 complaints, equal to 0.75 per cent of the total in 1997).

In 1998 there was a slight improvement in the general problem of the crime rate as compared with 1997. In 1998 the number of murders recorded was 2,577 less than in 1997, an important achievement in terms of lives, but not satisfactory since the number of murders in Colombia in 1998, 26,350, was catastrophically high; massacres, of which the self-defence groups are to a large extent responsible, showed a slight reduction, with a total of three less than in 1997, although their rate is still very high, with 112 massacres in 1998; the number of cases of kidnapping with extortion by the guerrillas increased on a massive scale in 1998 to a total of 2,388, up from 1,833 in 1997; in 1998 acts of terrorism using explosives totalled 1,680, a figure which was also higher than that of 1997; cases of physical injury in 1998 totalled 37,430, which was 5,147 less than in 1997.²

All the types of violence described at the beginning of this section play a role in the acts of murder and personal injury. Seventy per cent of massacres are carried out by self-defence groups on the extreme right and most of the other cases by guerrilla groups. Ordinary criminals and guerrilla groups are responsible for carrying out acts of abduction and bank robberies. Acts of terrorism are also carried out by guerrilla organizations and drug-trafficking groups. Ordinary thefts and the stealing of automobiles are in most cases the work of common criminals.

The crime rate is very high, indicating a massive degree of delinquency, regarding which the Colombian State must recognize the enormous difficulties involved in controlling the situation, despite its enormous efforts, its political will, and the considerable investments required in the fields of justice, security and defence.

Since 1990 murders have been committed with alarming frequency. According to 1996 data, Colombia has the second highest murder rate in the Americas, equal to 67 murders per 100,000 inhabitants.³

Ordinary crime which includes a wide range of offences has in the last ten years achieved a relatively stable historical average of 200,000 offences per year.⁴ Apart from the problems of corruption, environmental attacks, sexual offences and other relatively serious punishable acts, crimes against the life and physical integrity of persons, as well as attacks against economic wealth, are the most common.

As regards murders, 40 per cent of the total number of deaths which occurred in 1996 seem to have had a link with other criminal activities, while 31 per cent of deaths appeared

¹ Agro-industrial development is relatively limited and includes the cultivation of bananas, African oil-palm, flowers and sugar cane.

² Source: National police.

³ National Planning Department: *La paz: el desafío para el desarrollo*, Santafé de Bogotá, Tercer Mundo and National Planning Department, 1998, p. 50.

⁴ Source: National police.

to be the result of a settlement of accounts, which in principle would link 71 per cent of the murders with ordinary crime and drug trafficking.¹ Between 1958 and 1990, according to apparent crime statistics, there were a total of 2,718,400 offences against property.² Between 1991 and 1996 a total of 601,541 offences against property were recorded, costing an estimated 3.4 billion pesos.³ Between 1958-90 a total of 1,111,177 cases of physical assault were reported.⁴ In the period 1991-96, 192,070 cases of physical assault resulting in a disability of more than 30 days for the victims were recorded, requiring approximately 109,000 million pesos' worth of medical attention.⁵

Since ordinary crime affects various sectors of the civilian population without any special kind of discrimination, persons who have held prominent positions in various activities in the political, social, economic or labour life of the country have also become its victims. By way of example, mention can be made of the murder of María Arango Fonnegra (Case No. 787), who had a long working career in the Colombian popular movement and in human rights, and who was a well-known activist on the political left. The case is unusual since as a result of Arango's former links with the Communist Party, the crime was interpreted as a political one. However, Arango's death was the work of common criminals who were trying to prevent the political leader, who had already many years before her assassination retired from all political activity, from recovering 85 million pesos out of which they had swindled her.⁶ The two intellectual authors, an accomplice and the material author of the murder were arrested on the orders of the Procurator-General of the Nation.⁷

Another similar case was the assassination of Alfonso Vargas, who was at the time Secretary General of the General Confederation of Democratic Workers (CGTD), who was also a victim of common delinquency.

The violence of everyday life, which is different from that of organized crime and the result of a socio-cultural environment in which it has become a means of resolving disputes, is also reflected in the crime statistics, and cannot be ignored in attempts to create an atmosphere of peaceful coexistence. The most serious manifestations of this kind of violence consist of murders, acts of physical assault and deaths resulting from the illegal practice of abortion in inappropriate conditions.⁸ Murders resulting from quarrels or brawls, which might be considered a typical product of this kind of violence, accounted for 21 per cent of the total number of cases in the period 1991-96.⁹

As regards violence of a political kind, the most frequent cases involve murder, physical injury, massacres, abductions and extortion. Between 1958 and 1990 acts of subversion resulted in a total of 27,304 deaths, of which 3,326 were in the national police and the military forces and 23,978 were of civilians.¹⁰ It has thus been the defenceless civilian population which has been the main victim of the action of the armed groups. In the shorter period from 1976 to 1990, 687 guerrillas were killed in clashes with the public

¹ National Planning Department, *La paz ...*, op. cit. p. 51.

