Furthermore, one of the most common activities of the drug-trafficking groups has been the infiltration of institutions of the State or civil society through corrupt channels.[1]

In general, these organizations have used their armed forces in a combined manner in the fight against anything considered to be Communist and as a means of establishing appropriate conditions for the illicit drug trade.[2]

Evolution of the internal armed conflict

The strategy devised and implemented by both the FARC and the ELN consists of rapidly increasing and diversifying their financial resources, increasing their number of fronts by the splitting up of existing ones and infiltrating the local everyday life of the areas under their influence.[3]

In order to increase and diversify their economic resources, the guerrillas have engaged in various illicit activities which have enabled them to acquire large amounts of capital. To a large extent, the means used by the guerrillas to obtain these resources have led to clashes with the drug-trafficking gangs.

The confrontation between the drug traffickers and the guerrilla organizations, and in particular the FARC is one of the factors which has most contributed to the worsening, spread and intensity of the violence in Colombia. The first consequence of the conflict unleashed between the drug traffickers and the guerrillas was a wave of atrocious murders.[4] The drug-trafficking gangs launched a series of selective assassinations targeted against political leaders and activists on the political left and social and trade union leaders. This extended the conflict to the cities and to the civilian population.

In the southern region of the country, where the largest amounts of illicit crops are grown and where virtually the entire peasant population is engaged in this activity, FARC guerrillas have established a broad social base of support and which has also come into conflict with the State security forces. Indeed, since the armed forces are required to destroy the illegal crops and at the same time carry out military operations against FARC columns in order to neutralize them, their work has generated considerable hostility amongst the civilian population which sees these military detachments as forces which are trying to deprive them of their sources of survival. One possible means of offsetting the negative effects of the problem of the illicit crops lies in the "crop replacement programmes". However, these programmes have had only limited success since the traditional agricultural crops do not attract the international prices paid for the raw material used in cocaine and heroine production.

The use of criminal means to obtain economic resources rapidly has become a common practice of the guerrilla organizations. Although for some this implies a loss of their political objectives, it remains true that the use of such methods has become a means of achieving their political goals.[5]

The Colombian guerrilla movement has abandoned all sense of ethics, on the pretext that the end justifies the means, although the main consequence has been the rapid

[1] This has led to the initiation of numerous criminal proceedings and the handing down of sentences against political and social leaders, as well as former State officials, who have been found guilty of illicit enrichment and other drug-related offences.

[2] Ciro Krauthausen, Luis Fernando Sarmiento, *Cocaína* ..., op. cit., p. 96.

[3] Jesús Antonio Bejarano et al., *Colombia: Inseguridad* ..., op. cit., p. 118. Concerning diversification and economic expansion and the establishment of power at the local level, see National Planning Department; *La Paz* ..., op. cit., p. 74.

[4] Ciro Krauthausen; Luis Fernando Sarmiento. *Cocaína* ..., op. cit., pp. 95 and 204.

[5] On the use of banditry as a means of action and political revolution as an end, see: Germán Silva García. *Delito* ..., op. cit., pp. 75 and 76; and Alfredo Rangel Suárez, *Colombia: Guerra* ..., op. cit., pp. 148 ff.

accumulation of enormous wealth which it has enjoyed. "As a result, the income of the guerrillas rose from 349,000,000 pesos in 1991 to more than 1 billion pesos in 1996, i.e. 0.58 per cent of the GDP. Between 1991-96, income rose to 3.6 billion in 1995, i.e. 5.3 per cent of the GDP."[1]

"Kidnapping, robbery and extortion by the guerrillas brought them an income of 1.7 billion between 1991 and 1996."[2] These figures also illustrate another problem, namely the difficulty of convincing the members of the guerrilla movement to lay down their arms, since the criminal activities which they carry out provide them with a lucrative means of survival and an authentic style of life, which is sometimes, in the case of persons who joined the guerrilla movement when they were children, the only one they have known.

The expansion of the guerrilla fronts has also been rapid since 1982. There has also been an increase in fire power, resulting in spiralling violence, a greater number of victims and a broadening of the civilian sectors of society affected. In the same way, the growth of subversion has placed greater pressure on the public forces which have had to work double in combating an enemy which only fights when it is sure of its numerical superiority and which, in general, attacks and then escapes to mountainous and forest regions where it is difficult to pursue. Here it should be noted that the armed forces are also required to allocate a large number of their troops to protecting indispensable infrastructure work and resources, such as bridges, hydroelectric plants, dams, highways, power lines, telecommunication antennae, etc., thus immobilizing their units.

As regards the strategic objective of establishing effective power at the local level, the use of violence against all those who do not support their political project is, if not the only, then at least the preferred tactic of these groups. This violence, which is carried out with the above-mentioned objective, has been used against different social and political organizations, including those related to other guerrilla organizations, against the municipal authorities, represented by mayors and councillors,[3] employers and workers of commercial and industrial enterprises or those engaged in the building of works of infrastructure, as well as landowners and peasants carrying out agricultural activities.

As regards the first point, the guerrilla organizations have acted against trade union officials and workers, in line with their strategy of acquiring control of labour organizations or preventing them from being influenced by other political views. This can be seen above all in the region of Urabá (Department of Antioquia) where workers and leaders of SINTRAINAGRO (trade union of banana production workers) have been systematically persecuted by the guerrillas.

Acts of aggression by the FARC and the dispute between the EPL-Caraballo and the "Esperanza, Paz and Libertad" political movement have a long history and have always involved the questions of the armed territorial control of a region, in this case Urabá, and control of labour organizations, in this case the trade union of banana production workers and the community organizations of the populations of the region. The conflict, when set in the above-mentioned context, dates back to the struggle between the FARC and the People's Liberation Army (EPL) before its disbanding and the political agreement concluded with the Colombian State in 1991.

In contrast to the above and as confirmation of the fact that the evolution of the problem in the case if Urabá was not directly related to the worker-employer relations, it should be noted that although there were sometimes periods of tension which were only to

[1] National Planning Department. *La Paz* ..., op. cit., p. 81.

[2] National Planning Department. *La paz* ..., op. cit., p. 81.

[3] The mayor is the political head of a municipality and elected by popular vote. A municipal council is a municipal assembly and its members are also elected by popular vote.

be expected given the prevailing situation of violence, the relationship between enterprises and their workers was normal during the period of truce between the guerrillas. "In the end, the agreements resulted in the drafting and signature of 229 different collective labour agreements; at the same time, for the current year, there was a 30 per cent increase in banana production and an increase in banana exports of around 15 per cent."[1]

In other cases, guerrilla violence has been targeted on workers and employers engaged in the growing of African palm oil, with workers being forced to suspend production under threat or as a result of actual acts of violence. Another particular example concerns the terrorist action perpetrated against the Nare cement factory (in the Department of Antioquia) which resulted in its destruction and subsequent unemployment for tens of workers.

In some cases, trade union members or leaders have been arrested on charges of "rebellion" and terrorism" on the orders of the Procurator-General of the Nation. As already noted, the Office of the Procurator-General of the Nation is a jurisdictional body which is completely independent of the executive. Its judicial decisions, which are handed down autonomously, within the framework of the guarantees of due process, require in the case of an arrest warrant the existence of proof of criminal responsibility.[2]

The trade union central organizations have clearly stated that trade union organizations are neutral as regards the internal armed conflict and that the purpose of the trade union activities which they carry out is not to collaborate with or contribute to the political objectives of the guerrilla movement but to defend the interests and objectives of the workers.

The guerrilla offensive to improve their strategic position at the local level has also included greater presence and activity in the regions producing a large part of the national wealth.[3] This has been accompanied by a demonstration of force in the replacement of official local authorities, as for example in the last regional elections, when the rebels issued death threats against the candidates of 23 municipalities in the department of Cundinamarca alone.[4] Between 1995 and August 1997, the guerrillas, and to a lesser extent the self-defence groups, assassinated two Members of Parliament, a governor, 26 municipal mayors and 141 town council members.[5] In 1997, 920 election candidates had to withdraw as a result of threats and 121 were kidnapped.[6] Even so, it is worth noting that despite this wave of violence, the elections took place, with the highest elector participation rate in the history of Colombia.

When they are not attempting to replace the authorities with other power structures, the guerrillas use their strength to bring pressure to bear on decisions taken by local administrations. Thus the guerrillas in the municipalities located in these regions, as part of their strategy for constructing local power bases, pressure the municipalities into diverting funds from the public treasury towards works and programmes proposed by the rebels themselves. With this kind action, they not only increase their local influence and appear to the public as the champions of works in the public interest but contribute to the fragmentation of unity in the state organization, as well as obtain additional financial resources.

[1] William Ramírez Tobón, *Urabá* ..., op. cit., p. 58.

[2] According to the Code of Criminal Procedure, the preventive detention of a citizen requires the existence of a witness account or at least serious evidence of responsibility.

[3] Jesús Antonio Bejarano et al., *Colombia: Inseguridad* ..., op. cit., p. 136.

[4] "FARC: prohíben elecciones en 23 municipios", in *El Tiempo*, Santafé de Bogotá, 23 Oct. 1997.

[5] "Violencia se ensaña con políticos", in *El Tiempo*, Santafé de Bogotá, 10 Aug. 1997.

[6] "Cifras de la violencia política en el país", in *El Tiempo*, Santafé de Bogotá, 14 Sep. 1997.

With the precise objective of defending the civilian population and democratic institutions, the Colombian State, in accordance with its constitutional and legal obligations, has done everything possible to halt the violence. Even so, and despite some success obtained, the public forces have had to pay a high price. In an ambush against a convoy of the national army in Puerres (department of Nariño) in 1996, 31 soldiers were killed. In an attack on the military base of Patascoy (department of Nariño) carried out by the FARC on 21 December 1997, 11 soldiers were killed and 18 kidnapped. In an attack (1998) by the FARC on the city of Mitú (department of Vaupés) 110 members of the police and the military were killed, as well as ten civilians, and 63 members of the police were kidnapped. In an attack (1998) by the FARC against the municipality of Miraflores (department of Guaviare), the headquarters of the main anti-narcotics base of the national police, from which most of the fumigations of illicit crops were carried out, around 100 persons were killed, most of whom were members of the police and the national army, 150 were injured and 125 uniformed members of the police and the army kidnapped. In an assault by the FARC (1998) against the military base of La Uribe (department of Meta), several members of the security forces were killed or kidnapped. The FARC (1998) destroyed the military base of Las Delicias (department of Caquetá) in an attack which killed many soldiers. In El Billar (department of Caquetá) they also attacked a battalion of the national army, resulting in a large number of deaths. In 1998, more than 500 members of the national police lost their lives in carrying out their duty. At present, 226 soldiers and 184 members of the police are being held by the guerrillas.

The subject of human rights is of vital importance in the development and consequences of the conflict. In a country which is faced with a serious internal armed conflict, members of the public forces may be involved in violations of human rights, despite the reprobation of such conduct by the State. It is also clear that the Colombian State and its institutions can only establish themselves as an alternative to the guerrilla groups and to the search for an easy life through criminal activity if they pursue democracy, defend the legal order, encourage the participation of citizens and promote basic rights, acting as guardians of human rights and the implacable enemies of those who violate such rights.

Although isolated members of the State security forces have committed infringements of human rights, these practices are neither approved or tolerated, since this type of conduct is contrary to the official policy of the Colombian State and, its very principles and nature. However, these ideas would be a dead letter if they were not put into practice through clear policies for the prevention and repression of infringements of human rights which may be committed by State officials, and effective results in terms of the behaviour of its armed institutions. As regards the first point, a clear policy has been established through a number of measures which will be described and analysed in the next two sections of this report. As regards the product of such policy, the significant reduction in the infringement of human rights by the public forces is an indication of what has in fact been achieved.[1]

The paradoxical aspect of the human rights situation is the contradictory behaviour of the guerrilla forces themselves: "The guerrilla groups have a very ambiguous concept of the subject. They understand the respect of human rights as an obligation incumbent upon the State and see its violation by the public forces as an opportunity which should not be missed to make denunciations to the national and international public opinion, with a view to discrediting their legitimacy and discouraging support. On the other hand, however, they see the violations of human rights which they themselves carry out systematically and

[1] Source: Reports of the Office of the Procurator-General of the Nation.

frequently as being fully justified, since they are directed towards the achievement of high objectives. In other words, noble ends justify atrocious means."[1]

In this context, special importance is to be attached to the statement by the United Nations High Commissioner for Human Rights concerning the violation of human rights and international humanitarian law by the guerrilla organizations in Colombia.[2]

For their part, the self-defence groups are no less redoubtable an enemy for the Colombian State. Their main strategy consists of imposing states of terror, resulting in the forced displacement of the population, through the carrying out of massacres or threats to do so. Since the civilian population in the regions where the guerrillas are active must, out of fear or self-interest, collaborate with the guerrillas, the United Self-Defence Groups of Colombia (AUC), in an attempt to undermine support from the population, has sought to create an even greater sense of fear or threat to their survival. Thus, for the self-defence groups any person suspected of helping the guerrillas must be assassinated.[3] These groups are therefore one of the main sources of human rights violations in Colombia.

With these methods the self-defence groups are trying to: (a) forcibly displace the civilian population and deprive the guerrillas of their sources of logistical support and information; (b) force the guerrillas to engage in open combat to avoid attacks against the civilian population; (c) to gain the support of sectors of the civilian population for their cause, by setting it against the guerrillas under the threat of greater violence or enticing it with various means.

Within this process military clashes between the self-defence groups and the FARC in 1998 spread throughout the departments of El Chocó and Córdoba and, between the ELN and the self-defence groups in the south of the department of Bolívar. In all cases the civilian peasant and indigenous populations suffered the most.

Caught between the crossfire, the civilian population has been forced to migrate to areas not affected by the armed conflict or to the cities.

The self-defence groups have also committed attacks or engaged in combat against the armed forces and other state authorities and thus become another source of violence to which the attention and resources of the public forces and their units must be directed. Mention can be made of the following examples:

In the place known as La Rochela the self-defence groups ambushed a judicial commission, killing all its members, judges and members of the judicial police. In the department of El Meta, in October 1997, they attacked the members of another committee of inquiry, assassinating 11 persons including prosecutors, officials of the Judicial Research Technical Body (CTI) of the Office of the Procurator-General, officials of the Administrative Security Department (DAS) and officers of the national army. In the municipality of Villanueva (department of Guajira) the self-defence groups attacked members of the national police.[4] In San Diego (department of Cesar) clashes occurred between the army and a command unit of the Peasant Self-Defence Organizations of Córdoba and Urabá (ACCU), which resulted in the capture of two delinquents and one death.[5]

[1] National Planning Department. *La paz* ..., op. cit., p. 19.

[2] Report by the United Nations High Commissioner for Human Rights, document E/CN.4/1998/16, pp. 10 and 11.

[3] In this connection, see the statements by Carlos Castaño, head of the AUC, in which he distinguishes between activists of the democratic left and activists of the left "which render services to the war", in "La Izquierda no es un objectivo militar", in *El Tiempo*, Santafé de Bogotá, 29 Sep. 1997.

[4] See "Nuevo rumbo de los derechos humanos en Colombia", in *El Tiempo*, Santafé de Bogotá, 11 Dec. 1998.

[5] "Temor a paras en Media Luna", in *El Tiempo*, Santafé de Bogotá, 14 Dec. 1998.

Tens of members of the self-defence groups have been arrested on the orders of the Office of the Procurator-General of the Nation. The repressive action by the State against the self-defence groups has also achieved significant results, including the capture of 120 members of the self-defence groups in 1998, out of a total of 248 members of the self-defence groups currently in prison.[1] In the same way, persons suspected of being involved in the organization and command of the self-defence groups, such as Victor Carranza, have been captured and have been brought before the criminal courts.

The connection between the self-defence groups and the drug traffickers, who are both engaged in a process of accumulating productive land, is a further problem. "What is problematic in all this process is the fact that the system of buying and controlling land is linked with the intense violence of paramilitary activity, in which attacks against the civilian population are used as a means of forcing out the guerrillas."[2] This problem is made even more difficult to resolve by the enormous economic capacity of the drug traffickers to acquire and maintain arms.

The action of the self-defence groups and the drug-trafficking gangs is a further element which threatens the authority of the State and the national legal order, as well as the essential principles of the social State based on the rule of law, all of which is negated by the practices of the self-defence groups. The self-defence groups and the drug-trafficking gangs pursue a political programme which is also a programme of regional power that is not only different from but contrary to that promoted by the Colombian State, and thus their activities are contrary to the stability and functioning of the national institutions.

"The enormous capital which organized crime reaps from the drug industry has become the main source of violence, corruption and social deterioration, and is a major obstacle to development."[3]

Within the development of the conflict, "truth" is one of the first victims. Controlling information, manipulating it and bringing it into line with immediate political objectives are practices frequently used to gain the upper hand, to slander adversaries and to conceal or deflect responsibilities. In this connection mention can be made of the following flagrant examples:

The murder of Elsa Alvarado and Mario Calderón, employees of a non-governmental organization (NGO), whose various functions include the monitoring of human rights in Colombia. In this case, the assassination of Alvarado and Calderón was presented to public opinion and the mass media as a crime against the defenders of human rights. In fact, both were working on projects dealing with the protection of the environment on behalf of the NGO to which they were attached.

