INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Organization of American States

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REPORT ON THE SITUATION OF HUMAN RIGHTS IN THE REPUBLIC OF COLOMBIA

TABLE OF CONTENTS

INTRODUCTION

CHAPTER I POLITICAL AND LEGAL SYSTEM

CHAPTER II THE RIGHT TO LIFE

CHAPTER III RIGHT TO PERSONAL LIBERTY

CHAPTER IV RIGHT TO PERSONAL SECURITY AND HUMANE TREATMENT

CHAPTER V RIGHT TO A FAIR TRIAL AND DUE PROCESS

CHAPTER VI OTHER RIGHTS

CHAPTER VII MILITARY OPERATIONS IN RURAL AREAS

CONCLUSIONS AND RECOMMENDATIONS

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INTRODUCTION

A. Background

1. In Communication No. 168 of April 1, 1980, The Government of Colombia invited the Commission to undertake an on-site investigation in Colombia. As part of this work the Commission was to attend the public stage of the cases being tried in Oral courts-martial and acquaint itself with the investigations into alleged abuses of authority in the area of human rights. The aforementioned note reads as follows:

> Mr. Chairman:
>
> I have the honor to transmit to you the note addressed thought me to you and the others members of that Commission by Dr. Diego Uribe Vargas, Minister of Foreign Affairs of Colombia.
>
> Bogotá, April 1, 1980
>
> Mr. Chairman and members of the Inter-American Commission on Human Rights.
> Washington, D.C.
>
> It has been a longstanding hope of the Colombian government to invite the Commission, whose honesty and rectitude are internationally recognized, to visit our country for the purpose of examining the general situations of human rights and, at the same time, to be present at the public part of the oral proceeding of Oral courts-martial now being conducted, in accordance with the Constitution and the laws of the Republic, and to apprise itself of how the trials are conducted.
>
> Similarly, the Government wishes that the Inter-American Commission on Human Rights acquainted itself with the investigations being conducted into alleged abuses of authority with respect to human rights.
>
> In Particular, we wish to move ahead with the investigations that came about as a result of the report of Amnesty International; it is our obligation to make the veracity of these investigations clear. The competent authorities are also interested in having the Commission become familiar with the numerous investigations initiated after the

charges were made. Many of these investigations have been concluded and we wish you to see for yourselves the impartiality with which they were conducted. [1]/

It goes without saying that the sooner you can visit Colombia, the more effective and significant the results of that visit will be.

Accept the renewed assurances of my highest consideration,
(Signed) Diego Uribe Vargas
Minister of Foreign Affairs in Colombia

Accept, Mr. Chairman, the renewed assurances of my highest consideration.

Carlos Bernal Tellez
Ambassador, Permanent Representative of Colombia

2. Meeting at its headquarters in Washington, D.C., on the occasion of its 49th session, the Commission immediately took up the invitation formulated by the Colombian government of Colombia and expressed its decision in the following words:

Mr. Ambassador:

I have the honor to refer to note No. 168 of your embassy, dated this same day, in which your Excellency transmits to me a note from the Minister of Foreign Affairs of Columbia, Dr. Diego Uribe Vargas, dated yesterday, in which the Colombian government invites the Inter-American commission on Human Rights to visit its country for the purpose of reviewing the status of human rights there.

To that end, the commission believes that the most propitious date to start the on-site investigation would be the 21st of this month.

I am pleased to inform your Excellency, in reply. That the Commission, immediately after receiving such a gracious invitation, decided to accept it by unanimous agreement of its members.

Also, I wish to inform your Excellency that the Commission designated its Exclusive Secretary, Dr. Edmundo Vargas Carreno, to arrange with high Colombian authorities certain details relating to the length of the visit, the schedule of activities of this Commission during the visit, and the faculties and cooperation that the government of Columbia should furnish to it for adequate fulfillment of its mission, in accordance with the Commission's on on-site investigations.

I kindly ask your Excellency to transmit to his Excellency, the minister of Foreign Affairs, the appreciation of the Commission for the display of confidence that he has shown and I am honored to extend to him the assurances of my highest consideration.

Luis Demetrio Tinoco Castro
Chairman

B. Activities of the Commission during the on-site investigation

1. In accordance with the pertinent Regulations, the special commission that was to conduct the on-site investigation in Colombia was established. The Special Commission was composed of the following members: Prof. Tom J. Farer, Chairman; Dr. Francisco Bertrand Galindo, Vice Chairman; Prof. Carlos A. Dunshee de Abranches; Dr. Andrés Aguilar; and Dr. César Sepúlveda. Dr. Luis Demetrio Tinoco Castro did not participate in the

Commission due to prior commitments. This communication is contained in part 2 of this section.