² Republic of Colombia, national police, *Criminalidad ...*, op. cit., p. 387.

³ National Planning Department, *La paz ...*, op. cit., pp. 70 and 71. At the end of 1998 the exchange rate was 1,542.11 pesos to US\$1.

⁴ Republic of Colombia, national police, *Criminalidad ...*, op. cit., p. 386. These figures do not include wilful personal injury.

⁵ National Planning Department, *La paz ...*, op. cit., p. 72.

⁶ As noted above, the exchange rate as of 31 Dec. 1998 was 1,542.11 Colombian pesos to US\$1.

⁷ Report of the Procurator-General of the Nation, dated 10 Dec. 1998.

⁸ Twenty-three per cent of the deaths of pregnant women in Colombia are due to malpractice in the performance of abortions. In this connection see Lucero Zamudio: "El aborto en Colombia; dinámica sociodemográfica y tensiones socioculturales", in *La justicia en nuestro tiempo*, Bogotá, Universidad Externado de Colombia (forthcoming), pp. 13 and 14.

⁹ National Planning Department, *La paz ...*, op. cit., p. 51.

¹⁰ Republic of Colombia, national police, *Criminalidad ...*, op. cit., p. 391.

forces but at the same time 2,395 guerrillas were captured.¹ In the period 1985-96 the armed conflict was relatively intense, resulting in 4,325 clashes between the public forces and the guerrillas, 2,974 acts of sabotage and 1,126 skirmishes, which resulted in 16,625 deaths: 4,552 civilians, 4,400 members of the armed forces (police and the military) and 7,673 guerrillas.²

The Colombian guerrillas have carried out more kidnappings than any other revolutionary group in the world in a country like Colombia which also has the highest number of such cases in the world. Between 1976 and 1990 4,451 civilians were abducted.³ Political delinquency was responsible in the period 1985-86 for the kidnapping of 4,853 civilians, out of a total of 6,204 civilians abducted.⁴ The figures for 1997 and 1998, according to information from the Presidential Programme for the Defence of Individual Freedom, show a total of 1,443 abductions involving ransoms in 1997 and 1,294 up to the month of September 1998. Of these totals, 364 in the year 1997 and 370 in 1998 up to the month of September were due to subversive elements. As regards political abductions involving the payment of ransoms, in 1998, between January and September a total of 258 acts of this kind were reported, most of which were the work of the FARC (48.84 per cent) and the ELN (35.66 per cent). These figures do not include members of the public forces kidnapped by the subversive elements, who at present number more than 300 persons.

These crime figures do not include data on illicit drug trafficking, another of the fronts on which the Colombian Government, for political and ethical reasons, internal reasons and responsibility towards the international community, must act and deploy all its human, financial and material resources. Organized crime in Colombia is the second largest producer of coca leaf in the world, the raw material used for the manufacture of cocaine, although Colombia holds a world record in the destruction of illicit crops by manual methods and air fumigation; Colombian criminals continue to grow marijuana (cannabis) and engage in contraband activities; there is a growing cultivation of poppies, a necessary ingredient in the manufacture of heroin, and Colombian organized crime is the main distributor of cocaine in the world. In the same way, the Colombian State must give special attention to the identification and confiscation of the astronomical quantities of illicit money which may result from this trafficking, the control of chemical substances used in the manufacturing processes of the drugs and the secondary crimes resulting from the supply and demand of prohibited drugs. Mention should also be made of the resources and programmes for the development of alternative activities in the areas affected by the illicit crops, and which constitute a priority for the national Government.

The surface area used for the cultivation of coca leaf was 45,000 hectares in 1995, with 5,000 hectares being used for the cultivation of marijuana (1995).⁵ The illegal drug trade generates between 2,000 and 5,000 million dollars a year, with an accumulated capital from production and trafficking activities estimated at around \$66,000 million in recent years.⁶ These figures show the enormous challenge faced by the Colombian State in waging a battle which goes well beyond the resources which the State, with limited assistance from the international community, has at its disposal. In the same way, the figures illustrate the enormous capacity of the drug-trafficking groups to generate crime and violence.

¹ Republic of Colombia, national police, *Criminalidad ...*, op. cit., p. 393.

² National Planning Department, *La paz ...*, op. cit., p. 75.

³ Republic of Colombia, national police, *Criminalidad ...*, op. cit., p. 394.

⁴ National Planning Department, *La paz ...*, op. cit., pp. 69 and 75.

⁵ United Nations, International Drug Control Programme, *World drug report*, Oxford, Oxford University, 1997, pp. 264 and 265.