The assassination of Eduardo Umaña Mendoza, a criminal law specialist, who was known in the country as a human rights activist and a defending counsel in criminal cases. His death was categorically presented outside the country as the result of his participation as counsel for the defence of a number of members of the Workers' Trade Union (USO) being investigated by the Office of the Procurator-General of the Nation on charges of participating in terrorist attacks. However, no evidence has been given or exists in support of such a conclusion.

[1] Sources: Office of the Procurator-General of the Nation and Office of the High Commissioner for Peace.
[2] Alonso Salazar, *La cola* ..., op. cit., p. 111.
[3] Alonso Salazar, *La cola* ..., op. cit., p. 118.

The assassination, noted earlier, of María Arango Fonnegra, which was seen as the work of self-defence groups on the far right, because of her links with the political left and the popular movement, was, as noted earlier, the result of an ordinary crime.

In the massacre at Machuca (department of Antioquia) on 18 October 1998, the National Liberation Army (ELN) blew up a stretch of the pipeline on the outskirts of this town, as a result of which a total of 72 civilians were burned to death, and several dozen were seriously burned, when the spilt fuel caught fire. The ELN leaders accused the National Army of having set the oil on fire, so as to be able to accuse the ELN of carrying out an attack against the civilian population. It was only several days later, when they were no longer able to deny their responsibility for the events, that the ELN leaders recognized that the fire and the death of civilians were due to a "lack of foresight" on the part of the guerrillas who had carried out the terrorist attack.

As has been pointed out on different occasions, the death threats and violations of the human rights of members of trade union organizations are not a result of their trade union activity, but their participation in militant political activities. Thus for example several trade union leaders have been given protection under the protection programme established for the Patriotic Union (UP), not only because of their status as trade unionists, but because they are members of the UP or even other groups on the political left. This is the case with Wilson Borja, president of FENALTRASE, member of the UP, and Jesús González, head of the human rights secretariat of the Single Central Organization of Workers (CUT) (and who is not a member of the UP). Under this programme, which is intended to protect members of the UP, and which has also helped to protect members of other political groups, persons who have been threatened may freely choose persons to act as their bodyguards, who are trained and armed by the State, which also provides official vehicles and pays for their wages.

The problem of violence and the evolution of the armed conflict have also had an effect on the functioning of institutions, and in particular, the administration of justice, resulting in congestion and thus increasing the possibility of crimes going unpunished. Each criminal judge is allocated an average of 442.8 new criminal cases a year. However in 1997 alone a total of 402,952 new criminal cases were initiated.[1] This increase in new cases is greater than the number of criminal cases which are actually dealt with and, which, although high, is at all events too low given the large number of cases which enter the system, as well as those pending from previous years. This can be seen from the fact that the annual average number of cases concluded per penal judge is 385.35.[2]

The task of administering justice in a rapid and effective manner by the courts has also been affected by the use of violence against judicial officials. In addition to the above-mentioned attacks by self-defence groups, the drug-trafficking groups and guerrillas have also assassinated officials of the judiciary. In the period 1979-1991, a total of 515 officials of the judiciary were victims of acts of violence, including 278 murders.[3] As a result of this situation, the carrying out of judicial inquiries in regions controlled by the guerrillas and self-defence groups is extremely difficult.

However, as one of the positive signs in the development of the internal armed conflict, it is symptomatic that the municipalities with a higher rate of participation in the democratic electoral process are those which have the lowest rates of violence, whereas those municipalities in which there is a presence of some illegal armed group (guerrillas, self-

[1] Republic of Colombia, Superior Council of the Judicature, *Indicadores* ..., op. cit., pp. 114 and 116.

[2] Republic of Colombia, Superior Council of the Judicature, *Indicadores* ..., op. cit., p. 27.

[3] Republic of Colombia, Ministry of Justice and Law, *Crimen organizado y justicia*, Santafé de Bogotá, Ministry of Justice and Law, 1995, p. 32.

defence groups, drug traffickers) have the highest rates of violence.[1] The moral is clear: there is a need for more democracy and civilian participation and less interference by armed groups which claim to represent the interests and aspirations of the population.

In concluding this section, it should be pointed out that in accordance with the characteristics of the violence described above, and in particular those forms of violence carried out by members of the public forces acting outside the framework of the law and in association with self-defence groups, and the crimes committed by the self-defence groups themselves and the guerrilla organizations against the civilian population, all these acts are infringements of international humanitarian law the examination of which, within the framework of the international community, falls within the competence of the international bodies established by international law. Thus as noted earlier, Colombia, as a state party to the main international instruments regarding human rights and international humanitarian law, provides an adequate response, within the framework of the bodies established for such purposes by conventions or otherwise, to representations made to it, and presents the reports due in respect of its international obligations in this sphere.

State activity in the face of violence

The protection of human rights and international humanitarian law are crucial elements in the policy of the Colombian State, the importance and seriousness of which are neither disregarded nor given mere lip-service. This was made perfectly clear by the President of the Republic, Andrés Pastrana, in his presentation of the "Agenda for the protection of human rights" in Colombia: "The Colombian State recognizes the serious and grave nature of the human rights situation and I say this as President of the Republic in my capacity as representative of the State and the popular will." The second highest-ranking official of the Colombian State, the Vice-President of the Republic, Gustavo Bell, has thus been entrusted with coordinating the efforts made by the various state bodies with a view to protecting human rights and giving all the necessary collaboration to the Human Rights Unit of the Office of the Procurator-General of the Nation. For the same reasons, the present Government has continued the process of adopting measures to protect the basic rights of the Colombian population, within a state policy which had already established important guidelines.

The Political Constitution issued in 1991 established the Office of the Ombudsman, a body which is autonomous in administrative and financial terms, and the functions of which are to protect the rights of citizens. The Office of the Ombudsman, through its office responsible for the protection of human rights, maintains a permanent presence in the most crucial areas of conflict, receives denunciations concerning violations of basic rights and carries out the necessary inquiries for the adoption of the appropriate political or legal measures.

One of the main objectives of the 1991 constitutional reform was to modify the structure and functioning of the administration of justice, within a policy primarily directed at improving efficiency and fighting impunity. The changes introduced by the 1991 Constitution include the establishment of the Constitutional Court, the creation of the Superior Council of the Judicature and the organization of the Office of the Procurator-General of the Nation, as well as recognition of the indigenous jurisdiction. At the same time expenditure on justice increased during the following six years by 49 per cent.[2]

[1] National Planning Department, *La paz* ..., op. cit., pp. 42 and 43.
[2] Source: Ministry of Finances and Public Credit.

The Political Constitution of 1991 established the concept of protection under the Constitution as an extraordinary and expeditious legal means of providing citizens with an effective instrument for the protection of their basic rights.

Since 1990 the national police has undergone a thorough process of review and restructuring, aimed at excluding from the institution any members with a record of involvement in cases of human rights violations or corruption. Under the programme for the restructuring of the police force, 8,500 uniformed members were dismissed from the institution in the last three years. These measures were considered necessary to re-establish public confidence in the police, an essential prerequisite if the police forces were to be able to carry out fully their responsibilities for the protection of citizens' rights. In general, the results achieved over a number of years have been very satisfactory, as can be seen in various indicators, such as for example the significant reduction in the number of denunciations of human rights violations perpetrated by members of the police and the repeated expressions of international support for the success of the Colombian police in combating crime. Also in recent years there has been an increase in the size of the police force, which at 103,000 members is equivalent to that of the United States, a country with a much higher population.

One of the strategies used to combat the violence consists of the elimination of the economic sources which have financed the activities of those who practice it. This was the purpose of Act No. 333 of 1996, which provided the authorities with an effective legal instrument for cancelling the ownership of unlawfully acquired property.[1] At present the Office of the Procurator-General of the Nation has before it 123 cases involving the cancellation of unlawfully acquired property, and in respect of which assets of a value of 364,000 million pesos have been confiscated.[2]

The nation has fully committed itself to the policy being developed to strengthen justice, with a view to combating impunity, restoring the authority of the State, protecting the lives, property and basic rights of its citizens. Colombia is the Andean country with the highest number of magistrates in the region, 4,800, followed by Venezuela which has 1,272; it has the highest number of jurisdictional units in the region, 3,259, far ahead of Venezuela, the second country in the region, with 1,270; and the greatest territorial distribution in its judicial system, with 33 circumscriptions, compared with 25 in Peru, the country with the second highest number in the region; Colombia has invested most in its legal system, 425,865,029 dollars in 1998, almost twice that of the second-ranking country in the region and has the highest per capita judicial budget indicator in the Andean region, 35.7, well above that of the second-ranking State, Venezuela, with an indicator of 10.7.[3] Colombia has invested 1.25 per cent of its GDP in the justice sector, the highest index in the last 27 years, with the very recent exceptions of 1994 and 1995.[4]

An empirical evaluation of the work carried out by the judicial authorities against organized crime shows that significant progress has been made. Thus between 1992 and 1995 a study of the judicial proceedings undertaken revealed that 120 groups involved in organized crime had been dismantled and all their members captured. These included bands of ordinary criminals, but also a large number of self-defence groups, militia and hired assassins.[5]

[1] Republic of Colombia, Ministry of Justice and Law, *Extinción de dominio sobre bienes*, Santafé de Bogotá, National Printing Office, 1996, pp. 8 ff.

[2] Source: Office of the Procurator-General of the Nation.

[3] United Nations High Commissioner for Human Rights; Andean Commission of Jurists, *Justicia en cifras*, Lima, United Nations High Commissioner for Human Rights and Andean Commission of Jurists, 1998, pp. 111, 112, 115, 116 and 117.

[4] Republic of Colombia, Superior Council of the Judicature, *Indicadores* ..., op. cit., p. 16.

[5] Republic of Colombia, Ministry of Justice and Law, *Crimen* ..., op. cit., p. 276.

The main groups in the country engaged in drug trafficking, some of which are involved in the financing and organization of self-defence groups, were thrown into disarray with the capture or death of their leaders and main members. These groups include the gangs of Pablo Escobar (dead), Carlos Ledher (imprisoned), Gonzalo Rodríguez Gacha (dead), the Rodríguez Orejuela brothers (imprisoned), José Santacruz (dead), Nelson Urrego (captured), Reinaldo Murcia (captured).

The great efforts made to improve the functioning of the administration of justice have enabled progress to be made, as can be seen from the main management indicators. In 1998 Colombia had one judge per 12,305 inhabitants.[1] Between 1992 and 1995 7,012 sentences were handed down in cases involving terrorism, homicide, massacres, drug trafficking, insurrection and other serious offences by organized crime.[2] Similarly, in 1997 the military criminal courts handed down 822 sentences against members of the armed forces for various offences.[3] In 1998 other measures were taken such as the condemnation by the military criminal courts of two officials and two subofficials who participated in the death of 13 persons in Riofrio (Department of El Valle). The national Government also decided to set up a Special Committee for the Promotion of Human Rights Investigations, which operates at the highest level of the public administration and provides an additional means of action against crime.[4]

The Office of the Procurator-General of the Nation set up a Human Rights Unit consisting of a specialized group of highly qualified investigators, provided with all the economic resources indispensable for carrying out their work, to deal with the most problematic cases of violence. At present the Human Rights Unit has before it 864 cases and has managed to capture 259 accused persons. Of the persons who have been captured and against whom proceedings have been taken by the Office of the Procurator-General there are a total of 120 members of self-defence organizations and 90 guerrillas (1998),[5] and 248 persons suspected of being members of self-defence organizations have been arrested.[6] The successful action of the Office of the Procurator-General includes the capture and prosecution of the alleged heads of the self-defence groups. Between September 1997 and February 1998, 29 members of the self-defence groups were killed by the public forces.[7]

In 1998 extradition was re-established within the Colombian legal system which means that persons committing crimes outside the country can no longer seek refuge within the national frontiers. This measure affects the heads of the drug-trafficking groups, who are among the main protagonists of the violence affecting the country.

The investigation of crimes against defenders of human rights has been given special attention by the Colombian authorities. In this respect, the Office of the Procurator-General of the Nation has achieved positive results in its examination of all the cases, leading to the capture of the main co-participants in the five crimes. These include the murders of Eduardo Umaña Mendoza (arrests made), Jesús María Valle Jaramillo (five persons arrested). To these must be added the cases of the above-mentioned murders of María Arango Fonegra (four persons arrested); and Elsa Alvarado and Mario Calderón (five persons arrested).

[1] Republic of Colombia, Superior Council of the Judicature. Indicadores ..., op. cit., p. 67.

[2] Republic of Colombia, Ministry of Justice and Law, Crimen ..., op. cit., p. 207.

[3] Source: Ministry of Defence.

[4] Gustavo Bell Lemus. Statement by the Vice-President of the Republic, Gustavo Bell Lemus, at the celebration of the fiftieth anniversary of the Universal Declaration of Human Rights, 1998. See also Decree No. 2429 of 1998.

[5] Source: Office of the Procurator-General of the Nation.

[6] Source: Office of the High Commissioner for Peace.

[7] Source: Document submitted by the Deputy Minister of External Relations to the United Nations Committee on Human Rights, March 1998, p. 11.

Important results were achieved in 1998 in the fight against crime. A total of 6,298 persons were arrested on charges of murder, 14,281 persons were arrested by the Committee on Offences involving Physical Injury; 217 persons who had been abducted were freed by the national police, the highest number of cases involving the freeing of kidnapped persons in the history of the country; 386 kidnappers were captured; stolen property worth 550,000 million pesos was recovered.[1] The measures taken to combat the production of and trade in illicit drugs, the main source of violence in the country, include the destruction of a total of 63,140 hectares of illicit coca and poppy crops; the confiscation of 55 ton of cocaine, 39 ton of marijuana, 350 kilos of heroin and morphine; the destruction of 190 laboratories used for processing drugs; the capture of 1,364 persons accused of drug trafficking; the confiscation of 1,127 tonnes of solid chemical substances and 1,866,257 liquid gallons used for the processing of drugs.[2]

The national Government decided to dismantle and dissolve brigade XX of the national army responsible for military intelligence, following suspicion that some of its members had participated in human rights violations and subversive activities against the legitimately established Government.[3] Although there is no conclusive judicial evidence on the criminal activities of certain members of the brigade, the national Government acted decisively since it was not prepared to tolerate even any suspicion about a unit of the armed forces.

As regards the alleged relationship between members of the public forces and illegal self-defence or private "justice" groups, the Government has been clear and transparent in recognizing that these are isolated incidents and have in no way been an expression of state policy, and that such cases are at all events punished with the full force of the law. As regards this matter, which is of essential importance for the Colombian State and the international community, it is essential to bear in mind the report of the Office of the United Nations High Commissioner for Human Rights, which is the international body responsible for examining infringements of human rights and international humanitarian law. The conclusions of the above-mentioned report, state that the collaboration or acquiescence of members of the public forces in activities carried out by private justice groups has been of an occasional nature.[4]

Similarly, a Human Rights Office has been established within the Ministry of National Defence with responsibility for prevention policy and the promotion of a culture of respect of human rights within the military institution. The Human Rights Manual for Members of the Military Forces is an obligatory study text in the military academies.

The national Government has decided to undertake a reform of the Military Penal Code under which cases of infringement of international humanitarian law or human rights by members of the military or the police will be excluded from the competence of the military criminal courts and transferred to the ordinary courts. Although the infringements of human rights committed by members of the public forces occupy a secondary place in general statistics.[5] The purpose of the reform of the Military Penal Code is to give total transparency to criminal proceedings under way against members of the armed forces by eliminating all possible suspicion of any favouritism which they might receive in sentences

[1] Source: National police.

[2] Source: National police.

[3] An order has gone out for the capture of an official with the rank of colonel, suspected of being involved in the assassination of the Conservative politician Alvaro Gómez Hurtado.

[4] Report of the United Nations High Commissioner for Human Rights, document E/CN.4/1998/16, pp. 175 and 178.

[5] According to non-governmental sources, endorsed by the United Nations High Commissioner for Human Rights, 76 per cent of the acts of socio-political violence were due to "paramilitary groups", or more accurately, "self-defence" groups, 18.6 per cent to the guerrillas and 4.4 per cent to the public forces. Cf. the report of the United Nations High Commissioner for Human Rights, document E/CN.4/1998/16, p. 8.

handed down by the military authorities.[1] However, the proposed reform will to a large extent constitute a recognition of the legal texts of jurisprudence and judicial decisions that, in a healthy interpretation of law and the Constitution, have been handed down by magistrates.[2] These legal decisions have stated that crimes against humanity may not be considered as having been carried out in the exercise of duty or pursuant to functions of an inherently military kind which as such would benefit from military protection.

In accordance with the above-mentioned legislative changes, effective steps have also been taken to amend ordinary penal legislation, with a view to strengthening the existing legal instruments and fully incorporating standards on human rights and humanitarian international law into the internal legal system.[3] In this respect, on the initiative of the Procurator-General of the Nation, an integrated draft text of the Penal Code was presented to the Congress of the Republic, the revision and discussion of which have made rapid progress in Parliament.

The penal legislation in force provides sanctions for various infringements of human rights or international humanitarian law according to a classification of kinds of criminal offences within the penal statute.[4] The new draft text introduces a systematic classification which includes specific and heavier sanctions for these and other violations and expressly recognizes the relevance of human rights and international humanitarian law to the Colombian penal system. This importance had already been established by the Constitutional Court, for example when it ruled that human rights as enshrined in international treaties signed by the Colombian State were the essential yardstick to the constitutional interpretation of the legal order.[5]

The reforms proposed by the draft text of the Penal Code include the creation, as autonomous and special concepts, of the offences of "forced disappearance" (section 161),[6] "genocide" (section 100), "advocacy of genocide" (section 101), "murder of a protected person" (section 135),[7] "assault of a protected person" (section 136), "torture of a protected person" (section 137), "use of unlawful means and methods of war" (section 138), "acts of perfidy" (section 139),[8] "acts of terrorism" (section 140), "acts of barbarity" (section 141), "inhuman and degrading treatment and biological experiments on a protected person" (section 142), "acts of racial discrimination" (section 143), "taking of hostages" (section 144), "illegal detention and prevention of due process" (section 145), "involuntary

[1] "Límites al fuero militar", in *El Tiempo*, Santafé de Bogotá, 11 Dec. 1998.

[2] Reference may be made in this connection to ruling C-358 of the Constitutional Court, dated of 5 August 1997.

[3] Article 214 of the Constitution states: "In all cases the rules of international law will be observed." See in this connection Jorge Ortega Torres (editor). Constitución Política de Colombia, Santafé de Bogotá, Temis, 1991, p. 99. The Constitutional Court has also ruled the following: "The rules of international humanitarian law are now — as expressly stipulated by the Constituent Assembly — obligatory standards in themselves which do not require prior ratification or the issuing of regulatory standards. They are applicable in all cases as the Constitution itself specifically stipulates." See in this connection Constitutional Court, ruling 574, 1994.

[4] For example, provision was already made for the criminal offence of "torture" but acts of genocide are punished under the heading of "murder", forced disappearance under "kidnapping", etc.

[5] Ruling of the Constitutional Court C-225, 18 May 1995.

[6] Its classification as a crime had been proposed for some time by different international bodies and experts, and more recently, by the President of the United Nations Commission on Human Rights in a statement on Colombia (6 April 1998).

[7] The concepts of persons and goods protected under international humanitarian law are fully developed in this and the following provisions. The text states: "A combatant who, on the occasion of and during an armed conflict causes the death of a person protected under the international conventions respecting humanitarian law ratified by Colombia, shall be sentenced to imprisonment of (...)." See Republic of Colombia, *Gaceta del Congreso*, Santafé de Bogotá, No. 139, National Printing Office, 6 Aug. 1998, p. 29.

[8] "A combatant who, on the occasion of and during an armed conflict and in order to prejudice or attack adversary, pretends to be a protected person or makes improper use of protection marks such as those of the Red Cross or the Red Crescent (...) shall as a result of this conduct alone be sentenced to imprisonment of (...)." See Republic of Colombia, *Gaceta* ... op. cit., p. 29.

support of an act of war" (section 146), "plundering on the field of battle" (section 147), "failure to provide measures of support and humanitarian assistance" (section 148), "hindering of health and humanitarian measures" (section 149), "destruction and seizing of protected goods" (section 150), "destruction of property and equipment used for health purposes" (section 151), "destruction or unlawful use of cultural goods and places of worship" (section 152), "attack against plant and installations containing dangerous sources of power" (section 153), "acts of reprisal" (section 154),[1] "deportation, expulsion, transfer or forced displacement of the civilian population" (section 155), "attacks against subsistence and acts of devastation" (section 156), "failure to adopt measures to protect the civilian population" (section 157),[2] "unlawful recruitment" (section 158), "exaction or arbitrary contributions" (section 159), "destruction of the environment" (section 160) as well as an increase in the sanctions applicable to the crime of "torture" (section 173).[3]

Pursuant to the above, the national Government signed on 10 December 1998 the Statute of the International Criminal Court.

As can be seen from this report, both international humanitarian law and international law respecting human rights, as well as their principles and concepts, have been at the heart of the entire strategy for achieving an immediate reduction of the violence affecting Colombia, as a preliminary stage to the humanization of the conflict, which is an indispensable step to the achievement of more comprehensive agreements for the total elimination of the internal armed conflict. This is also the purpose of the incorporation of standards of international humanitarian law into the Colombian Penal Code, but at the same time the matter has also been raised in conversations with several of the armed groups participating in the internal conflict.

The Colombian State has set up a system for protecting threatened persons which involves several state agencies. The protection of the life, integrity and freedom of persons in situations posing a risk of human rights violations is also a matter of crucial importance if the rights of the civilian population are to be not only established on paper, but guaranteed in an effective manner. The protection of the population and, within the population, of those persons or social groups in situations of risk, is provided by various state agencies.

In particular, the Administrative Security Department (DAS) provides personal protection to threatened persons or persons who are potential targets of terrorist action. However, this is a relatively difficult task, given the large number of vulnerable persons and groups directly threatened with death or other reprisals by armed groups,[4] a situation which is further compounded by the limited economic and staff resources of state bodies. All this has resulted in the strengthening of special projects, with priority being given to the most vulnerable groups, such as the programme for protecting defenders of human rights in the

[1] "A combatant who on the occasion of and during an armed conflict carries out acts of reprisal or acts of hostility against protected persons or goods shall be sentenced to imprisonment (...)." Republic of Colombia, *Gaceta* ..., op. cit., p. 30.

[2] "A person who on the occasion of and during an armed conflict is forced to disregard the measures for the protection of the civilian population shall be sentenced to imprisonment of (...)." Republic of Colombia, *Gaceta* ..., op. cit., p. 30.

[3] As regards the cited sections of the draft text, see Republic of Colombia, *Gaceta* ..., op. cit., pp. 22, 29, 30, 31 and 32.

[4] In this respect, mention may be made of the frequent statements by guerrillas that their "military objectives" include persons of the civilian population or state officials, such as popularly elected mayors or employees of the National Registry Office responsible for organizing and supervising the democratic electoral processes. Similarly, the self-defence groups or armed gangs on the extreme right regularly draw up and publish long "blacklists" of individuals threatened with assassination. Furthermore, a large number of persons must be protected from possible attacks by drug-trafficking groups, for which, as the recent history of Colombia shows, the assassination of individual persons and even massacres are one of the favourite tactics used against the State and civilian society.

country, under which special powers were given to the Special Administrative Unit for Human Rights of the Ministry of the Interior, since these persons are one of the highest risk groups in Colombia.[1] The programme which covers different threatened persons, includes, according to the respective security studies, the provision of escorts, vehicles, bulletproof jackets, security training courses, television cameras, the cost of transfer to other cities, communication equipment, arms, economic assistance for personal maintenance, installation of security alarms and doors, etc.[2]

The Human Rights Unit of the Ministry of the Interior has also established a programme for protecting political leaders, many of whom are also trade union leaders. These include the special protection programmes for Nelson Berrío, an official of the Workers' Trade Union (USO); Hector Fajardo, leader of the CUT; Tarcisio Mora, a leader of the Colombian Federation of Teachers (FECODE); Jesús Bernal, an official of SINTRACREDITARIO; Wilson Borja, a leader of FENALTRASE; Domingo Tovar, an official of the CUT.[3]

However, measures taken to protect threatened persons are pointless without their own collaboration. This was unfortunately and clearly demonstrated in the assassination of the vice-president of the Single Central Organization of Workers (CUT), Jorge Ortega, who a few days before his death had refused the personal protection services offered to him by the State.[4]

The Inter-Institutional Commission on Workers' Human Rights, set up by Decrees Nos. 1413 of 1997 and 465 of 1998, is another of the mechanisms established by the Colombian State to monitor human rights and deal with acts of violence. The Commission is made up on a participatory basis of state agencies and representatives of the organizations of civil society. Members of the Commission include the Minister of Labour, the Minister of the Interior, the Minister of Justice, the Minister of Defence, the Presidential Adviser for Social Policy, the Presidential Adviser for Human Rights, the Presidential Adviser for Displaced Persons, as well as representatives of non-governmental organizations (NGOs): five representatives of the worker central organizations, the President of the Episcopal Conference, the President of the José Alvear Restrepo College of Lawyers, the Director of the Colombian Commission of Jurists, the Procurator-General of the Nation and the Ombudsman.[5] The Commission has a detailed workplan which is carried out collectively with state agencies, trade union organizations, and the non-governmental human rights bodies which make up the Commission.

The search for a negotiated solution to the armed conflict

For all the social and political forces of the nation, as represented in the State and civil society, the conclusion of a political agreement with the authors of the violence, and in particular with the guerrillas, is a priority objective in the search for peace. The possibility of achieving a lasting peace agreement, through negotiations with the subversive armed groups, would put an end to the internal armed conflict which is bleeding the country

[1] "Mea culpa", op. cit., in *El Tiempo*, 11 Dec. 1998.

[2] Source: Ministry of the Interior.

[3] Source: Ministry of the Interior.

[4] "Jorge Ortega rechazó escoltas, asegura el Ministro del Interior", in *El Tiempo*, Santafé de Bogotá, 22 October 1998. An offer was made on 6 October 1998 to provide the trade union leader with two agents of the Administrative Security Department (DAS) to protect him, following an assessment of his personal security risks, but they were refused by Ortega, who wished to choose his escorts from persons in his confidence. This is possible under the protection programme but requires time to train the escorts chosen by the person, as well as the allocation of the necessary resources to arm them and equip them with vehicles.

[5] Decree No. 1413 of 1997, s. 12.

The ending of the internal armed conflict would have a number of favourable implications for a new and constructive development of the nation; the enormous resources which at present have to be invested in security and other activities relating to the defence of society and institutions could be used to generate employment and social well-being; a number of essential rights would be fully restored, which are necessary conditions for the development of society but which have been adversely affected by the process of the internal conflict.

If the internal armed conflict were ended by way of political negotiations an immediate repercussion would be that a series of supervisory functions and proactive, direct and indirect functions, would come into play, all of which are positive. With respect to the supervisory functions, which are of a direct nature as they relate to the occurrence and origin of the conflict, we should mention the end of the acts of violence which have seriously affected the rights to life, personal freedom, personal safety, the population's free choice of where to live, etc. The sphere of supervisory functions of an indirect nature, given their connection with the origins of the armed conflict, would cover such rights as freedom of association and trade union rights, free enterprise, etc. Among the proactive functions we should mention the creation of an environment of tranquillity and safety to attract investment and generate work and wealth.

In specific areas relating to social rights, such as freedom of association and trade union rights, which have attracted the interest of the International Labour Organization, and have been indirectly affected by the internal armed conflict, political negotiations with the perpetrators of the violence should efficiently eliminate the original, real factors which led to the violence.

Peace is then a way of generating the appropriate conditions for the population to be able fully to exercise all their social, economic and political rights where, in turn, the fulfilment of such rights constitutes the fundamental objective to be achieved by the State and civil society. Even if, in order to create the conditions for peace, which are seen as a way of consolidating the population's rights as citizens, the State has not renounced the monopoly of force, nor the duty to protect that it must provide an instrument, is currently under political negotiation with the armed insurgents that will not only help to develop these conditions but which is also a mechanism that can save lives, suffering, property, financial resources and time in conflict settlement.

The option of conducting political negotiations with armed groups situated on the fringes of the law is not unknown in the country's history, nor unrealistic in ideological or political terms. In Colombia's recent history, the State has successfully conducted a number of political negotiation processes with guerrilla groups, the principal effect of which was to reduce violence and its negative consequences, at the same time as creating better living conditions for the population. These peace processes led to the demobilization of certain guerrilla groups such as the 19th of April Movement (M-19) and the Popular Liberation Army (EPL), with only relatively minority dissident factions not laying down their arms; the Socialist Renewal Current (CRS), the Workers' Revolutionary Party (PRT) and the "Quintín Lame" group, whose constituents all came over to the side of the law.

The President of the Republic, Andrés Pastrana, established and is personally leading a peace process that the country is aware of and fully supports, as well as the strategy developed to apply it. This policy made provision for a political solution to the armed conflict based on negotiations with the insurgent movements as well as the adoption of substantive reforms of a political, economic and social nature.

The President said during the campaign period: "I am basing myself on the fact that what the guerrilla forces want to see is a change in the country's political and economic

structures, the principal features of which can be found in the agendas for reconciliation that the insurgent groups made known some time ago. These agendas relate to substantive aspects which can and should be addressed by the Government during negotiations, which makes the war even more senseless. Negotiation would not only put an end to the confrontation, but it would guarantee that by way of broad agreement on a new plan for the country the basis for true reconciliation among Colombians would be put into place".[1]

On the same occasion, the now President of the Republic was emphatic in saying that "peace must be the product of the meeting of the whole of Colombian society, which is why its definitive agenda must be the product of its active participation. Society at present is not only demanding an end to the confrontation, but is expressing its views on the new country the Colombians would like to see. Both expressions should represent an inescapable mandate for the parties to the conflict. These demands by civil society impose a new approach to negotiation which is not just limited to considering the subjects for discussion defined by the parties, but implies the creation of a broad, representative and plural space so that the peace agenda and its negotiation can be the result of democratic opinions. From this standpoint the participants should be the national Government and the leading members of the guerrilla movements, hopefully with a unified mandate, with the active involvement of civil society".

The current administration's peace policy is based on these convictions and all the decisions that have been made, both of a substantive and of a procedural nature, are intended to facilitate this process.

In the Government's view the peace process should begin and political negotiations should transcend the insurgency as it is an inescapable and unconditional duty of the State as a whole to overcome the objective conditions that caused it.

Overcoming poverty, achieving social justice and promoting and stimulating human rights are an essential part of the current peace policy. This is why the President of the Republic decided that the "national development plan" would be a plan for peace and why he proceeded to establish 'Plan Colombia', first announced during his inauguration as President. Through 'Plan Colombia' programmes and projects will be implemented which are designed to redress the economic and social situation in the country's most depressed areas.[2]

'Plan Colombia' is designed in such a way that all Colombians can participate in decisions concerning its application, including the members of the insurgent forces, for the President of the Republic was serious when he said "I accept with realism that I will negotiate with insurgent forces which have stated their decision to be joint protagonists in rebuilding the nation". 'Plan Colombia' is coordinated by the High Commissioner for Peace, Víctor G. Ricardo.

The Government has worked hard to obtain the necessary resources to finance 'Plan Colombia'. Together with the contribution provided in the national budget, so-called "peace bonds" have already been established, a tax contribution by members of society who have greater financial capabilities, and further mechanisms are being set up to obtain other voluntary contributions from the private sector. Likewise, a widespread foreign operation is under way, as part of this Government's diplomatic efforts in pursuit of peace, to obtain resources through international cooperation. Definite and encouraging commitments have already been made in this respect by friendly countries and the multilateral bank.

[1] The quoted statements by the President of the Republic, Andrés Pastrana, were provided by the Office of the High Commissioner for Peace.

[2] "Pastrana Lanzó: 'Plan Colombia'", in *El Tiempo*, Santafé de Bogotá, 20 Dec. 1998.

The government operation also involved setting the scene for political negotiations with the insurgent forces. As the President said "the time has come to take the agenda of the guerrilla forces seriously as a condition to ending the stalemate of mutual distrust". The Head of State had previously said that "when the substantive agendas for reconciliation that were submitted by the insurgent movements were examined, particularly the platform for reconciliation consisting of ten points from the FARC and of 12 points from the ELN, it was easy to see that all the issues they contain are negotiable".

The President also noted that "the process should reconcile the urgent need to end the armed confrontation with the need to exhaust a full agenda for lasting peace, the fulfilment of which involves the whole nation, including the insurgent organizations. The first step in this respect must be to overcome the procedural difficulties which are the only ones standing in the way of dialogue".

As demonstrated above, the commitment of the Head of the State of Colombia, President Andrés Pastrana, to the peace and reconciliation policy was total, and this was widely recognized by public opinion.[1]

His peace policy is unreservedly supported by all the country's political and social forces, including the opposition political parties, the associations of trade and industry, the trade unions and the non-governmental organizations (NGOs).

When he was a candidate to the first magistracy, in an action which demonstrated his open and public commitment to peace, President Andrés Pastrana met personally with Manuel Marulanda Vélez and members of the FARC staff to agree to the terms of the peace talks.[2]

Since August 1998, when he was inaugurated as President of the Republic, the Government of Andrés Pastrana, as a clear demonstration of this will to seek a negotiated peace agreement, authorized the clearance of five of the country's municipalities covering a total area of 43,000 km^2 in order to establish an "area of détente". This "area of détente", to be in force between 7 November 1998 and 7 February 1999, was created in order to provide an appropriate setting to begin negotiations and to offer security guarantees to FARC leaders, and implied the withdrawal of all the military forces and national police from the specified area.

In addition to the establishment of the "area of détente", the political nature of the FARC and the ELN was also recognized. President Andrés Pastrana endorsed a meeting of members of civilian society and some non-governmental state agencies with delegates from the National Liberation Army (ELN) in Mainz (Germany) to begin talks with this guerrilla organization. It then also authorized, with the approval of the Attorney-General of the Nation, the temporary release from prison of ELN leaders for the purpose of holding a meeting with the guerrilla group at a place chosen by the leadership of the subversive organization, in order to advance in the process of dialogue.[3] The Government of President Andrés Pastrana not only agreed to, but also clearly supported, the holding of a "National Convention" on Colombian territory organized by the ELN with the participation of state representatives and members of civilian society, the latter selected by the ELN, where the peace talks will take place. The Government also recognized three members of the FARC as representatives of this organization to the peace talks, after having obtained the withdrawal of the arrest warrants issued against them.

[1] See, for example, Sergio Ocampo Madrid. "Pastrana o la audacia por la paz", in *El Tiempo*, Santafé de Bogotá, 27 Dec. 1998.

[2] Something that had never happened before in Colombia.

[3] "Gobierno avala encuentios ELN y sociedad civil", in *El Tiempo*, Santafé de Bogotá, 7 Oct. 1998.