⁶ Francisco Thoumi: *Economía política y narcotráfico*, Santafé de Bogotá, Tercer Mundo, first reprinting, 1996, pp. 204 and 207.

Drug trafficking plays a major role in the murders committed in the country. "The most violent departments are to be found in areas known to be under the influence of drug traffickers and in the new departments where illicit crops are being grown."¹ The record of gangs of illicit drug dealers in carrying out acts of violence is a long one, and reached a high point in the narco-terrorist war against the State and members of civil society who opposed their plans.²

In addition to carrying out indiscriminate terrorist acts against the civilian population in an attempt to force the State to halt its action against them and attacks against State officials which have resulted in the loss of life of magistrates, members of the police, ministers of State, etc., the drug traffickers also launched a mortal attack against the representatives of civil society. Gangs of drug traffickers murdered a selected number of political leaders (including four presidential candidates), journalists and trade union officials. They were also actively involved in the kidnapping of State officials and members of their families, journalists and political leaders. The groups of drug traffickers also play a role in the organization and financing of self-defence groups which are responsible for carrying out massacres of peasants and trade union workers. Furthermore, there is a clear link between the groups of drug traffickers on the one hand and the armed conflict and the crime rate on the other, and these groups have actively participated in the carrying out of murders, massacres, acts of terrorism and kidnappings.

As regards the characteristics of the victims of the criminal actions described in the previous paragraphs, most of them are not trade union leaders and workers, and they are affected by the violence only to the extent that they are involved in the internal armed conflict or are the victims of ordinary crime. However, their violent persecution is not the result of their trade union activities.³

On the contrary, violence has affected the entire Colombian population in degrees determined by the characteristics of the internal armed conflict and the methods and types of violence used. Since the conflict is essentially rural, it is the peasant population which has been most affected. Peasants have also been the main victims of the massacres carried out by self-defence groups on the extreme right. In the case of the massacre of trade union workers, as will be seen below, these have been concentrated in the region of Urabá (Department of Antioquia), which is engaged in the industrial exploitation of bananas. Acts of extortion have been carried out against landowners and peasants who are considered small and medium-sized landowners. Families of all social classes have been the victims of kidnappings, especially in the upper middle class urban residential areas, as well as the owners of large and medium-sized rural estates.

In 1996, 93 per cent of murder victims were male, and the remaining 7 per cent women; 19 per cent were aged between 21 and 25, and 18.1 per cent between 26 and 30; 59 per cent of the murders occurred on the public thoroughfare; and 50 per cent of those who died were found to be under the effect of intoxicating substances.⁴

The social, economic and political costs of the various kinds of violence carried out in the country are astronomical. Only the economic costs can be calculated and the figures reflect the enormous efforts made by the State and society to contain the violence, cushion

¹ National Planning Department, *La paz ...*, op. cit., pp. 52 and 53.

² An analysis of the violence resulting from drug trafficking can be found in Germán Silva García: *Será justicia? Criminalidad y justicia penal en Colombia*, Santafé de Bogotá, Universidad Externado de Colombia, 1997, pp. 319 ff.

³ The case of Urabá is an exception, where the clashes, in all cases political, between the FARC and the EPL have had repercussions at the trade union level.

⁴ National Planning Department, *La paz ...*, op. cit., pp. 50-52.

its effects or simply to pay the costs. These include the losses of life in terms of human capital, the losses resulting from terrorism, the sums paid for extra medical costs and private insurance, additional military expenditure, the sums paid in respect of kidnappings and ransoms, as well as the loss of material goods due to the attacks carried out against property.

Thus in the period between 1991 and 1996, the gross cost of the internal armed conflict was equal to 9 per cent of the gross domestic product (GDP), a sum of 6.1 billion pesos, equal to an annual average of 1.5 per cent of the GDP. In the same way, since 1989 the country has been faced with levels of military expenditure above the average for Latin America, exceeding that average by an estimated 3.7 billion pesos in the period 1991-96 alone.¹

The violence produced by ordinary crime, in addition to the damage it causes in terms of the loss of lives and goods, has the serious effect of distracting the attention of the State security forces and its agencies in general and which could otherwise be focused on combating other forms of violence. Given the scope of ordinary crime as described in the previous paragraphs, it is clear that the State has to invest large amounts of material, human and financial resources to fight it.

The costs of the armed conflict, the investment required to curb the various kinds of crime and the expenditure required to protect the lives of the persons and groups who are most vulnerable to violence have strangled the public finances. In recent years, the country has invested around US\$1,000 million a year just to combat drug trafficking.²

Over and above the enormous expenditure which the State and society have been required to make, mention should also be made of certain economic indicators concerning the nation's income which only compound the costs resulting from the violence. Colombia has been faced with a high and continuous deficit in its trade balance, amounting to US\$4,100 million in 1995, US\$4,756 million in 1996 US\$4,790 million in 1997.³ The picture is not very encouraging in this respect, since the international price of coffee, the main traditional product of Colombia, remained low throughout 1998, under US\$1.3 per pound, whereas the price of oil, a product in which the country had placed its well-founded hopes, fell to one of the lowest international levels in history, US\$10.83 per barrel. Industrial growth in 1998 was equivalent to zero, while the external debt rose to US\$31,665 million.⁴ The fiscal deficit in 1998 was equivalent to 6.6 per cent of the GDP, a high-risk level for the economy as a whole.

The authors of the violence

The authors of the criminal violence in Colombia are many. In addition to the gangs and individuals who carry out acts of common delinquency and ordinary citizens who engage in acts of violence, specific groups have been established which have considerable economic and coercive powers, and a highly developed structure within the sphere of organized crime and political delinquency. This section will describe the characteristics of these groups. The acts of violence carried out by the guerrilla organizations, self-defence gangs and groups on the extreme right and the gangs and groups linked to drug trafficking are amongst the most serious and extensive. There are first of all the guerrilla groups, which

¹ National Planning Department, *La paz ...*, op. cit., pp. 7, 82 and 83.

² Alonso Salazar. *La cola del lagarto*, Medellín, Grupo Enlace del Ministerio de Comunicaciones and Corporación Región, 1998, p. 118.

³ ECLAC. *Preliminary overview of the economy of Latin America and the Caribbean*, 1997.

⁴ ECLAC. *Preliminary overview ...*, op. cit.

are the oldest subversive armed organizations in the Americas, as well as the only active groups alongside two guerrilla organizations in Peru and two in Mexico.

The main subversive armed group active in Colombia, the self-styled Revolutionary Armed Forces of Colombia (FARC), was established as such in 1966, although its roots go back to armed groups which operated from the beginning of the 1950s.¹ The organization is mainly made up of persons of peasant extraction. The FARC has followed an orthodox communist line and supported the traditional communist parties known for their pro-Soviet views.² However, the organization is a product of the historical period known in Colombia as “the Violence” which occurred between 1946 and 1964.³

The FARC is still today an autonomous political-military organization which cannot be described as the armed wing of a political party.⁴ As regards its objectives, “the Revolutionary Armed Forces of Colombia were established to fight and seize power for the people, to establish themselves as the people’s army in opposition to the army which is in the service of the bourgeoisie and the exploiting classes”.⁵

Its structure comprises a “secretariat” which functions as the executive of the guerrilla organization, as well as a “central staff” under the general direction of the organization which is headed by Manuel Marulanda Vélez (alias “Tirofijo”).⁶ There then follow a number of “blocs”, which are responsible for a specific territorial region, grouped together into “fronts”, which constitute the major basic units into which the military apparatus is divided. The “blocs” are in turn directed by their respective “commander” and “staff” and the same structure is reproduced in the “fronts”.⁷ At present, the FARC has seven “blocs” and 66 “fronts”, with an estimated total force of between 7,000 and 8,000 armed fighters. In general, the organization has a rigid hierarchical and vertical structure.

Initially and for most of its 33 years of subversive activity, the FARC guerrillas were active in remote regions along the agricultural frontiers of the country, where they claimed to be defending the interests of small-scale rural landowners,⁸ while at the same time gaining strength and power. During this period the organization increased its membership, weapons, financial resources and its military experience. At present, it has demonstrated its advanced attack capacity, which has led to a new stage in the armed conflict. Since the “Seventh Conference” held in 1982 the organization has established a plan to expand into

¹ On this background, see Mons. Germán Guzmán, Orlando Fals Borda, Eduardo Umaña Luna, *La violencia en Colombia*, Bogotá, Tercer Mundo, Vol. 1, 2nd edition, 4th reprinting, 1963, pp. 46 and 48. See also Carlos Arango Z., *FARC veinte años*, Bogotá, Aurora, 2nd edition, 1984, pp. 61 ff.

² On these links, see for example Jacobo Arenas, *Diario de la resistencia de Marquetalia*, Abejón Mono, 2nd edition, 1972, p. 81. See also Jacobo Arenas, *Cese al fuego*, Bogotá, Oveja Negra, 2nd edition, 1985, p. 75, and Fernando Landazabal Reyes, *Conflicto social*, Medellín, Bedout, 1982, pp. 262 and 263.