Within the peace strategy established by the State of Colombia it is important to point out that the national Government agreed to hold peace talks with the FARC and the ELN under two difficult and generous terms that demonstrate the efforts being made to achieve progress using this approach: (i) holding peace talks without demanding the fulfilment of any prerequisites; (ii) holding peace talks in the midst of the conflict, that is to say without the guerrilla organizations declaring a ceasefire or stopping abductions and other criminal actions.

At the same time, the State of Colombia and the members of civilian society participating in the talks with the guerrilla groups have been seeking ways of reducing the repercussions of the internal armed conflict, until the peace process reaches a permanent and firm agreement to end it. The Government invited the subversive groups to order a "ceasefire" during the Christmas festivities, an initiative that was agreed to by the dissident group of the Caraballo Popular Liberation Army (EPL) and the United Self-Defence Forces of Colombia (AUC). The National Liberation Army (ELN) agreed not to abduct persons over the age of 65 or minors although this offer was only adhered to in a limited fashion. The Government was able to discuss with the guerrilla forces the possibility of not recruiting minors into armed groups. The Government began discussions with the guerrillas on stopping planting anti-personnel mines, which claim the greatest number of victims among the civilian population. The Government prevailed upon the Congress of the Republic to pass the first legislative initiatives to make available the necessary legal powers to engage in negotiations with the armed insurgent groups. The Government, in compliance with legal provisions, studied the viability of legal means to negotiate the exchange of police and military personnel abducted by the guerrilla forces for the liberation of detained subversives, as requested by the rebels. Also, with the participation of members of civilian society, the guerrilla groups were invited to release all those they had abducted, a request that, while it was not complied with by the guerrillas, was partially successful as seen in the case of the 16-year old girl abducted by the FARC, when she went with her mother to pay the ransom for her father's release.[1]

Given the dynamics of the peace process championed by the Government, not even the self-defence forces have been able to avoid its impetus. Together with representatives of the Peace Council, the United Self-Defence Forces (AUC) signed the so-called "Paramillo Knot Agreement", where they agreed to discuss the foundations of a convention to humanize the conflict at the same time as providing information on their readiness to participate in a "national peace assembly".[2] And although the Government was cautious and prudent on the subject of the self-defence or private "justice" groups, being of the view that dialogue with them would have to take place separately once the necessary conditions have been met, these initial indicators of the AUC's position are positive for the future of the peace process.

In this undertaking the Government has sought and obtained international understanding and support with a view to providing the peace process with new instruments to gradually build mutual confidence and to seek its public and financial cooperation in order to achieve the objectives set by the parties.

The participation of the international community presupposes acceptance that the peace process does not depend solely and exclusively on the will and actions of the Colombian Government, but that it also involves civil society and the insurgent groups which have their own wills and actions, meaning that this is a complex process which is

[1] "Liberada anoche Lina María", in *El Tiempo*, Santafé de Bogotá, 19 Dec. 1998.

[2] "AUC convocarán asamblea nacional de paz", in *El Tiempo*, Santafé de Bogotá, 11 Dec. 1998.

neither controlled nor monopolized by the Government. Consequently the cooperation of the international community, as the President of the Republic has indicated, must respect the negotiations of the parties to the conflict, as it is these parties which can make peace a reality and not the international community. The specific tasks of the international community, in accordance with the progress and dynamics of the peace process, are manifold. It can work to facilitate meetings and appropriate conditions for negotiation, can act as witness to commitments obtained, and as an authority to inspect and monitor adherence to the agreements reached.

It is in this way that the Government has formulated and put into practice diplomacy for peace, a foreign policy based on calls to the international community to support, on all fronts, the negotiated political end to the Colombian conflict.

The Government of President Andrés Pastrana received offers of cooperation in the peace process, developed carefully and with due regard for political implications, from the Governments of the United States,[1] Costa Rica,[2] Cuba,[3] Spain[4] and Venezuela,[5] members of the European Parliament,[6] etc., which realized that their actions to promote the peace process must come under the leadership of the Colombian Government which is responsible for promoting the process. Similarly, the United Nations Office of the High Commissioner for Human Rights monitored national peace efforts, contributing to the policy developed by the Government.

Violence engenders more violence. The Government is very much aware of this lesson of experience in its exchanges with the self-defence and private justice groups. The President has realized that their existence "is one of the most perverse expressions of the worsening of the conflict", adding forcefully and grimly that "these groups essentially contradict the principle of the monopoly of the arms in the State's possession and are an extremely serious factor in the war. For this reason peace cannot be envisaged without silencing their weapons, which is something that will have to be done on a platform separate to peace negotiations with the guerrilla forces and under the exclusive responsibility of the State". The President stated his commitment to using all his powers and his utmost political will to prevent any criminal links being established between any of the state agents and the paramilitary groups and also to investigate all denunciations, ensuring the effectiveness of the investigations and the punishment of any wrongful conduct.

The Government respects and requires strict compliance with the provisions of international humanitarian law in respect of the confrontation. It has been and it will continue to be inflexible in this stance, denouncing both nationally and internationally attacks against those who are not participating in the hostilities and against civilian property, as well as the use of any means or methods of fighting that are prohibited by humanity. The State of Colombia is ready to sign a special agreement in this area with the armed protagonists which will establish the mechanisms to examine the combatants' behaviour and respect vis-à-vis the civilian population and its property.

Respect for these humanitarian dictates will be the parameter for decisions pertaining to pardon and justice. Civilized peoples have set the moral limits of amnesties and reprieves in accordance with these dictates and Colombia will do the same.

[1] It made cooperation with the peace process one of its priorities, given that finding a solution to the armed conflict in Colombia has important implications in areas such as drug trafficking.

[2] It facilitated the holding of meetings with the guerrilla forces on its territory.

[3] Juan Carlos Iragorri: "Fidel Castro, listo para ser facilitador de la paz", in *El Tiempo*, Santafé de Bogotá, 18 Oct. 1998. Also, "Pastrana pedirá a Cuba que sea garante", in *El Tiempo*, Santafé de Bogotá, 28 Dec. 1998.

[4] "Apoyo iberoamericano en bloque al proceso de paz", in *El Tiempo*, Santafé de Bogotá, 16 Oct. 1998.

[5] "Chávez envía mensaje de paz a FARC", in *El Tiempo*, Santafé de Bogotá, 19 Dec. 1998.

[6] "No tienen más opción que la paz", in *El Tiempo*, Santafé de Bogotá, 28 Dec. 1998.

The biggest demonstration of the State of Colombia's peace policy was the meeting held with the FARC on 7 January 1999 with the aim of beginning negotiations with that guerrilla organization. In the presence of the President of the Republic, and in spite of the last-minute absence of Manuel Marulanda Vélez, the negotiating tables were set up and FARC participated, as witnessed by representatives of the international community and over 300 national and international journalists.

At the negotiators' meeting held on 11 January 1999 the parties involved submitted their agendas for reconciliation, which shared a number of common points.

The Government submitted a ten-point agenda, as follows:

1. Unconditional protection of human rights and respect for international humanitarian law.
2. Economic and social structure.
3. Political and state reform.
4. Alternative development and crop replacement.
5. Environmental protection.
6. Strengthening of the justice system.
7. Land reform.
8. "Paramilitarism".
9. International community support for the process.
10. Viability of instruments for peace.

The reconciliation agenda of the FARC included the following ten points:

1. Political solution to the serious conflict affecting the country.
2. The military doctrine of national defence will be Bolivarian.
3. National, regional and municipal democratic participation in decisions which could endanger the future of society.
4. Development and economic modernization with social justice.
5. Fifty per cent of the national budget will be invested in social welfare.
6. Those with the greatest wealth will pay the highest taxes in order to achieve the effective redistribution of income.
7. Agrarian policy that will democratize credit, technical assistance and marketing.
8. Exploitation of natural resources such as oil, gas, coal, gold, nickel, emeralds, etc., for the benefit of the country and its regions.
9. International relations with all countries under the principle of respect for the free self-determination of peoples and for mutual benefit.
10. Solving the matter of the production, commercialization and consumption of drugs and hallucinogens.

It should be emphasized with respect to these agendas for negotiation that they constitute the first step in building a joint agenda for negotiation, change and transformation in the political, social and economic life of the country. Peace talks are no longer just a promise or an expectation, they are already being developed on the joint agenda mentioned.

Likewise, it is imperative to stress the fact that the role of the international community in the peace process is part of the proposed agenda for negotiation.

The peace process has begun; its first firm and serious steps reflect the unrestricted will of the State of Colombia, expressed in the generous and conciliatory attitude of the national Government under the leadership of President Andrés Arango.

Bibliography

United Nations High Commissioner for Human Rights in Colombia. Report E/CN.4/1998/16.

United Nations High Commissioner for Human Rights; Andean Commission of Jurists. *Justicia en cifras*, 1998.

Amnesty International. "Programa de 14 puntos para prevenir las desapariciones fozadas", 1992.

Arango Z., Carlos. FARC *veinte años*, Bogotá, Aurora, 2nd edition, 1984. Arenas, Jacobo. *Diario de la resistencia en Marquetalia*, Abejón Mono, 2nd edition, 1972.

Arenas, Jacobo. *Cese al fuego*, Bogotá, Oveja Negra, 2nd edition, 1985.Bejarano, Jesús Antonio and others. *Colombia: inseguridad, violencia y desempeñoeconómico en las áreas rurales*, Bogotá, FONADE and Universidad Externado de Colombia, 1997.

Bell Lemus, Gustavo. Speech by the Vice-President of the Republic, Gustavo Bell Lemus, at the celebration to mark the fiftieth anniversary of the Universal Declaration of Human Rights, 1998.

Calvo, Fabiola. *Diez hombres. Un ejército. Una historia.* Bogotá, Ecoe, 1985.

Casas, Ulises. *Origen y desarrollo del movimento revolucionario colombiano*, Bogotá, 1980.

ECLAC. *Balance económico de América Latina y el Caribe*, 1997.

Higher Council of the Judicature, Administrative Division, Republic of Colombia. *Indicadores de la justicia*, Santafé de Bogotá, 1998.

Higher Council of the Judicature. Republic of Colombia. *Informe al Congreso de la República 1997-98*, Santafé de Bogotá, 1998.

Higher Council of the Judicature; DANE. *Derecho de acceso a la justicia*, Santafé de Bogotá, 1998.

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

Guevara, Ernesto "Che". *Obras completas*, Buenos Aires, CEPE, 2nd edition, 1973.

Guzmán, Germán Mons.; Fals Borda, Orlando. *La violencia en Colombia*, Bogota, Tercer Mundo, Vol. I, 2nd edition, 4th reprint, 1963.

Hernández Mondragón, Mauricio. "Medidas nacionales de aplicación y de difusión del derecho internacional humanitario. Prevención, represión y sanción de las infracciones del DIH", in *Conflicto armado y derecho humanitario*, Bogotá, Tercer Mundo, IEPRI and International Committee of the Red Cross, 2nd edition, 1997.

International Drug Control Programme, United Nations. *World drug report*, Oxford, Oxford University, 1997.

Krauthausen, Ciro; Sarmiento, Luis Fernando. *Cocaína & co.*, Santafé de Bogotá,

Tercer Mundo and Instituto de Estudios Políticos y Relaciones Internacionales, 1st reprint, 1993.

Landazabal Reyes, Fernando. *Factores de violencia*, Bogotá, Tercer Mundo, 2nd edition, 1981.

Landazabal Reyes, Fernando. *Conflicto social*, Medellín, Bedout, 1982.

Ministerio de Justicia y del Derecho, Republic of Colombia. *Crimen organizado y justicia*, Santafé de Bogotá, 1995.

Ministerio de Justicia y del Derecho, Republic of Colombia. *Extinción de dominio sobre bienes*, Santafé de Bogotá, National Press, 1996.

Múnera Ruiz, Leopoldo. *Rupturas y continuidades. Poder y movimiento popular en Colombia*, Santafé de Bogotá, IEPRI, Universidad Nacional de Colombia, CEREC, 1998.

Ortega Torres, Jorge (Compiler). Constitution of Colombia, Santafé de Bogotá, 1991.

National Police Force, Republic of Colombia. *Criminalidad 1990*, National Police Force Press, undated.

Ramírez Tobón, Wilson. *Estado, violencia y democracia*, Bogotá, Tercer Mundo y Universidad Nacional, 1990.

Ramírez Tobón, Wilson. *Urabá. Los inciertos confines de una crisis*, Santafé de Bogotá, Planeta, 1997.

Rangel Suárez, Alfredo. *Colombia: guerra en el fin de siglo*, Santafé de Bogotá, Tercer Mundo y Facultad de Ciencias Sociales, Universidad de los Andes, 1st reprint, 1998.

Republic of Colombia. *Gaceta del Congreso*, Santafé de Bogotá, No. 139, National Press, 6 Aug. 1998.

Salazar, Alonso and others. *La génesis de los invisibles*, Santafé de Bogotá, Programa por la Paz Compañía de Jesús, 1996.

Salazar, Alonso. *La cola del lagarto*, Medellín, Grupo Enlace del Ministerio de Comunicaciones y Corporación Región, 1998.

Sánchez, Gonzalo; Meertens, Donny. *Bandoleros, gamonales y campesinos*, Bogotá, El Ancora, 3rd edition, 1985.

Silva García, Germán. *El proceso de paz*, FESIP and CSPP, 1985.

Silva García, Germán. *¿Será justicia? Criminalidad y justicia penal en Colombia*, Santafé de Bogotá, Universidad Externado de Colombia, 1997.

Silva García, Germán. "Delito político y narcotráfico", in *La problemática de las drogas. Mitos y realidades*, Bogotá, Universidad Externado de Colombia y Grupo Enlace del Ministerio de Comunicaciones, 1998.

Thoumi, Francisco. *Economía política y narcotráfico*, Santafé de Bogotá, Tercer Mundo, 1st reprint, 1996.

Uprimny, Rodrigo. "Sentido y aplicabilidad del derecho internacional humanitario en Colombia", in *Conflicto armado y derecho humanitario*, Bogotá, Tercer Mundo, IEPRI and International Committee of the Red Cross, 2nd edition, 1997.

Valencia Villa, Hernando. "Responsabilidad de los funcionares públicos a la luz del derecho internacional de los derechos humanos y del derecho humanitario en Colombia", in *Conflicto armado y derecho humanitario*, Bogotá, Tercer Mundo, IEPRI and International Committee of the Red Cross, 2nd edition, 1997.

Zamudio, Lucero. "El aborto en Colombia: dinámica sociodemográfica y tensiones socioculturales", in *La justicia en nuestro tiempo*, Universidad Externado de Colombia (forthcoming).

Press sources

"Violencia se ensaña con políticos", in *El Tiempo*, Santafé de Bogotá, 10 Aug. 1997.

"Cifras de la violencia política en el país", in *El Tiempo*, Santafé de Bogotá, 14 Sep. 1997.

"La izquierda no es un objetivo militar", in *El Tiempo*, Santafé de Bogotá, 29 Sep. 1997.

"Farc prohíben elecciones en 23 municipios", in *El Tiempo*, Santafé de Bogotá, 23 Oct. 1997.

"Gobierno avala encuentros ELN y sociedad civil" in *El Tiempo*, Santafé de Bogotá, 7 Oct. 1998.

Juan Carlos Irragorri. "Fidel Castro, listo para ser facilitador de la paz", in *El Tiempo*, Santafé de Bogotá, 18 Oct. 1998.

"Fuimos nosotros", in *El Tiempo*, Santafé de Bogotá, 20 Oct. 1998.

"Luto se toma el paro", in *El Tiempo*, Santafé de Bogotá, 21 Oct. 1998.

"Suspenden negociaciones del paro", in *El Tiempo*, Santafé de Bogotá, 21 Oct. 1998.

"Fue un crimen calculado", in *El Tiempo*, Santafé de Bogotá, 21 Oct. 1998.

"Jorge Ortega rechazó escoltas, asegura el Ministro del Interior", in *El Tiempo*, Santafé de Bogotá, 22 Oct. 1998.

"Negociación del paro en suspenso", in *El Tiempo*, Santafé de Bogotá, 22 Oct. 1998.

"Acercamientos para poner fin al paro estatal", in *El Tiempo*, Santafé de Bogotá, 26 Oct. 1998.

"Desde hoy, todos a trabajar", in *El Tiempo*, Santafé de Bogotá, 28 Oct. 1998.

"Machuca fue un tremendo error", in *El Tiempo*, Santafé de Bogotá, 12 Nov. 1998.

"Nuevo rumbo de los derechos humanos en Colombia", in *El Tiempo*, Santafé de Bogotá, 11 Dec. 1998.

"Mea culpa por derechos humanos", in *El Tiempo*, Santafé de Bogotá, 11 Dec. 1998.

"Límites al fuero militar", in *El Tiempo*, Santafé de Bogotá, 11 Dec. 1998.

Olga V. González Reyes. "Hoy sellan paz en el Ariari", in *El Tiempo*, Santafé de Bogotá, 11 Dec. 1998.

"AUC convocarán asamblea nacional de paz", in *El Tiempo*, Santafé de Bogotá, 11 Dec. 1998.

"Temor a 'paras' in Media Luna", in *El Tiempo*, Santafé de Bogotá, 14 Dec. 1998.

"Liberada anoche Lina María", in *El Tiempo*, Santafé de Bogotá, 19 Dec. 1998.

"Chávez envía mensaje de paz a FARC", in *El Tiempo*, Santafé de Bogotá, 19 Dec. 1998.

"Pastrana lanzó 'Plan Colombia'", in *El Tiempo*, Santafé de Bogotá, 20 Dec. 1998.

Glemis Mogollón. "Los indígenas Chamí regresan bailando", in *El Tiempo*, Santafé de Bogotá, 20 Dec. 1998.

Sergio Ocampo Madrid. "Pastrana o la audacia por la paz", in *El Tiempo*, Santafé de Bogotá, 27 Dec. 1998.

"Pastrana pedirá a Cuba que sea garante", in *El Tiempo*, Santafé de Bogotá, 28 Dec. 1998.

"No tienen más opción que la paz", in *El Tiempo*, Santafé de Bogotá, 28 Dec. 1998.

Other sources

Advisory Office for Human Rights and Displacement (CODHES).

Constitutional Court.

Procurator-General of the Nation.

Ministry of Finance and Public Credit.

Ministry of the Interior.

Office of the High Commissioner for Human Rights.

National Police Force of Colombia.

Annex II

The political institutional system in Colombia

Colombia is a State subject to the rule of law. In this section we will explain the detailed workings of the Colombian Constitution and the way in which it acts as a fundamental focus that serves as the source and touchstone of the State's institutional system. For this purpose it is necessary to provide details of a legal, political and cultural nature about the structure of the State and the numerous social elements that comprise and define it. Although this account is not an exhaustive one, it will provide a broader and more precise picture of the State of Colombia.

Background

In the context of the agitated and complex history of the Western world, Colombia is a country that 188 years ago threw off the yoke of colonial imperialism. Since its very birth as an independent and sovereign State, our country has suffered the effects of successive waves of violence and far-reaching internal clashes, that are inherent in the shaping of any national identity. The Colombian people have faced these clashes with unwavering determination to create a democratically spirited nation which embodies the greatest conquests of the cultural consolidation of western political traditions, thereby assimilating the country's unique socio-cultural circumstances.

Following a long line of constitutional endeavours which served to give concrete form to the population's democratic aspirations and to strengthen the State's sovereignty, the nation consolidated itself as a legally organized political unit through the Constitution of 1886. The practical basis of the new institutional system was the fact that the acknowledgement and establishment of a constitutional State is that State's dynamic course and fundamental principles is the only way of achieving the ideal of democracy. Likewise, the division of powers into three branches guaranteed the balance of the branches of public authority capable of resisting and transforming the radical social, demographic and political changes that occurred during the 105 years that the Constitution was in force, during which time the political map of the nineteenth century became more flexible adapting itself to the necessities of its modernization.

Among other legal concepts in the Constitution, the following are worthy of mention:

(i) Prior to the appearance of European constitutional courts, Colombia gave the Constitution jurisdictional control, establishing the public action of unconstitutionality, that is to say, that any citizen may bring an action before the Supreme Court against a national law which in their view violates constitutional provisions. Since 1910 this has provided a specific defence for fundamental rights threatened or infringed by the legislator, in such a way that the power held by the citizens in effect controlled political power.

(ii) The 1886 Constitution was refined and improved through a process of vigorous exchanges between the nation and the legal authorities. Thanks to the Constitution's social provisions the democratic election of mayors became a reality in 1888, followed by the social reform of the State in 1936 when the more privileged were required to shoulder obligations that bound them to an arrangement linking privilege to a strict system of social justice along the lines of noblesse oblige.

(iii) Likewise, with an illustrious vision of equity and the condemnation of discrimination, the whole range of rights was always universal, making it automatically impossible for the system to impose any type of sectarian persecution.

(iv) The law of laws broadened its spectrum to include a variety of concepts, with its leaning towards justice being the most important attribute it manifested in the social institutions. In this way the proper process was strengthened by specific characteristics and easily accessible controls for its enforcement, in the administrative as well as the judicial sphere.

(v) In the international sphere, the constitutional reform of 1945 allowed the sovereignty assigned to primary powers to be transferred to supranational legislation such as the Andean Pact, it being understood that the decisions contained in this Pact were legally binding for Colombia, provided that it remained a signatory to the international treaty.

(vi) Unlike other Latin American political models, Colombia reduced the power of the presidency, so that the huge power held by this body would gradually be lessened until it became an element in the political universe characterized by the three branches being in equilibrium with each other. We thank the Colombians that dictatorships are a much more distant phenomenon for us than is the case for our Latin American brothers.

1991 Constitution

In spite of the merits of the 1886 Constitution, all the social partners realized that in order to achieve a more just, tolerant and pluralistic society integrating all sectors of the population and providing legitimate opportunities for dialogue for the most dissimilar forces, it was necessary to make significant changes to the Constitution. Extensive deliberations led to the 1991 Constitution.

The advent of the present Constitution has no historic precedents in our country. Up until 1990, political initiatives from the various social levels had to be channelled according to a rigid two-party formula which, in the majority of cases, was not in keeping with the high mobility of a multifaceted society. Thus the vital energy of the constituent process sprang from actors who up until that time had been timid in the constitutive processes of power in such a way that the mandate of the Constituent Assembly came from the basic participation of the student movements, the trade union organizations, independent intellectuals of different ideological beliefs, minority political movements, dissident armed groups who were returning to the path of institutional participation,[1] among many others. This new and vigorous political reality, together with the traditional parties and the direct patronage of the State resulted in a change of direction which gains its constitutional legitimacy from a juridical dialogue founded on the social rule of law, a charter of fundamental rights and guarantees, the development of participative democracy and a series of specific citizens' actions in defence of their fundamental rights.

The fundamental principles of the State

The structure of the State of Colombia requires that its various cogs work together harmoniously and legitimately to achieve the aims declared by society and incorporated into the Constitution. Beginning with the preamble,[2] the people of Colombia, in the exercise of their sovereign power, state that it is the essential aim of the Constitution to "ensure its members life, peaceful coexistence, work ... " and the other fundamental values that determine the boundaries of the state policy.

A State subject to the social rule of law

The first article of the Constitution stipulates that "Colombia is a State subject to the social rule of law"; within the mechanics of modern constitutionalism beginning with the revision of the liberal state model, the social element in the formation of the State is fundamental to the development of a constitutional State. In other words, the State of Colombia is not only compelled to operate in a manner strictly in accordance with the law of the nation in each manifestation of its power, but also its work must be directed at satisfying the problems arising from the country's social and economic realities. The constitutional State thus illuminates the Constitution and is the basis of the supremacy of equality, participative democracy, freedom and social welfare as the reflection of the collective interest, with the prerogative of respect for legality being a given.

Sovereignty

While national sovereignty constituted the backbone for the establishment of the State of Colombia, the huge and dramatic changes in the concept of nation States have made their way into the Colombian political consciousness which regards that concept as being neither rigid nor immutable and which, on the contrary — for the sake of the universal ideals of globalization — adopted a more flexible view of sovereignty to enable Colombia to join the ranks of the global community, it being understood that that flexibility will not imply the deterioration or erosion of the principle of the autonomy of peoples or of freedom which constitutes the very essence of national liberty as the guiding principle of reciprocal and equitable international relations. The Constitution is generous in harmonizing national legislation with the rules of globalization, as the following examples show:

[1] Of the 70 delegates democratically elected to the Constituent Assembly, 19 belonged to the political movement M-19, which at one time was the movement which had the broadest electoral support during elections.

[2] It should be noted that unlike many preambles in different constitutions, the Colombian one is legally binding and is not simply a collection of the Constitution's good intentions.

(i) The preamble establishes that one of the aims of the Constitution is "to promote the integration of the Latin American community", a necessity at a time when regional communities are embarking on huge projects.

(ii) Article 9 of the Constitution categorically stipulates that "the external relations of the State are based on national sovereignty, on respect for the self-determination of peoples, and on the recognition of the principles of international law approved by Colombia" which clearly demonstrates the country's acknowledgement that the foundation of its international commitments lies in respect for other nations subject to international law, to instruments concluded with them and to the observance of those elementary principles which the Colombian people, as a sovereign power, have incorporated into their legislation.

(iii) Article 44 confirms that the fundamental rights of children include the rights upheld in the Constitution, national laws and international treaties ratified by Colombia.

(iv) Article 53, paragraph 4, provides that "international labour agreements duly ratified are part of domestic legislation". Under this constitutional provision, such agreements automatically become part of domestic legislation, repealing any earlier legislation that is contrary to them. In addition, those that recognize human rights and that prohibit their limitation in states of emergency, according to article 93 "have priority domestically". We can therefore say that our legal system gives international agreements superior status and legal force.

(v) Article 94 provides that "the enunciation of the rights and guarantees contained in the Constitution and in international agreements in effect should not be understood as a negation of others which, being inherent to the human being, are not expressly mentioned in them"; the description of fundamental rights does not depend on an act of capricious will by the State; they are inherent in human beings and it is for the State to recognize and protect them given that they are in essence intangible, imprescriptible and universal. For this reason rights are considered on a much broader level than the possibility of a State to condition them.

(vi) The importance of international law and the commitment entered into by the State of Colombia in this respect can be seen in an entire chapter of the Constitution which is exclusively dedicated to international relations. Chapter 8 of Title VII stipulates, inter alia, the internal procedure to incorporate international treaties into national legislation and the basic elements necessary for its validity, a procedure that involves the three branches of political authority, each working in harmony with the others, but acting as checks and balances, the source of a true constitutional State. In addition, this chapter indicates that: "The State will promote the globalization of political, economic, social and ecological relations on the basis of fairness, reciprocity, and the national interest" (article 226).

Transnational equality has been the central factor in the establishment of the international community. As Colombia sees it, this presupposes that making sovereignty more flexible in favour of globalization requires as a determining factor that the transfer of competence to various international instruments is implicit, strict and being an essential part of the process this means that each country, as international treaty writers unanimously claim, "only acquires obligations when it ratifies an agreement to the extent that they objectively express the provisions contained therein";[1] in other words the international instrument incorporates all the obligations required of the State and elements that it does not contain cannot be derived from it.

[1] Barroso Figueroa, José: "Derecho Internacional del Trabajo", Porrúa (ed.), Mexico, 1987.

Decentralization and territorial autonomy

Colombia is organized as a unitary republic which does not mean that its internal political structure is monolithic or that there is a monopoly of central power. The principal reality and tendency that shapes the Constitution right from the very start is the embodiment of territorial autonomy as an essential basis for the whole of society to develop in accordance with its regional needs and characteristics. This autonomy, while neither legislative nor jurisdictional, does contain essential elements for the self-governing of regions and municipalities. These elements are:

(i) As a result of the distribution of competence among the various levels of the civil service involved in local government, the central Government can only do what has not been assigned to the territorial bodies by way of legislation. In other words the boundaries are clearly established between regional powers and the powers of the central State so that it cannot in any way intervene in matters that are their responsibility.

(ii) The local government political authorities are autonomous in their administrative decisions with respect to the central power once the territorial authorities such as the governors, mayors, deputies and town councillors are democratically elected by the electorate.

(iii) As a form of expression of state unity, the local authorities, like all other authorities, must comply with national judicial rulings.

Fundamental rights and guarantees

The Constitution of Colombia could be seen as a recipient of the immense effort of Western culture to develop solid and effective constitutions in the face of the previously absolute power of the State. The Colombian Constitution enshrines rights, at various levels, making it an imperative for the State to defend and promote them. However, the importance of this wide range of rights does not lie in merely declaring them, but in the practical and direct mechanisms available to individuals and the community to make them effective and the clear obligation of the State of Colombia to promote and extend the culture of fundamental rights through all its agencies. By way of information only we will provide a summary of some universal rights and freedoms and the ways in which they are protected in Colombia.

Rights. Article 11, the right to life. Without the shadow of a doubt this is the essential core around which all other rights evolve. Article 12, the right to personal safety. Article 13, the right to equality, where the State is required to promote the conditions necessary in order that equality may be real and effective and to adopt measures in favour of groups which are obviously discriminated against or marginalized. Article 15, the right to privacy (habeas data). Article 16, the right to free personal development without limitations other than those imposed by the rights of others. Article 21, the right to dignity. Article 25, the right to work under dignified and equitable conditions. Article 29, the right to due process with respect to all legal and administrative measures. Article 39, the right to freedom of association. Article 40, the right to vote and be elected. Article 48, the right to social security. Article 49, the right to health. Article 51, the right to live in dignity. Article 55, the right to collective bargaining. Article 56, the right to strike, except in the case of essential public services. Article 67, the right to education. Article 79, the right to enjoy a healthy environment.

Freedoms. Article 18, freedom of conscience. Article 19, freedom of religion. Article 20, freedom of expression and of thought. Article 24, freedom of movement. Articles 27 and 67, freedom of teaching, training and professorship. Article 38, freedom of association.

Mechanisms for the protection of rights

In addition to the judicial actions established in the usual legislative provisions of different codes and statutes there are certain judicial actions or remedies designed specifically to protect fundamental rights. We would like to make particular mention of the following:

Writ of protection (constitutional guarantee of protection). Established in article 86 of the Constitution, this is the supreme safeguard of the power of the individual vis-à-vis violations of fundamental rights by the administration. The major advantage of the writ of protection lies in the far-reaching scope of application accorded to it under the law, meaning that anyone can claim before any judge at any time and in any place the immediate protection of their fundamental rights if these have been infringed or threatened by any action or omission by any public authority, and the order must be complied with immediately through a preferential and summary proceeding (ten days for the first petition and 20 for the second). The writ of protection is currently being revised by the Constitutional Court which, as the highest body for the judicial defence of the Constitution, has made this form of protection sufficiently effective to counteract any possible irresponsible actions by the State. The defence of rights using this provision extends beyond the sphere of individual cases and has become the most effective judicial remedy and the principal safeguard in the protection of fundamental rights in Colombia. The constitutional guarantee of protection has allowed all citizens to become familiar with and aware of the content of fundamental rights, thus enhancing their central power in the political fabric.

The right of petition. Established in article 23 of the Constitution, this mechanism makes it possible for everyone to present petitions to the state authorities and establishes the corresponding obligation of the State to satisfy the requirements, without any exception, through the prompt resolution of the petition. This right is vital for democracy and gives people basic and fundamental control over administrative acts, as well as a degree of power which the State is expressly prohibited from withdrawing.

Action for performance. This is a public action which allows everyone to be granted the performance of a legislative provision or administrative act by way of a judicial ruling on any legal standards that have not been applied by the administration. It constitutes an extension of citizens' powers to intercede as a vibrant and dynamic political voice before the State, and the concrete application of the classical ideals of democracy where the power of the citizen determines the sphere of power of the public authorities.

The public rights of action under article 88 of the Constitution came into being with the Colombian Civil Code (1873), but given their importance, were integrated into the Constitution in 1991. This action allows for "the protection of collective rights and interests related to the homeland, space, public safety and health, administrative morality, the environment, free economic competition, and others of a similar nature".

Democracy

The true possibility of constitutional provisions becoming a reality in the daily life of a society and of the society having a definite influence on the Constitution lies in the capacity that each citizen has of freely expressing himself before the democratic institutions and directly influencing the structure of power and decision-taking.

Forms of participative democracy

The 1991 Constitution contains a wide range of mechanisms for democratic participation, including:

(i) Referendums to repeal laws. These are presented in general terms in article 103, while article 170 provides that "A group of citizens corresponding to one-tenth of the electoral rolls may solicit from the electoral organization the holding of a referendum for the repeal of a law" and continues in the second paragraph "This law will be repealed if half plus one of the voters who participate in the referendum so decide ...".

(ii) Referendum. Among the various formulas established with respect to constitutional reform this type of participation is twofold. Article 375 provides that a number of citizens totalling at least 5 per cent of the electoral rolls in force may submit Bills for the reform of the Constitution to the Congress of the Republic. But the Constitution goes even further, requiring that constitutional reforms approved by the Congress must be submitted to a referendum when they involve fundamental rights and their guarantees, procedures of popular participation or reforms of Congress itself, if 5 per cent of the citizens who make up the electoral rolls so decide (article 377). In the territorial sphere, article 307 requires that the conversion of a region into a territorial entity shall be submitted to a referendum by the citizens of the regions concerned.

(iii) Popular consultation. This is another of the ramifications of direct participation by the electorate in the taking of political decisions that are important for the State. Article 104 allows the President of the Republic to consult the electorate so it is the people who decide "on matters of great national importance". This provision extends to the regional sphere, according to the provisions of article 105, which gives governors or mayors the same possibilities for consultation in their respective spheres of competence.

(iv) Legislative initiatives. According to article 155, legislative Bills or those involving constitutional amendments may be introduced by a number of citizens equal to or greater than 5 per cent of the existing electoral rolls.

(v) Repeal of the mandate and programmatic vote. The most significant democratic feature of the relationship between governors and governed is the provision in the Constitution of the right to repeal the mandate. This demonstrates that the democratic government goes beyond the sphere of popular legitimation and comes under that of political responsibility for its mandate, distancing the shadow of full autonomy towards its electorate which had been seen as immutable since it was justified by Abbot Sieyes. In this way certain individual duties within the Colombian Government must comply with a government programme developed prior to election which means that voters do not vote for political colours or trends but for the programme that satisfies their concerns as citizens. In the event of the government official not fulfilling the programmes, the mandate is repealed.

Representative democracy

In Colombia the following political authorities are elected by way of universal and direct vote: President of the Republic, Vice-President of the Republic, senators, representatives to the legislative body, governors, mayors, municipal and district councillors, deputies to departmental assemblies, members of local administrative boards and when appropriate the members of the Constituent Assembly.