³ “The Violence” originated in the political quarrels between the two traditional parties (Liberals and Conservatives) which left an estimated 300,000 persons dead during the period in question. The conflict moved towards a solution with a political reconciliation agreement concluded in 1958, known as the “National Front”, which granted an amnesty to the different groups which had taken up arms. However, some groups continued their activities up until around 1964, after which only a part of the Communist factions continued to operate and refused to accept the rule of law. Concerning the final phase of the violence, see Gonzalo Sánchez, Donny Meertens, *Bandoleros, gamonales y campesinos*, Bogotá, El Ancora, 3rd edition, 1985, pp. 42, 47 and 48.

⁴ For decades the doctrine of the “combination of all forms of struggle” was advocated, and which included action carried out within the framework of the law as well as subversive acts. However, whereas the FARC is a real power based on the force of arms, the political parties on the left, including the Communist Party, have obtained only derisory levels of support in recent elections, which has not even allowed them to gain seats in Parliament. This explains the political predominance of the FARC and its model of revolution based on violence.

⁵ Statement by Manuel Marulanda Vélez, in Carlos Arango Z., *FARC ...* op. cit., p. 95.

⁶ He has been the historical leader of the FARC since the period of “the Violence”. Its main ideologue, Jacobo Arenas, died of natural causes a few years ago.

⁷ The basic organization is described in Jacobo Arenas, *Cese ...*, op. cit., p. 95.

⁸ William Ramírez Tobón, *Estado, violencia y democracia*, Bogotá, Tercer Mundo and National University, 1990, pp. 59 ff.

strategic zones of economic importance in the agricultural and commercial sectors, because of the natural resources existing there or as a basis of access to regions of political, economic or social importance. Of the 33 departments which make up the political and territorial division of the country, they are absent in only eight. In 1995, the organization was present, in varying degrees, in a total of 522 municipalities, out of the 1,069 in the country.¹

In these circumstances, they control certain areas enabling them to establish communication corridors with other regions where military fronts are concentrated. They therefore have considerable capacity to bring together major military units (approximately 2,000 guerrillas) from different regions to attack major targets such as national army bases or relatively large towns. Their weapons are typical of infantry-based warfare, backed up in some fronts with heavy machine-guns and light artillery such as mortar.

The so-called National Liberation Army (ELN) was established in 1965, like other guerrilla organizations of Latin America, under the inspiration of the Cuban revolution and the theory of revolutionary "focal points".² "In its programme principles, the National Liberation Army states: "The National Liberation Army has arisen from the need of the Colombian people to have a conscious and aggressive armed wing which is capable of allowing it, through a direct confrontation with its enemies, to take power and establish a social system which is consonant with the development of the country and which frees the masses from the exploitation to which they have been subject throughout all their history".³

For more than a decade the organization attempted without any success to develop its model of insurgency, without establishing any real presence on the national territory or achieving any political or military influence and with a small number of members. By the middle of the 1970s it had been reduced to a number of small gangs, following an offensive by the national army and the death of most of its leaders.⁴ However, after a period of minimal survival, when it remained as an endemic phenomenon with a very low level of activity and little impact, the organization was given a new lease of life thanks to economic resources acquired from acts of extortion against multinational companies drilling for oil or installing oil infrastructure plants. This new capital enabled it to finance the establishment of new armed columns which would serve as a basis for the development of military and economic financing activities, all of which led to a sustained growth in its subversive activities, the size of its forces and territorial presence.

¹ Jesús Antonio Bejarano et al., *Colombia: Inseguridad, violencia y desempeño económico en las áreas rurales*, Bogotá, FONADE and Universidad Externado de Colombia, 1997, p. 132.

² According to this theory, Latin America possessed the appropriate objective conditions for the development of a revolution because of the poverty and marginalization of the population of its countries, although it lacked the indispensable subjective conditions, i.e. the formation of guerrilla groups which could act as politically conscious and organized nuclei to promote and direct the revolutionary process. Thus the creation of a guerrilla "focal point" was all that was needed to begin the revolution. See Ernesto "Che" Guevara, *Obras completas*, Buenos Aires, Cepe, 2nd edition, 1973, p. 27. However, social research has shown that political subversion or crime in general have not thrived any better or more intensely in countries with poor socio-economic conditions; on the contrary, they have prospered in nations, regions and areas in which there is greater relative wealth. Furthermore, the evolution of the insurrectionist movements in Latin America has demonstrated the failure of the revolutionary focal point strategy.

³ Ulises Casas, *Origen y desarrollo del movimiento revolucionario colombiano*, Bogotá, 1980, p. 124.

⁴ During the Anorí Operation (1974) the organization suffered serious losses inflicted by the Colombian army, and its military structure was destroyed. The disappearance of its leaders was the result, in part, of internal purges, in which its leaders were executed (Víctor Medina Morón, Ricardo Lara Parada, Jaime Arenas) or expelled and sent into exile (Fabio Vásquez Castaño) and, in part, the result of armed clashes with state forces (Camilo Torres, Domingo Laín, Manuel and Antonio Vásquez Castaño).