Basic structure of the State and the transfer of powers

Article 113 of the Constitution gives a general description of the basic structure of the State of Colombia. "The branches of government are the legislative, the executive and the judiciary. In addition to the organs which constitute them, there are others, autonomous and

independent, for the execution of other functions of the State. The various organs of the State have separate functions but cooperate harmoniously to achieve their goals."

Since it was established as a political theory by John Locke and later lauded by the Baron of Montesquieu, up until the present time, one maxim of the constitutional State remains unchanged: the transfer of powers has been the formula whereby political systems have kept their applicability and philosophical and political consistency sufficiently capable of rationally understanding and promoting the democratic evolution of societies.

While it would be a considerable effort to describe in detail the functions assigned to the branches of the public authorities and the supervisory bodies in Colombia, it is necessary to explain the main ways in which our system takes up the universal principles of the division and autonomy of powers if one wishes to draw any empirical knowledge from its practical foundations and not to just engage in presumptive speculation lacking sufficient information.

The bastion of our political culture has been the maintenance of and firm respect for the spheres of competence that the Constitution has assigned to the various branches of power. This allows balance to be maintained in a variety of ways, namely:

Relations between the executive branch and the legislative branch. Our political system, while it does not allow such close relations between these branches as in a parliamentary system, opens sufficient channels for communication to allow them to work together harmoniously and in a manner which respects the constitutional State. With the structure of Congress being bicameral, this does not only offer the advantage of a pluralist structure open to the needs of minorities and regions, but it also operates as the internal reflection of the legislature. As the direct depository of the sovereign will of the Colombian people and the basic forum for democratic debate, the Congress autonomously issues the laws which generally strengthen the State's legislation, and its role as legislator can be neither delegated nor transferred. The relations of the legislative with the executive branch are expressly described in the Constitution and obey the framework of the firmest possible respect for the division of powers. The following points must be taken into account during the issuing of laws: (i) as an inherent part of the division of powers, the national Government can submit Bills to Congress (articles 154, 189, 200), discuss them, promote them and defend them through the ministers of the corresponding branch, but never through any institutional means demand the approval of the Bill or repeal any legislative faculty as this would constitute a devastating blow for the balance of the public authorities which has become an imperative aspect of our political structure; (ii) the President of the Republic as "Head of State, Head of Government and supreme administrative authority" (article 115), has the constitutional obligation to punish (article 157 NI 4), promulgate, obey and see to the strict compliance of the laws enacted by Congress (article 189, No. 10). Once it is understood how the functions of the executive and legislatives branches overlap, as far as the legislative process is concerned, it is clear that those branches have no possibility of repealing functions expressly stipulated in the Constitution, which in turn takes up the most important developments in the constitutional State.

Relations between the executive branch and the judicial branch. Article 230 of the Constitution is categoric in stipulating that "In their decisions, the judges are bound exclusively by the rule of law." The most delicate equilibrium among the branches of public authority definitely consists of the respect that judicial decisions deserve within a democracy. Following the tortuous path taken by the judicial courts of the world it is clear today that the cultural development of a people can be measured by the degree of respect for and autonomy of a nation's judges. It is easy to see from this fundamental principle that the aspiration of founding a jurisdiction uninfluenced by the political and administrative

changes taking place in the other branches of public authority is specified in article 228 of our Constitution which states: "The administration of justice is a public function. Its decisions are independent. ... The functioning of the judiciary will be decentralized and autonomous."

It is the duty of the Government, in addition to respect and deference for its decisions as the essential nucleus of the division of powers, to do the following in conjunction with the judiciary branch: "Lend the necessary assistance to the judicial officials to make their decisions effective, in accordance with the laws" (article 201, No. 1). It is impossible to come to the exotic conclusion that the Government can oblige the judges of the republic to distort their judicial decisions.

Relations between the legislative branch and the judicial branch. In keeping with the Constitution, the judiciary and the legislature work autonomously; there is no possibility of their functions crossing over or becoming mixed up. Ultimately, their function is to ensure the application of the law to cases assigned to the judiciary. The Constitutional Court as "the custodian of the integrity and supremacy of the Constitution" should, in the terms of the Constitution, declare the unconstitutionality of the laws issued by Congress.

Supervisory bodies

In addition to the branches of public authority, there are other autonomous and independent bodies which supervise the State's activities and their repercussions on society. They are designed to ensure that the operation of the State faithfully adapts itself to the supreme goals contained in the Constitution and the laws.

The Government Procurator's Office, comprised of the Attorney-General of the Nation and the People's Advocate. The work of the Attorney-General is in essence to supervise compliance with the Constitution, laws, judicial decisions and administrative acts; to protect human rights and ensure their effectiveness; to defend the interests of society and communities; to exercise additional vigilance over those performing public duties, exercising disciplinary power over all state officials. It thus complements the balance of power, basically in respect of the work of officials and the defence of the institutional system. The tools available to this body and its full autonomy ensure its effectiveness and preponderance in monitoring the way the State is run. The People's Advocate, inspired by the figure of the Ombudsman, fulfils the vital role of promoting and providing information on the free exercise of human rights, strengthening his power as intermediary between the state agencies and the society in order to promote the full enjoyment of such rights.

The Office of the Comptroller-General of the Republic is responsible for supervising the fiscal management of the administration and, more generally, ensuring that the nation's assets are managed in accordance with the Constitution and legislation.

We hope that a critical and committed reading of this description of Colombia's institutional system will give a clearer picture of the country.

Annex III

Position of the Colombian employers in respect of the complaint made by the workers of the country to the ILO and of the possibility of naming a commission of inquiry for the country

Introduction

During the 86th Session of the International Labour Conference in Geneva, Switzerland in June 1998, the Colombian workers, with the support of the workers' delegates of 26 ILO member States and by virtue of article 26 of the ILO Constitution, made a complaint against the Colombian Government alleging 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).

In particular, the main aspects of the complaint can be summarized as follows:

— The State of Colombia carries out a policy of persecution against the trade union movement; a policy which, as conceived, is demonstrated by violent acts against workers exercising their trade union activity.

— There is no will of the Colombian Government to adapt the internal legislation to the Conventions ratified by the country, in this case Conventions Nos. 87 and 98, in the manner which has been recommended by the ILO Committee on Freedom of Association; this omission is equivalent to an outright violation of freedom of association rights and the right to bargain collectively.

In view of the above, the Colombian employers and businesses, in the interest of a better understanding of the reality in the country, wish to present their position in respect of the allegations made by the workers. This position is set forth below.

General considerations concerning the violence in Colombia

There are few countries like Colombia where there exists such a complex phenomenon of violence. Indeed, the roots of this violence, its authors and its signs are so heterogeneously connected that they are extremely difficult to describe and the ultimate cause in respect of a particular act of violence is almost impossible to determine.

The following comments, rather than presenting an exhaustive or integral analysis of this phenomenon (of which, of course, there is an abundance in the country) are aimed at putting into context a sad reality whose solution requires the efforts and understanding of all, especially of international organizations.

From the time of its independence from the King of Spain, almost 180 years ago, Colombia has endured a high number, almost without interruption, of internal conflicts. It is enough to say that these conflicts, up until the middle of this century, have in most cases been due to various policies and leaders characteristic of a new republic.

In this respect, while it may be accurate to state that the violence in the country had a predominantly political origin, this is not so clear as concerns the present-day situation where it is necessary to add other elements to the political component such as drug-trafficking, contraband and common delinquency.

The simultaneous violence of so many and so powerful adversaries has undoubtedly disabled the ability of state entities and authorities to respond, and moreover has wreaked havoc at all levels of society. This is why in Colombia, as paradoxical as it may seem,

everyone has been a victim of the violence. To give an idea, even if only superficial, of the level to which violence has risen in the country one can note that during the 1980s, homicides in Colombia began to increase at a rate of 8 to 9 per cent a year which raised the number from 9,000 in 1980 to 28,000 in 1991.

Such a spiral of violence hurts both the social fabric and its institutions, including those of the State. The case of the administration of justice provides a good illustration of this, as was appreciated in the analysis made by the Corporación Excelencia en la Justicia (a private, non-governmental organization) and from which the following extracts come:

> Citizens' faith in the state judicial system and the need which exists for it is reflected in the way in which the individuals of a society seek to resolve the problems and conflicts which they live. According to the results of the most recent criminality module in the national home survey by DANE (level 90, December 1995), only 31 per cent of Colombian residents in the 11 most important cities of the country have reported to the authorities when they have been confronted with a crime. Sixty-two per cent did nothing, 1 per cent said that the matter was "resolved" and almost 5 per cent responded to the attack by their own means. The positive side of these figures is that they indicate that recourse to the justice system has increased because only an estimated 20 per cent of crimes were reported to the competent authorities in the 1980s. Nevertheless, the percentage of crimes reported continues to be very low and the fact that 5 per cent of the population acknowledge having sought justice by their own means is disturbing.

Within this framework, the notion which ignores the victimized position of the state entities and authorities of the country appears partial. Such a position, while in no way justifying the excesses and omissions of one or the other, does explain many of them. It is inadmissible to pretend now that these excesses constitute a policy or a reasoning of the Colombian State since, no matter how general they may be, the unprepared observer will be able to note that they are contrary to the constitutional standards, the thinking and directives of most of the executive, legislative and judicial authorities.

If a state policy — because it can be properly qualified as such — specifies the active cooperation of most of the levels of the State, it must be concluded that there would be no state policy in the absence of such an active cooperation.

If in Colombia there is not full implementation of the constitutional rights and guarantees, this is not due to a lack of will on the part of most public authorities and entities, but rather and precisely to the contrary, as we have said before, due to a decrease in their capacity to act.

The consequences of the statement that there is a state policy against freedom of association in Colombia

The Colombian employers and businesses thus share to a certain degree the considerations contained in the complaint presented by the Colombian workers in the sense that the State carries out a policy of persecution against the trade union movement, although this is a partial and simplistic statement which does not acknowledge the complex reality of violence in Colombia and is furthermore inaccurate in that it does not correspond to the standards of the national Constitution or of the directives, nor does it reflect the will of most of the public bodies and authorities.

Nor can we agree with the assertion that the high number of deaths of trade union leaders and violent acts against them (acts which we abhor, condemn and regret) constitute irrefutable proof of a state policy against workers' freedom of association.

The different authors generating violence in Colombia

We disagree, in the first place, because the authors of violence in Colombia are so numerous that such deaths and attacks can come from any one of them. If they are

committed by the military or public servants, this is due, as indicated above, not to the existence of a state policy but rather to motives solely and exclusively attributable to the persons concerned.

That violent and criminal acts in Colombia do not come only from the military and/or public servants acting in an isolated manner is something recognized by the studies of conflict undertaken in the country, such as those by international organizations for the defence of human rights, as can be noted in the sections below from the paper "Armed Conflict and Deterioration of Freedom in Colombia" by Dr. Alfredo Rangel and from the reports of Human Rights Watch published in 1998 and 1999.

(a) Paper "Armed Conflict and Deterioration of Freedom in Colombia" by Dr. Alfredo Rangel for the international seminar "Personal and Collective Freedom in Colombia, Reflections for its Construction", organized by the President of the Republic, Programme for the Defence of Personal Liberty:

Despite the political nature of the guerrillas as shown by the systematic search for local and regional power, guerrilla groups have systematically and massively called for forms of banditry, in drawing from Marxist ideology and in their goals of achieving structural reform in Colombian society by means of armed violence, which have increasingly victimized the civilian population. Indeed, despite the fact that almost all revolutionary guerrillas in all areas have used to greater or lesser degrees kidnapping as a means of financing, historically, no guerrilla has used kidnapping to such a degree as it is used today by the Colombian insurgence; to such a degree that they can be considered the single organization which carries out the greatest number of kidnappings for economic reasons in the world per year. Indeed, if approximately 45 per cent of the total number of kidnappings which take place each year in the world occur in Colombia and the guerrillas are responsible for half of these, it can be deduced that 20 per cent of the kidnappings taking place in the world are carried out by Colombian guerrillas. Similarly, extortion, betting and vaccinations are common forms of putting pressure on the civilian population to contribute to its revolutionary cause.

Local political leadership in the whole country has similarly converted into a white military of guerrillas. They use armed pressure daily against the mayors and councillors of small and medium-sized towns, as well as threats made and carried out against all types of public civil servant in order to obtain a certain type of behaviour in their favour. The number of mayors and councillors who have been assassinated by the guerrillas for political ends has reached double digits. All of these acts constitute without a doubt systematic and flagrant violations of the mandates of international humanitarian law which is the minimum requirement of the laws of war.

(b) Human Rights Watch, "Annual Report on the Situation of Human Rights in the World", 1998, chapter concerning Colombia:

Guerrillas also committed serious abuses during 1997, among them massacres. On 9 March presumed members of the FARC's (Fuerzas Armadas Revolucionarias de Colombia) 34th Front opened fire on an ice-cream parlour in Currulao, Antioquia, killing nine people, including parlour owner Danilo Valencia Naranjo. The FARC was believed to have sent the April letter bomb that killed Pedro Agudelo, the 17-year-old son of the Hope, Peace and Liberty party (Esperanza, Paz y Libertad) leader Mario Agudelo.

The FARC made a practice of attacking civilian targets, putting the lives of non-combatants at serious risk. In April, guerrillas apparently activated a bomb in front of a Medellín skyscraper, killing four passers-by and wounding 41 others. In September, one of Colombia's largest hydroelectric plants was the target, causing the Government to recommend that families begin limiting their use of electricity.

The ELN also committed serious violations, among them targeted killings. According to press reports and information gathered by human rights groups, the ELN was responsible for at least 49 political killings in the first nine months of 1997. Among the victims were farmers, mayors, an employee of the attorney-general's office, and children. In addition, the ELN apparently killed several security force agents hors de combat, among them three soldiers captured and executed on 3 August near El Playón, Santander.

The ELN stepped up its use of car bombs, registering dozens of attacks in the first six months of 1997. In an attack on 17 March, a car bomb in Cúcuta, northern Santander, apparently detonated by the "Resistencia Yariguíes" Front of the ELN, killed 18-month-old Martha Liliana Riveros and left several others wounded.

Kidnapping remained a common tactic of paramilitaries and guerrillas, who routinely took family members of combatants as hostages. Since 1996, the ACCU (Autodefensas Campesinas de Cordoba y Uraba) kidnapped over a dozen family members of guerrillas, seven of whom were released on 26 March under the auspices of the International Committee of the Red Cross (ICRC).

Several political kidnappings led to deaths. On 5 May, the FARC announced that Congressman Rodrigo Turbay Cote, kidnapped in 1995, had died while being transported along the Caguán river in his native department of Caquetá, apparently after falling from a canoe. In retaliation, paramilitaries who had kidnapped two family members of an ELN commander announced that they had been executed in May.

(c) Human Rights Watch, "Annual Report on the Situation of Human Rights in the World", 1999, chapter concerning Colombia:

Although exact figures remained difficult to confirm and many cases went unreported or uninvestigated, the data bank run by the Centre for Research and Popular Education (Centro de Investigación y Educación Popular, CINEP) and the Intercongregational Commission of Justice and Peace (Justicia y Paz), human rights groups, reported that 619 people were killed for political reasons in the first six months of 1998. In cases where a perpetrator was suspected, 73 per cent of these killings were attributed to paramilitaries, 17 per cent were attributed to guerrillas, and 10 per cent to state agents. These figures did not include combatants killed in action.

Guerrillas also committed serious abuses in 1998. When the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia, FARC) perceived a political advantage, it emphasized its respect for the laws of war. However, when no political advantage was apparent, the FARC made little if any attempt to abide by these standards. For instance, Human Rights Watch received credible and consistent information about the FARC's use of the bodies of slain combatants as booby traps, an act of perfidy under the laws of war. After combat near Fomeque, Cundinamarca, on 16 February 1998, the army collected the bodies of three soldiers which were flown by helicopter to Santafé de Bogotá. There, the explosives hidden in the body of Captain Luis Hernando Camacho detonated, killing two soldiers and wounding five.

The National Liberation Army (ELN) regularly executed soldiers and police officers who were captured during combat. Just during the first semester of 1998, the ELN killed at least 32 civilians according to the data bank.

During the same period, the ELN detonated explosives more than 40 times in the 770 km of area connecting the oil pipelines of the east of Colombia with the Caribbean port of Coveñas. The ELN did not blow up the pipelines for military reasons but to extort money and to make known its opposition to the type of agreements concluded between Colombia and multinational corporations.

The People's Liberation Army (EPL) also participated in continual and atrocious violations of international humanitarian law, including the assassination of the families of deserters. For example, after two hostages of the EPL, María Constanza and Juan Carlos Morales Ballesteros, escaped from detention with the help of an EPL activist, the guerrillas captured the family of the companion of the latter on 18 November 1997, avenging themselves by killing his mother and his brother and injuring another brother.

All the guerrilla groups continue to practise the taking of hostages to extort or to make known a political view. According to the Free Country Foundation, a non-governmental organization which compiles information on abductions, the guerrillas are responsible for around half of the 1088 abductions registered in the first seven months of 1998.

All the parties in the conflict continue to plant mines. For example, the ELN planted mines in the populated areas of Antioquia, Arauca and Santander, amongst others, which put into peril the lives of the civil population and provoked casualties amongst peasants and children. Although Colombia signed the Land Mine Treaty in December 1997, it still has not ratified it.

The result of various areas being shaken by massacres, conflicts and planned assassinations led to the forced displacement of people in 1998; the northern departments of Antioquia, Bolivar, Cesar and northern Santander; the region of Magdalena; and the region known as Urabá on the frontier with Panama. Moreover, the forced displacement extended to new areas which were previously outside the conflict, such as the departments of Chocó and Putumayo.

Another relatively new phenomenon in 1998 was the persecution of the leaders of these displaced communities who were accused by the guerrillas of sympathizing with the enemy or of organizing these displacements as a military strategy. On 28 April 1998, armed men who affirmed belonging to the ACCU captured six persons from a group of displaced families in Bello, Antioquia, killed at least four of them and made the rest "disappear".

The impact of the violence on all social sectors

The second reason for which we disagree with the link made by the workers between the high level of trade unionists affected and a state policy directed against them derives from the reality that is impossible to ignore. This is that all social sectors have a high level of victims.

The figures speak for themselves. According to the crimes reported to the National Police, the number of murders between 1994 and 1998 were:

Month	1994	1995	1996	1997	1998
January	2 134	2312	2087	2224	2021
February	1997	1943	2002	1999	1833
March	1906	2105	2085	2192	1920
April	2082	1915	2056	2098	1807
May	2335	2091	2267	2262	1851
June	2285	2128	2300	2096	1679
July	2116	2193	2196	2077	1921
August	2191	2131	2279	2205	1971
September	2331	1993	2232	1961	1788
October	2252	2089	2155	1888	1971
November	2269	1875	2368	2023	1948
December	2535	2439	2435	2188	2423
Total	26433	25214	26462	25213	23133

According to the complaint presented by the workers, the acts of violence including assassinations, disappearances, death threats and abductions against trade union leaders and activists, registered by the ILO within the framework of Case No. 1787, totalled 192. These lamentable acts, which have many causes and which we condemn, do not amount to

more than 1 per cent of the violent acts which occur annually in Colombia. The violent acts that the rest of the Colombians have to contend with daily due to the generalized violence that characterizes the country are also to be condemned.

In effect, in the case of kidnappings, the Free Country Foundation, a non-governmental organization which promotes a policy to fight this terrible crime, presented the following figures of the sectors most affected between January and December 1998.

Social groups	Total	Social groups	Total
Without establishment	5576	Geologists	4
Politicians	394	Photographers	3
Business persons	296	Industrialists	3
Minors	131	Entrepreneurs	3
Farmers	110	Shareholders	2
Engineers	105	Masons	2
Drivers	63	Peasants	2
Employees	58	Carpenters	2
Farmers	52	Accountants	2
Students	45	Economists	2
Foreigners	42	Nurses	2
Public forces	41	Advertisers	2
Housewives	30	Supervisors	2
Doctors	23	Social workers	2
Administrators	19	Zoo technicians	2
Educational staff	18	Indigenous persons	2
Journalists	16	Professional workers	2
Executive business persons	15	Dentists	1
Lawyers	15	Analysts	1
Landowners	12	Artists	1
Subcontractors	10	Insurance workers	1

Social groups	Total	Social groups	Total
Technicians	10	Assistants	1
Transport workers	8	Poultry farmers	1
Public employees	8	Bacteriologists	1
Pensioners	7	Biologists	1
Musicians	7	School guardians	1
Tax authorities	7	Comptrollers	1
Architects	7	Traders	1
Secretaries	7	Writers	1
Pilots	6	Ex-mayors	1
Veterinarians	6	Worksite supervisors	1
Coffee growers	4	Radiologists	1
Mechanics	4	Priests	1
Construction workers	4	Total	2216

From the previous figures we count, for example, amongst the "politicians" all those who are elected by popular vote, especially mayors.

Obviously, all crimes committed against a trade unionist are reprehensible; however, this condemnation should be extended equally to the rest of the affected population. In other words, without attenuating the gravity of the acts committed against the trade unionists in Colombia, we consider that such facts should not be used to give an inexact or partial picture of the situation in the country. The commission of these criminal acts as well as the misrepresentation of these acts are to be condemned.

Finally, it would seem useful to present a picture of the high incidence of violence in Colombia which directly affects the whole country. We are in agreement with the document "The economic cost of crime and violence in Colombia: 1991-96" written by Edgar Trujillo Ciro and Martha Elena Badel Rueda and published by the National Department of Planning;

... The costs of urban crime and those generated by the armed conflict can be summarized as follows: between 1991 and 1996 the total cost of the violence in Colombia amounted to US$17.2 billion which was the equivalent of 25.3 per cent of the GNP in 1995. The total costs are those that are assumed by the victims and the net costs are those that are assumed by society as a whole.

Out of the sum of the total cost of crime in Colombia, the loss of lives represents 31 per cent, excess military expenditure 22 per cent, security costs 17 per cent, economic crimes 15 per cent, abductions and extortion 12 per cent and finally terrorism 2 per cent.

In this complex Colombian context where all sectors suffer equally, it is not admissible that only one of them is entitled to the exclusive status of victim and even less so that this be attributed to a state policy against this sector.

The existence of a state policy in favour of human rights in Colombia

Contrary to what the workers affirm in their complaint, in Colombia there is a state policy in favour of human rights, a policy that has multiple and different manifestations.

The most significant manifestation of this state policy in favour of human rights is demonstrated by the strength and compromise of the highest authorities and public entities. For example, it would be appropriate to mention that a Presidential Adviser for Human Rights had existed since 1987 as an adviser to the President of the Republic and who has the role of reducing the violations of fundamental human rights, in particular violations of the right to life, personal integrity and freedom, relations with the armed conflict and the political violence in the country. This position is so important that the Government actually designated the Vice-President of the Republic to personally and directly oversee it.

In the Defence Ministry there is the Secretariat for Human Rights and Political Matters who depends directly on the Ministry. Moreover, in the military forces and police units, there exist offices for human rights and international humanitarian law. The function of the Secretariat and the above-mentioned offices includes the increase in the respect for human rights and international humanitarian law on the part of the military forces and national police; the enforcement of the efficiency of the internal control mechanisms and of sanctions for violations of human rights; the consecration of the respect of human rights and of international humanitarian law as a fundamental aspect of the strategy of the military forces and the national police in their fight against subversion, drug-trafficking and delinquency.

In the Office of the Comptroller-General of the country there exists the National Unit of Human Rights and the Office of International Matters which, automatically or following a complaint, are responsible for investigating crimes and accusing those presumed to have violated the penal law before the competent courts. It should not be forgotten that the Office of the Comptroller-General is an institution which depends on the judicial branch and not the executive branch.

The Ombudsman is to be found in the Office of the Procurator-General of the Nation, a supervisory body of the public administration. The function of the Ombudsman is to mediate and find a solution to the conflict generated by violations of human rights especially concerning acts of genocide, torture and disappearances of persons which are incurred through the exercise of their functions by the members of the Ministry of National Defence, the Military Forces and National Police, the officials who were personnel of the entities bound to these institutions and the additional officials and public servants.

In the Public Defender's Office, an entity which forms part of the public administration, there is a department of promotion and information on human rights that is charged with, among other things, the responsibility for making recommendations and comments to authorities and to individuals in cases of threats or of violations of human rights, and to disseminate knowledge regarding the political constitution of Colombia, particularly with regard to fundamental rights, social, economic, cultural, collective rights and the environment.

The multiplicity of legislative instruments and regulations that govern one or more aspects of the peace process, along with international humanitarian law that penalize

violations of human rights is another manifestation of the existence in Colombia of a national policy which is markedly different from that suggested by the workers in the representation presented by them to the ILO. In addition and by way of illustration, the following is a list of some of the above-mentioned legislative instruments and regulations:

(a) Law No. 171 of 1994, through which the second additional Protocol to the Geneva Conventions of 12 August 1949 is approved, relative to the protection of victims of armed conflicts.
(b) Decree No. 1290 of 1995, which establishes the commission for the analysis and assistance in the application of the recommendations formulated by the international bodies of human rights, under the Ministry of Foreign Relations.
(c) Law No. 282 of 1996, which creates the Presidential Programme for the Defence of Personal Liberty.
(d) Law No. 288 of 1996, by means of which are established instruments for the compensation of damages suffered by victims of human rights violations in accordance with the provisions of certain international human rights bodies.
(e) Decree No. 1396 of 1996 which creates the Commission of Human Rights of Indigenous Peoples.
(f) Law No. 387 of 1997, by means of which measures are adopted for the prevention of forcible displacement, attention to, protection of, consolidation and stabilization and social economic stabilization of internally displaced persons due to violence in Colombia.
(g) Law No. 409 of 1997 through which the Inter-American Convention for the prevention and sanctioning of torture is approved.
(h) Decree No. 1454 of 1997, which establishes the National Committee for the Defence of Human Rights and the Application of International Humanitarian Law in the Colombian rural sector.
(i) Decree No. 2895 of 1997, which establishes a block of investigations into private justice groups.

Other examples of the goodwill of the national authorities in this area include the signing on the part of the Colombian Government of the instrument creating the international criminal court that was approved in Rome in July 1998, as well as the petition that the Colombian Government presented for the broadening of the mandate and extension of the stay, for an additional year, of the Office of the United Nations High Commission on Human Rights in Colombia.

Now, turning to the specific case of the human rights of the workers, Decree No. 1413 of 27 May 1997 established the Inter-institutional Commission for the Promotion and Protection of the Human Rights of the Workers. The composition of this Commission, which is as follows, clearly demonstrates the commitment of the Government in this important area:

— The Minister of Labour and Social Security or his representative, who will preside over the Commission.
— The Minister of the Interior or his representative.
— The Minister of Justice and Law or his representative.
— The Minister of the National Defence or his representative.
— The Presidential Adviser for Social Policy or his representative.
— The Presidential Adviser on Human Rights or his representative.
— The Presidential Adviser on Displaced Persons or his representative.
— Five representatives of the Workers' confederations.
— The President of the Episcopal Conference or his representative.

— The President of the Association of Attorneys José Alvear Restrepo or his representative.
— The Director of the Colombian Commission of Jurists or his representative.

In addition, there have been public and repeated declarations from the highest national authorities supporting human rights. In this regard, the following should be cited:

Following the meeting held on 16 February 1999 between the President of the Republic, the Vice-President, the Minister of the Interior and ten representatives of the NGOs working in Colombia, Vice-President Dr. Gustavo Bell Lemus announced that the Government will advance mechanisms to protect the lives of defenders of human rights and to offer security for the headquarters of the respective organizations. Equally, the Vice-President indicated that, with the objective of supporting the social work carried out by the NGOs and confirming the importance that these organizations have in building democracy, the Government will offer them the possibility of disseminating information necessary to advance a campaign for the promotion of respect for life and for tolerance. The Minister of the Interior, on his part, announced the establishment of an elite group of investigators, to be established immediately and composed of 25 specialists in human rights.

On 19 January 1999, the High Commissioner for Peace, Dr. Victor G. Ricardo, presented a declaration containing the position of the national Government with regard to the *Autodefensas de Colombia, AUC*. The following paragraph is taken from that declaration:

> The national Government has stated and repeats its intention to commit all resources within its reach to deal with those self-defence and private justice groups currently operating in the national territory. The Government does so with the awareness that the use of arms is a function which belongs exclusively to the State and that no one may take up arms in order to hand out its own justice. The Government emphatically rejects under all circumstances the argument that such arms are necessary in order to support democratic institutions, recover territories or fight against subversion.

On 15 December 1998, the President of the Republic, Dr. Andrés Pastrana Arango, stated categorically that the legitimate authority of the State "cannot respond to barbarism with barbarism", and he added that:

If the enemies of the State and of society torture, kidnap, massacre, use arms and methods forbidden by society, those to whom society and the State have entrusted their defence cannot respond with the same methods, because they would thereby blur the boundaries between good and evil, because they would be delivering up the most precious of weapons, which is the moral authority, because they would be violating the principles of the rule of law that they swore to defend.

On 10 December 1998, during the celebration of the 50th anniversary of the Universal Declaration of Human Rights, the President of the Republic, in stating that there are those in the "State" who have found the "scapegoat" that permits them to throw stones and accuse others while maintaining their innocence, also stated that "if the State accepts its responsibility, all of us and each of us individually, as a community, collectively and by association are equally guilty".

We, as Colombian employers and businesses, take these last words of the Head of State as indicating that the affirmations and minor complaints that in the area of human rights have been realized against the State, apart from being imprecise and inexact, do not contribute to the solution of an extremely complex problem. Consequently, while we reject and condemn those violent acts that the trade unionists have suffered, we declare that these acts in no manner can be attributed to any national policy. The violence to which the trade unionists have fallen victim is not different from that which businesses and employers suffer and, generally, all Colombians.

National legislation in relation to ILO Conventions Nos. 87 and 98

The Colombian employers and businesses also cannot support the second reason put forth in the complaint of the Colombian workers against the Government, concerning the Government's lack of will to introduce the necessary reforms to bring the legislation into conformity with ILO Conventions Nos. 87 and 98; such an assertion fails to acknowledge in any way the efforts made during the last decade to bring the legislation into conformity — efforts that even the Committee of Experts has noted with satisfaction.

Among the efforts that have been made, particular mention must be made of Law No. 50 of 1990 which introduced a number of changes to the collective relations chapter of the Labour Code, specifically strengthening anti-union discrimination provisions and those promoting freedom of association; a right protected by article 39 of the Constitution in the following terms:

> Workers and employers have the right to form trade unions or associations, without state interference. Legal recognition is obtained simply through the registration of the constituting attestation.
>
> The internal structure and functioning of the trade unions and social organizations are subject to the legal order and democratic principles.
>
> The cancellation or the suspension of legal recognition is only possible through judicial procedures.
>
> Immunity for trade union representatives, and other guarantees necessary for the normal carrying out of activities are recognized. (Article 39.)

The Constitution also provides that "International labour Conventions that have been ratified are incorporated into internal legislation".

Thus, the assertion that in Colombia there is a state policy to repress the trade union movement and an explicit desire to obstruct the bringing into conformity of the legislation with the applicable ILO Conventions, is unjustified; moreover, in addition to the constitutional provisions already mentioned, Law No. 26 of 1976 and Law No. 27 of 1976, incorporate into the internal law Conventions Nos. 87 and 98 respectively.

What has happened is that there has been a lapse in the process, which was not a result of anti-union state policies, but of the normal development of every process of aligning legislation, since the changes do not come about automatically, which is further complicated by the fact that the adoption of these changes do not depend on only one state entity.

In Colombia, the state structure is divided into three branches of public power — the legislature, the executive and the judiciary — and each has its own characteristics and each is autonomous. As a result, changes to labour law provisions must be adopted by the Parliament of the Republic and not imposed by the executive whose competence ends after presenting and defending the Bills.

After the promulgation of Law No. 50 of 1990, the Government drafted and presented Bills for the consideration of the Parliament of the Republic, aimed at bringing the laws into full conformity with ILO Conventions Nos. 87 and 98. The reason that these were not ultimately approved was because the activities of the Parliament were focused on other subjects arising out of the existing circumstances of public disorder which had to be addressed urgently.

In summary, the Government cannot be accused of not having acted with due diligence in the implementation of the changes in order to bring the legislation into full conformity with Conventions Nos. 87 and 98.

On the other hand, the true will of the State in relation to labour and trade union relations is reflected in article 56 of the National Constitution, which creates a permanent commission made up of government, employer and worker representatives, in order to promote sound labour relations, assist in resolving collective labour disputes, and to reach agreements on labour and wage policies. This Committee was established pursuant to Law No. 278 of 1996, and has met a number of times concerning a variety of matters. It is important to point out that the members reached an agreement concerning the legal minimum wage for 1998.

The ILO can attest to the activities in the country to promote a new culture of labour relations based on mutual agreement and dialogue between the social partners, and of the spirit of economic coordination and social equilibrium, since many of these activities were carried out under the auspices of the ILO.

In conclusion, as has been stated with respect to the violence in Colombia, judgement cannot be made on the basis of generalities and the facts must not be viewed out of context.

F. Recommendations of the Committee on Freedom of Association to the Governing Body concerning the complaint presented under article 26 of the Constitution

141. The Committee notes the contents of the complaint submitted pursuant to article 26 of the Constitution of the ILO and the Government's reply thereto. The Committee considers that it is now for the Governing Body, on the basis of the present report and its conclusions adopted in the pending cases concerning Colombia, to take a decision as to the appropriateness of appointing a commission of inquiry.

Geneva, 17 March 1999.

(Signed) Max Rood,
Chairman.

315th Report of the Committee on Freedom of Association

I. Introduction

1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 4, 5 and 17 March 1999 under the chairmanship of Professor Max Rood.

2. The Committee had before it two complaints of violations of freedom of association in Nigeria, presented by a number of trade union organizations (Cases Nos. 1793 and 1935), as well as a report of the Officers of the Governing Body entitled "Observance by Nigeria 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): Report on the direct contacts mission to Nigeria (17-21 August 1998)"[1] pursuant to its decisions to institute, by its own motion, the procedure provided for in article 26(4) of the ILO Constitution and to proceed to appoint a commission of inquiry (271st Session, March 1998) and to suspend the work of the commission to allow a direct contacts mission to take place in the country (272nd Session, June 1998).

3. In accordance with the decision adopted by the Governing Body at its 273rd Session (November 1998), the Committee submits, for the Governing Body's approval, a report on the pending cases.