The ELN obtains most of the necessary resources for financing its military activities from the kidnapping of persons (nationals and foreigners), the extortion of entrepreneurs and other members of the civilian population, interest on its accumulated capital and, to a lesser extent, attacks on banking establishments or other individuals.¹ There is no evidence to conclude that it has benefited from the production or trafficking of illegal drugs.² Its most destructive action has involved the blowing up of pipelines which transport oil, causing serious damage to the national economy and the environment.³

Most of the leaders of the ELN are from the middle class.⁴ It is organized into “fronts” or “columns” which operate with considerable military and political autonomy in obtaining financing resources, and for this reason hierarchical dependency on its “central command” is both weak and relative. It has 35 “fronts” and around 3,000 armed fighters. Following the death from natural causes of its main leader in 1998, the former Spanish priest Manuel Pérez, the leadership was taken over by Nicolás Rodríguez Bautista (alias “Gabino”).

The main ELN units are located in areas which have natural resources, and in particular, in oil-producing regions or those adjacent to the pipelines which transport crude oil. According to 1995 data, these units were present in 280 municipalities.⁵

The so-called People’s Liberation Army (EPL) is the third guerrilla organization in the country. It is made up of remnants of the former guerrilla movement of the same name established in 1967 by the Marxist Leninist Communist Party (PC/ML).⁶ The PC/ML had split from the traditional Communist Party, which it accused of being “revisionist”, and adopted what in leftist terminology is known as the “pro-China” line.

The EPL was made up of members of the middle class, who were its leaders, and peasants. Its main area of influence was in the north-east region (border region between the departments of Córdoba and Antioquia) and in the adjacent region of Urabá (department of Antioquia). With the political reforms introduced in China following the death of Mao Tse Tung, the movement began to follow the policy guidelines of Enver Hoxa in Albania. Finally, in 1980 the EPL and its political wing abandoned Maoism⁷ and in 1984 began a process of negotiations with the Colombian State which was successfully concluded in 1991 with the demobilization of the guerrilla group and the granting of an amnesty to those members who accepted the peace process. This was followed by the founding of a legal political movement called “Esperanza, Paz y Libertad”, which retains the EPL acronym, and whose members are engaged in a serious dispute with the FARC, an organization which is attempting to take control of its former areas of military and political influence.⁸ A dissident minority of the guerrilla group which continues to identify itself as the People’s Liberation Army, led by Francisco Caraballo, continues its armed rebellion.⁹

A fourth guerrilla group is the Jaime Bateman Movement, made up of a group of dissidents from the former group of rebels known as the Movimiento 19 de Abril (M-19), which refused to accept the peace process concluded with this organization. The M-19

¹ ELN income for the period 1991-1996 has been estimated at 1,314,999 million pesos. In this connection, see National Planning Department, *La paz ...*, op. cit., p. 78.

² Germán Silva García, *Delito ...*, op. cit., p. 75.

³ The repair of damage caused to pipelines in the country cost the State petroleum enterprise 592,000 million pesos between 1986 and 1996, a figure which was greater than that of the justice budget for 1998. In this connection, see National Planning Department, *La paz ...*, op. cit., pp. 7 and 8.

⁴ Fernando Landazabal Reyes, *Factores de violencia*, Bogotá, Tercer Mundo, 1981, p. 113.

⁵ Jesús Antonio Bejarano et al., *Colombia: Inseguridad ...*, op. cit., p. 132.

⁶ Fabiola Calvo O., *Diez hombres. Un ejército. Una historia*, Bogotá, ECOE, 1985, p. 37.

⁷ Fabiola Calvo O., *ibid.*, p. 121.

⁸ In particular, leaders and workers of SINTRAINAGRO, a trade union organization of the banana-producing region in Urabá, are being assassinated.

⁹ Francisco Caraballo was subsequently arrested and is currently serving a term of imprisonment.

emerged in 1970, although it was only in 1974 that it began military operations. Its members came from the middle class, and in particular the professional class. The Jaime Bateman Movement is a minor group which is active in the departments of El Valle and Tolima, and its size is the equivalent of one of the FARC's fronts. It participates in sporadic kidnappings and skirmishes with the public authorities.

The fifth group of rebels consists of a minute terrorist organization which operates under the names of the People's Revolutionary Organization (ORP) and the Jorge Eliecer Gaitán Movement (JEGA) and has been involved in kidnappings and selective murders.¹ Its operations have been carried out on a fairly discontinuous basis, and its main leader is Hugo Antonio Toro Restrepo, alias "Comandante Bochica". It has no presence in rural areas, or any "fronts" or armed columns. It is active in the departments of Risaralda and Quindío.