II. Cases examined by the Committee

Cases Nos. 1793 and 1935

Report in which the Committee requests to be kept informed of developments

Complaints against the Government of Nigeria presented by — the International Confederation of Free Trade Unions (ICFTU) — the Organization of African Trade Union Unity (OATUU) — the World Confederation of Labour (WCL) and — the International Federation of Chemical, Energy, Mine and General Workers' Union (ICEM)

Allegations: Arrest and detention of trade union leaders, dissolution of union executive councils, government interference in union structure and functioning and restrictions on international affiliation

4. In August 1994, the International Confederation of Free Trade Unions (ICFTU), the Organization of African Trade Union Unity (OATUU) and the World Confederation of Labour (WCL) submitted a complaint of violations of freedom of association against the Government of Nigeria. This complaint (Case No. 1793) has been examined by the Committee on Freedom of Association in the following reports [295th Report, paras. 567-614; 300th Report, paras. 245-271; 304th Report, para. 13; 306th Report, paras. 45-47; 307th Report, paras. 33-35; 308th Report, paras. 53-55; 309th Report, paras. 27-29].

[1] See GB.273/15/1.

5. In a communication dated 1 August 1997, the ICFTU and the International Federation of Chemical, Energy, Mine and General Workers' Union (ICEM) presented a new complaint of violations of freedom of association against the Government of Nigeria (Case No. 1935). The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), the International Textile, Garment & Leather Workers' Federation (ITGWLF) and the International Federation of Commercial, Clerical, Professional and Technical Employees (FIET) associated themselves with this complaint in communications dated 29 August, 24 September and 10 October 1997 respectively. In the absence of any reply, the Committee addressed an urgent appeal to the Government to furnish its observations in respect of Case No. 1935 in March 1998 [309th Report, para. 8].

6. In the meantime, at its 271st Session (March 1998), the Governing Body, after taking due note of the Committee's 309th Report, as well as a report of the Officers of the Governing Body concerning the trade union rights situation in Nigeria, occasioned by a letter from the Governing Body Worker Vice-Chairperson to the Director-General, decided to institute the procedure provided for in article 26(4) of the Constitution and to proceed to appoint a commission of inquiry to consider the allegations made against the Government of Nigeria in Cases Nos. 1793 and 1935. At its 272nd Session (June 1998), while appointing the members of the Commission of Inquiry, the Governing Body, referring to recent significant developments in the country, nevertheless decided that the commencement of the work of the Commission should be delayed for 60 days in order to allow the Government to admit a direct contacts mission to Nigeria. The mission took place from 17 to 21 August 1998 and was headed by Justice Rajsoomer Lallah, Chair designate of the appointed Commission of Inquiry, accompanied by Steven Oates from the ILO Standards Department.

7. At its 273rd Session (November 1998), the Governing Body had before it a report of the Officers entitled "Observance by Nigeria 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): Report of the direct contacts mission to Nigeria (17-21 August 1998)". [See GB.273/15/1.] On the basis of this report, the Governing Body decided:

(a) to take note of the report of the direct contacts mission;
(b) to endorse the concluding remarks and request the Government of Nigeria to take all appropriate action in that light;
(c) in particular, to request the Government of Nigeria to communicate full information on the matters raised in Cases Nos. 1793 and 1935 in due time for examination by the Committee on Freedom of Association at its next meeting (March 1999);
(d) to request the Director-General to transmit the report of the direct contacts mission to the Committee of Experts on the Application of Conventions and Recommendations, for examination at its November-December 1998 session in connection with the application by Nigeria of relevant ratified Conventions;
(e) to suspend the work of the Commission of Inquiry pending such examinations and until such time as the Governing Body may decide otherwise.

8. The Government sent its observations in a communication dated 27 January 1999.

9. Nigeria 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. PREVIOUS EXAMINATION OF CASE NO. 1793

10. The last full examination of Case No. 1793 by the Committee took place during its November 1995 meeting [300th Report, paras. 245-271]. At that time, the Committee formulated the following recommendations:

(a) As concerns the arrests of Mr. Kokori, Mr. Addo, Mr. Aidelomon and Mr. Elregha for carrying out legitimate trade union activities, the Committee urges the Government to take the necessary measures to ensure the immediate release of any of these trade union officials who might still be detained and to keep it informed in this regard.

(b) The Committee furthermore urges the Government to refrain in the future from arresting trade unionists who have only been exercising their legitimate trade union activities.

(c) The Committee urges the Government to repeal immediately Decrees Nos. 9 and 10 and to allow independently elected officials to exercise their trade union functions once again, to restore to the executive councils of the NLC, NUPENG and PENGASSAN access to their respective trade union premises and bank accounts and to withdraw the suspension of their check-off facilities at the national level. The Government is requested to keep the Committee informed of the measures taken in this regard.

(d) Given the information provided by the Government, and even if elections were organized at the branch level, the Committee cannot but conclude that interference by government authorities in the internal affairs of the NLC still continues, constituting a serious violation of the most basic principles of freedom of association. It therefore calls upon the Government to withdraw immediately the government-appointed Sole Administrator of these organizations and allow the union members and their elected officials to exercise their trade union functions in full freedom.

11. During its follow-up examination of this case at its meeting in June 1996 [304th Report, para. 13], the Committee noted the release of Mr. Addo, third vice-president of PENGASSAN, Mr. Elregha, branch chairman, PENGASSAN, and Mr. Aidelomon, branch chairman, PENGASSAN. It continued, however, to express its strong condemnation of the continued detention of Mr. Kokori, General Secretary of NUPENG, as well as the lack of progress in respect of its other previous recommendations.

12. In March 1997, in its follow-up examination of the case, the Committee had noted that several new decrees had been issued which appeared to demonstrate an expansive and systematic approach to diminishing trade union rights in Nigeria. In this regard, the Committee referred to the Trade Disputes (Essential Services Deregulation, Proscription and Prohibition from Participation in Trade Union Activities) Decree No. 24 and the Trade Disputes (Essential Services) (Proscription) Order 1996 of 21 August 1996 which proscribed and prohibited the participation in any trade union activities of the Non-Academic Staff Union of Educational and Associated Institutions, the Academic Staff Union of Universities and the Senior Staff Association of Universities, teaching hospital, research institutes and associated institutions and dissolved the National Executive Council and the Branch Executive Councils operating within any university in Nigeria. The Committee also took note of the Trade Unions (Amendment) Decree No. 4 of 5 January 1996 which restructured the 41 previously registered industrial unions into 29 trade unions affiliated to the Central Labour Organization (named in the law), as well as the Trade Unions (Amendment) (No. 2) Decree No. 26 of 16 October 1996 which granted the Minister the power to revoke the registration of any trade union in the interest of overriding public interest and replaced the right of appeal to the appropriate High Court which was previously guaranteed with a right of appeal limited to the Minister [see 306th Report, paras. 45-47].

B. THE COMPLAINANTS' ALLEGATIONS IN CASE NO. 1935

13. In their communication dated 1 August 1997, the complainants refer to the continued detention of Mr. Kokori and the arrest in January 1996 and continued detention of Milton Dabibi, the general secretary of PENGASSAN and secretary general of SESCAN, the federation of senior staff associations. They refer to the fact that neither Mr. Kokori nor Mr. Dabibi have been charged or tried, that they have been denied access to their lawyers and their unions, that visits from their families have been severely restricted and that, although they are both in poor health, they have been refused proper medical attention.

14. The complainants further allege that the Government has violated the principles of freedom of association and the provisions of Conventions Nos. 87 and 98 with the adoption of the Trade Unions (Amendment) Decree No. 4 of January 1996, the Trade Unions (Amendment) Decree No. 26 of October 1996 (see above for greater detail concerning the contents of these decrees) and the Trade Unions (International Affiliation) Decree No. 29 of October 1996 which specifies the international trade union organizations with which the Nigerian Labour Congress (NLC) and any other trade union may affiliate. According to the allegations, Decree No. 29 nullifies existing affiliations to unapproved international trade union organizations unless approval has been granted by the Provisional Ruling Council, and bans future affiliations without the express approval of the government-appointed administrator running the affairs of the NLC. This Decree further provides for a fine of 100,000 naira or five years' imprisonment for any contravention, as well as the revocation of the trade union registration certificate.

15. Finally, the complainants state that, ever since the issuance of the Dissolution Decrees Nos. 9 and 10 in 1994, the NLC, NUPENG and PENGASSAN have been run by government-appointed administrators and independent trade union activity in Nigeria has been rendered impossible.

C. THE GOVERNMENT'S REPLY

16. In its communication dated 27 January 1999, the Government first refers to the progress made concerning the outstanding points in these cases which have already been reflected in the report of the ILO direct contacts mission which was submitted to the ILO Governing Body in November 1998. As follow-up information to that report, the Government then indicates that two new decrees have been promulgated in order to repeal and/or amend Decrees Nos. 4, 26 and 29 of 1996 in so far as they were found to be in contravention of the principles of freedom of association. The Government transmitted with its reply a copy of these two decrees: Trade Unions (Amendment) Decree No. 1 of 1999 and Trade Unions (International Affiliation) (Amendment) Decree No. 2 of 1999.

17. The Government further indicates that the full democratization of the Nigerian Labour Congress (NLC) was undertaken by the workers themselves on 27 January 1999, in the presence of international observers, including ILO representatives and the Secretary-General of the Organization for African Trade Union Unity (OATUU). Finally, the Government states that details of the newly elected members of the new National Executive Council of the NLC will be communicated in due course.

D. THE COMMITTEE'S CONCLUSIONS

18. *The Committee first welcomes the news that an ILO direct contacts mission was able to take place in Nigeria in August 1998 and expresses its deep appreciation to the mission for their excellent work in this regard. It takes due note of the mission report which was submitted to the Governing Body in November 1998. The Committee welcomes*

the significant developments which have occurred in the country since it last examined this case, in particular the release of Mr. F. Kokori, and of all remaining detained trade unionists.

Outstanding recommendations in Case No. 1793

19. *The Committee notes with interest in respect of its earlier outstanding recommendations in Case No. 1793 that Decrees Nos. 9 and 10 of August 1994 which had dissolved the Executive Councils of the Nigerian Labour Congress (NLC) and of the National Union of Petroleum and Natural Gas Workers (NUPENG) and the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN) were repealed on 11 August 1998 (with a commencement date of 20 July 1998) by Repeal Decrees Nos. 13 and 14 respectively. As concerns the Committee's previous recommendations concerning the interference by government authorities in the internal affairs of the NLC through the appointment of a government sole administrator, the Committee welcomes the Government's indication that the workers of the NLC have elected their representatives in a Congress which took place on 27 January 1999. The Committee is also aware that democratic elections have been held for the members of the Executive Councils of NUPENG and PENGASSAN.*

20. *The Committee further notes with interest that the Trade Disputes (Essential Services Deregulation, Proscription and Prohibition from Participation in Trade Union Activities) Decree No. 24 and the Trade Disputes (Essential Services) (Proscription) Order 1996 of 21 August 1996, which proscribed and prohibited the participation in any trade union activities of a number of academic and non-academic staff unions and associations, were repealed on 11 August 1998 (with a commencement date of 20 July 1998) by Repeal Decree No. 12.*

Allegations in Case No. 1935

21. *As concerns the complainants' allegations that the Trade Unions (Amendment) Decree No. 4 of 5 January 1996 violated the principles of freedom of association by unilaterally restructuring the previously registered industrial unions, reducing their numbers from 41 to 29, the Committee notes with interest the adoption of the Trade Unions (Amendment) Decree No. 1 of 1999 which deletes all restricting references to "twenty-nine" unions and adds to the list in the Schedule to the Act a reference to "any other workers' trade union registered under this Act". The Committee notes with concern, as has been noted previously by the Committee of Experts on the Application of Conventions and Recommendations, that the Trade Unions Act still maintains a system of trade union monopoly given that, under section 33(2), all registered trade unions are deemed to be affiliated to the Central Labour Organization which is named in the law (section 33(1)). Furthermore, under section 3(2) of the Trade Unions Act, no trade union shall be registered to represent workers or employers in a place where there already exists a trade union. Firstly, the Committee would recall that even in a situation where, historically speaking, the trade union movement has been organized on a unitary basis, the law should not institutionalize this situation by referring, for example, to the single federation by name, even if it is referring to the will of an existing trade union organization. In fact, the right of workers who do not wish to join the federation or the existing trade unions should be protected, and such workers should have the right to form organizations of their own choosing, which is not the case in a situation where the law has imposed the system of the single trade union [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 299]. Furthermore, the existence of an organization in a determined occupation should not constitute an obstacle to the establishment of*

another organization, if the workers so wish [see ***Digest****, op. cit., para. 276]. The Committee therefore urges the Government to amend its legislation so as to ensure that workers may belong to the union of their own choosing at all levels and requests the Government to keep it informed of the measures taken in this regard.*

22. Furthermore, while noting with interest that the Trade Union (Amendment) Decree No. 1 of 1999 modifies some of the amendments made by Decree No. 26 of 1996 by reinserting the possibility for appeal to an appropriate court in cases of denied or cancelled registration and by redefining the term "member of a trade union" more broadly to include persons either elected or appointed by a trade union to represent workers' interests, the Committee notes with regret that the amendment made in 1996 to section 7(9) of the Trade Union Act authorizing the Minister to revoke the certification of any registered trade union due to overriding public interest has been maintained. The Committee must recall in this respect that the dissolution of trade union organizations is a measure which should only occur in extremely serious cases; such dissolutions should only happen following a judicial decision so that the rights of defence are fully guaranteed [see ***Digest****, op. cit., para. 666]. In these circumstances, and while noting that the cancellation of registration may once again be appealed to the appropriate court, the Committee notes with concern that the powers vested in the Minister under section 7(9) are overly broad and urges the Government to take the necessary measures to repeal this section.*

23. The Committee further notes with concern that Decree No. 1 of 1999 has also maintained the condition for the payment of check-off payments based on the inclusion of "no-strike" clauses in relevant collective bargaining agreements and has merely inserted an additional requirement for "no lock-out" clauses. Recalling in particular that the right to strike is one of the essential means through which workers and their organizations may promote and defend their economic and social interests [see ***Digest****, op. cit., para. 475], the Committee can only consider that a legislative provision conditioning check-off payments on the inclusion of no-strike and no lock-out clauses constitutes undue intervention by the authorities in the right of workers' organizations and of employers' organizations to negotiate freely as set out in Article 4 of Convention No. 98. It would further point out that the withdrawal of the check-off facility, which could lead to financial difficulties for trade union organizations, is not conducive to the development of harmonious industrial relations and should therefore be avoided [see* ***Digest****, op. cit., para. 435]. The Committee would therefore request the Government to take the necessary measures to amend the legislation so as to ensure that the provision of check-off facilities is not conditioned upon the inclusion of such clauses in freely concluded collective agreements and requests the Government to keep it informed in this regard.*

24. Finally, the Committee takes due note of the Trade Unions (International Affiliation) (Amendment) Decree No. 2 of 1999 which amends Decree No. 29 of 1996 which had cancelled all previous international affiliations other than to the Organization of African Trade Union Unity (OATUU) and the Organization of Trade Unions for West Africa and conditioned all future affiliations upon prior approval. While noting that section 1(1) has been amended to provide that any trade union may affiliate with any international labour organization or trade secretariat in accordance with the Decree, the Committee notes with regret that section 1(2), as amended, still provides that an application for affiliation under this Decree must be submitted with the details of such affiliation to the Minister for approval. While noting with interest that the penalty of up to five years' imprisonment for contravention of this Decree has now been deleted, the Committee must nevertheless recall that legislation which requires that government permission be obtained for the international affiliation of a trade union is incompatible with the principle of free and voluntary affiliation of trade unions with international

organizations [see ***Digest****, op. cit., para. 627]. The Committee therefore urges the Government to take the necessary measures to amend the International Affiliation Decree so as to ensure that workers' organizations may affiliate with the international workers' organization of their own choosing free from interference by the public authorities. It requests the Government to keep it informed of the progress made in this regard.*

25. In conclusion, the Committee takes note of the positive steps which have been taken by the Government to ensure fuller conformity between national legislation and practice and the principles of freedom of association. As pointed out above, however, it notes that a certain number of discrepancies in respect of these principles and the provisions of Conventions Nos. 87 and 98 remain in the legislation. The Committee therefore draws the legislative aspects of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

THE COMMITTEE'S RECOMMENDATIONS

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

(a) Noting that sections 3(2) and 33(1) of the Trade Unions Act maintain a system of trade union monopoly, the Committee urges the Government to amend the Act in order to ensure the right of workers to form and join the union of their own choosing at all levels and requests the Government to keep it informed of the measures taken in this regard.

(b) Noting with concern that the Minister has overly broad powers to cancel trade union registration under section 7(9) of the Trade Unions Act as amended in 1996, the Committee urges the Government to take the necessary measures to repeal this section.

(c) Considering that the legislative requirement to include "no-strike" and "no lock-out" clauses in collective agreements in order to benefit from check-off facilities is a violation of the principle of free collective bargaining, the Committee requests the Government to take the necessary measures to amend the legislation so as to eliminate any governmental interference in this respect and to keep it informed in this regard.

(d) The Committee urges the Government to take the necessary measures to amend the International Affiliation Decree so as to ensure that workers' organizations may affiliate with the international workers' organization of their own choosing free from interference by the public authorities and requests the Government to keep it informed of the progress made in this regard.

(e) The Committee draws the legislative aspects of these cases to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

Geneva, 17 March 1999.

(Signed) Max Rood,
Chairman.