The guerrilla movement has a total of approximately 10,000 armed fighters. In 1995 its territorial presence included 622 municipalities of the 1,069 which make up the Colombian territory.

On the ideological fringe there are also the armed groups of the extreme right, whose origins vary and which have different forms of organization. They are generally known in the mass media as "paramilitary" groups, in the universal sense of this term, since the groups which are known by this name in Colombia have no organic link with the State. Indeed, in Colombia, unlike other countries which have waged war against rebel groups, there are no real paramilitary forces to combat the guerrillas.² The self-defence peasant groups of Guatemala, the civil defence forces of El Salvador and the peasant patrols of Peru were all official or officialized paramilitary structures which were armed, maintained and directed by the military forces of their respective countries to fight the war against the guerrillas. In Colombia, the so-called "paramilitary" organizations are in fact armed groups on the extreme right, which operate outside the law, and are therefore pursued by the authorities of the Colombian State.

Two characteristics can be mentioned concerning the establishment of the above-mentioned gangs: (a) the existence of various groups, many of them lacking continuity and with complex origins; (b) the influence of drug-traffickers in association with other social sectors, in the most significant cases.

In Colombia many anti-subversive "social cleansing"³ groups have operated which are organized like military forces or which function as hired assassins.⁴ Most of these groups have had a short existence, have been relatively unstructured, with a very weak sense of ideology, discourse and practice, devoid of any sense of ethics and with a fairly restricted and local scope of action. The urban groups emerged as a means of fighting against common delinquency, sometimes as an alternative to or simultaneously with their own

¹ The group is known for the kidnapping of Juan Carlos Gaviria, brother of the Secretary General of the Organization of American States (OAS) and for the assassination attempt against the lawyer Antonio José Cancino.

² Some years ago the legislation which authorized such forces was declared unconstitutional by the Court.

³ The "social cleansing" groups frequently active in urban areas proceeded to assassinate destitute persons, young persons suspected of having links with crime and persons with a criminal record. These groups have had little continuity, emerging and disappearing shortly afterwards and apparently lacking in any solid structure.

⁴ The militia are an urban phenomenon, established by the M-19 and then the ELN in some cities as part of their revolutionary project, and in particular in Medellín, towards the middle of the 1980s; in many cases, they subsequently evolved into self-defence groups against delinquency in certain neighbourhoods, or into juvenile gangs engaged in crime or into groups of hired assassins. The gangs of hired assassins, which in part arose from the militia, in many cases became part of the military apparatus or security forces of the drug traffickers. Their main activity consisted of carrying out murders in exchange for the payment of money, with their victims generally being magistrates or public prosecutors, members of the police and politicians campaigning against drug traffickers. On this subject, see: Alonso Salazar, J. et al., *La génesis de los invisibles*, Santafé de Bogotá, Society of Jesus Programme for Peace, 1996, pp. 142-145.

illicit activity. The rural groups were mainly engaged in anti-subversive activities and to a lesser extent in the fight against certain kinds of common delinquency, and on many occasions were linked to illicit business activities, in particular concerning drug trafficking.

Of the various groups which were active, mention may be made of such organizations as "Alfa 83", "Los Tiznados", "Terminator", "Muerte a Abigeos-Maos", "El Embrón", "Pro Limpieza del Valle del Magdalena Medio", "Movimiento Anticomunista Colombiano", "Los Grillos", "El Escuadrón Machete" and "Falange". These groups are no longer active.

The more sophisticated groups which emerged in the first half of the 1980s were the direct descendants of the drug-trafficking organizations headed by Gonzalo Rodríguez Gacha and Pablo Escobar.¹ An alliance was formed with the brothers Fidel and Carlos Castaño for the establishment of private armed "self-defence" groups.²

The original groups were established in the area of the Magdalena Medio (a region in the departments of Boyacá, Cundinamarca, Antioquia and Santander) and in the north-west part of the department of Antioquia, in the central region of the country, where the drug traffickers had acquired estates, in response to the extortion activities carried out by the guerrillas against rural land owners.³

The self-defence groups of the Magdalena Medio went through various operational stages, in line with the political and military objectives which they were pursuing. During the first phase, they eradicated the guerrilla groups of the Magdalena Medio region. In the second stage, they pursued a campaign to exterminate activists of the Patriotic Union, a legal leftist political front, founded by the Communist Party and the FARC (the political participation of the guerrilla movement, represented by rebels who had been granted amnesty, was a result of the 1984 peace process), in reprisal to FARC interference in the drug-trafficking business, and with which they concluded a temporary alliance, which soon led to irreconcilable disputes.⁴ During a third stage, they carried out campaigns of terror, which included massacres, in regions under the influence of the EPL (Urabá) or the FARC (north-west part of the department of Antioquia).⁵ In the final stage, when the groups were more closely linked to the security forces of the drug traffickers or their gangs of hired assassins, they participated in the assassination of many leading figures in the country (for example, in the murder of Luis Carlos Galán, the Liberal Party presidential candidate) and the serial murder of members of the national police.⁶ These self-defence groups, with a unified hierarchical command, originated in a specific region but over time they spread throughout the entire country.⁷

¹ Pablo Escobar and Gonzalo Rodríguez Gacha were killed by the national police. Fidel Castaño is presumed dead, although it has not been possible to confirm his death.

² Ciro Krauthausen, Luis Fernando Sarmiento, *Cocaína ...*, op. cit., p. 97.

³ It has been estimated that the drug traffickers acquired more than a million hectares of the best land in the country. At present, many of these properties have been seized and legal proceedings have been started to terminate ownership rights, given their unlawful acquisition.

⁴ The war unleashed by the self-defence groups in the Magdalena Medio region resulted in the assassination of more than 1,000 activists of the Patriotic Union, including its presidential candidate Jaime Leal, who was vice-president of FENALTRASE and president of ASONAL JUDICIAL, a trade union organization of state workers. The persons murdered included a large number of trade union leaders and workers.

⁵ In particular in the region of Urabá, there have been mass-scale assassinations of SINTRAINAGRO workers employed in banana production.

⁶ This period saw the beginning of the dissolution of the self-defence groups, not only as a result of the relentless war waged by the drug traffickers against the Colombian State, but due to internal divisions between the drug traffickers. The main leaders of the self-defence groups of the time were murdered as a result of internal quarrels or killed by the national police. Concerning the assassination of members of the police, Pablo Escobar had offered to pay a sum of money for each member of the police killed and a higher amount for each police official assassinated, which resulted in a wave of executions.

⁷ Víctor and Henry Pérez, the main military leaders of the self-defence groups of the Magdalena Medio, died in separate incidents.

The second stage in the development of the self-defence groups, in which remnants of the group organized in the Magdalena Medio have participated, has been centred on the rural areas of the department of Córdoba, to which the self-defence groups from north-west Antioquia, under the leadership of the brothers Fidel and Carlos Castaño, moved. The Castaño brothers, who were being sought by the Colombian State on various charges, soon extended their organization to the region of Urabá in the region of Antioquia. At one time, they clashed with Pablo Escobar's supporters, which resulted in a bloody private war between the two groups.

The self-defence groups have also pursued a territorial strategy aimed at achieving power at the local level, with the use of violence being combined with the acquisition of land which has given them an additional influence in social, economic and political terms, as well as bringing them obvious benefits.

During the offensive which they launched in 1997, the United Self-Defence Groups of Colombia (AUC) extended their activities to regions where the guerrillas have been traditionally present (departments of Bolívar, El Chocó, Santander and Meta), clashing with members of the ELN and the FARC. However, their main tactic consists of carrying out massacres against the civilian population, as a means of destroying the social base of the guerrilla movement or forcing the guerrillas into combat. In the same way, they undertake the selective assassination of political activists suspected of maintaining links with the guerrilla movement; these figures have included defenders of human rights, trade union officials and workers. Guerrilla leaders and members of their families have also been kidnapped.

According to data available for 1993, the self-defence groups were present in 138 municipalities, although the figure has certainly risen since the launching of their national offensive in 1997.¹ The estimated membership of the AUC fluctuates between 4,000 and 5,000.²

The armed groups operating in Colombia also include the squadrons of the drug-trafficking groups. The drug traffickers, in addition to their links with the self-defence organizations, have their own military and security apparatus, which is used to combat the state security forces, eliminate enemies or competitors in their illegal business and kidnap and assassinate state officials or leading figures of civilian society who have acted against their interests or expressed criticism of their activities.³ There is a long list of presidential candidates, ministers of State, journalists, trade union leaders, members of the police, political activists, Supreme Court magistrates, judges, prosecutors, entrepreneurs, competitors in the drug-trafficking business, and family members of all these persons, who have been murdered. The groups of traffickers have also used terrorism as a tactic for achieving their objectives by blowing up planes in flight, destroying automobiles with explosives on the public thoroughfare as well as on the premises of state agencies or private enterprises.

They have acted in this way to defend their economic interests and to escape legal action or to force the derogation or non-application of measures authorizing the extradition of nationals to foreign countries to be tried on drug-trafficking charges.

In most cases, the drug traffickers have not established any special or well-known groups themselves but have used their enormous economic resources to hire armed gangs or death squads.

¹ Jesús Antonio Bejarano et al., *Colombia: Inseguridad ...*, op. cit., p. 131.

² National Planning Department, *La paz ...*, op. cit., p. 79.

³ See Germán Silva García, *¿Será ...*, op. cit., pp. 323 ff.