The Special Commission, was accompanied by the following professional and technical staff members of the Secretariat: Dr. Edmundo Vargas Carreno, Executive Secretary of the Commission; Dr. David Padilla, Assistant Executive Secretary of the Commission; and by two additional staff lawyers, Dr. Edgardo Paz Barnica and Dr. Manuel Velasco Clark.

The administrative staff that worked with the Special Commission during its visit to Colombia was composed of Mrs. Dafne de Murgia, Mrs. Elsa Ergueta, Miss Gabriela Restrepo and interpreters, Mr. Marcelo Montesinos and Mrs. Eva Desrossier.

2. The on-site investigation began April 21 and its first stage came to an end on April 28, 1980. At the start of its work in Colombia the Commission issued its first press release dated April 21, 1980. [2]/

3. The Special Commission established its main offices in Colombia at the Tequendama Hotel in Bogotá. In accordance with the work schedule approved for the on-site investigation, the Commission carried out the following activities.

a) Interviews with public authorities

From the starts of its activities and during the on-site investigation, the Commission conducted interviews with Colombian authorities of varying ranks. On April 21, it met with the President of the Republic, Dr. Julio César Turbay Ayala, at Nariño Palace. The President was accompanied by several members of his cabinet. The Commission also held later interview with the Colombian Chief Executive.

In addition, the Commission met separately with the Minister of Foreign Affairs, Dr. Diego Uribe Vargas, with the Minister of Government, Dr. German Zea Hernández, the Minister of Justice, Dr. Hugo Escobar Sierra, the Minister of Defense, General Luis Carlos Camacho Leyva and the Minister of Communications, dr. José Manuel Arias.

In addition, the Commission met with the Chairman of Congress who is also the Chairman of the Senate of the Republic, dr. hector Echeverri Correa. It also met with the President of the Supreme Court of Justice, Dr. Juan Manuel Gutierrez Lacouture, and the Procurator general of the Nation, Dr. Guillermo González Charry.

In their wide-ranging and frank exchanges of impressions, the members of the Commission explained to these government officials the objectives of their mission in Colombia. They reviewed several cases relating to the observance of human rights. In these interviews, the Commission received from government authorities offers of fullest support to help make the Commission's activities in Colombia as effective as possible.

During its visits to Cali, the capital of the Department of Valle del Cauca, to Medellín, the capital of the Department of Antioquía, and to Bucaramanga, the capital of the Department of Santander, the Commission met with departmental and local authorities as well as with the directors and other authorities of detention centers and military centers in Bogotá and in the above mentioned cities.

b. Interviews with former Presidents of the Republic

The Commission considered it appropriate and useful to discuss the Colombian situation with former Presidents of the country. For that purpose, it met with Dr. Alberto Lleras Camargo, Dr. Misael Pastrana Borrero, and Dr. Alfonso López Michelsen. Dr. Darío Echandía was not able to meet with the Commission for reasons of health. Dr. Carlos Lleras Restrepo was not in the Colombian capital at the time of the Commission's visit.

c) Interviews with religious figures

During the on-site investigation, the Commission visited the cardinal primate of Colombia, Monsignor Anibal Muñoz Duque. It exchanges impressions about different aspects of life in Colombia and listened to the opinion about these matters of the distinguished Colombian prelate. The Commission also met with the Archbishop of Cali, Monsignor Alberto Uribe Urdaneta.

In addition to these persons, the Commission spoke during its hearings in the other cities it visited with other figures and representatives of religious groups.

d) Human rights agencies

During its stay in Colombia the Commission held individual meetings with leaders and representatives of national human rights agencies.

The Commission held a number of meetings with the Permanent Commission for the Defense of Human Rights, presided over by Dr. Alfredo Vasquez Carrizosa, a former Chancellor of the Republic, and with the Colombian Pro-Human Rights Association, presided over by Dr. Luis Agudelo Ramírez, a university professor.

In Bogotá, the Commission also met with the Committee of Family Members of Political Prisoners, the Committee of Solidarity with Political Prisoners and a delegation from the Boyaca Human Rights Committee.

In Cali, the Commission met with the Committee of Family members of Political Prisoners, delegates from the Popayan Human Rights Organization an representatives of the Regional council of the Cauca Indians, (CRIC)

In Medellín, the Commission conducted a hearing with representatives of that city's Human Rights Commissions, and of other organizations. In Bucaramanga, it met with representatives of human rights groups of the Department of Santander.

e) Professional Organizations

During its stay in Colombia, the Commission met with executives and representatives of professional organizations. One of these that deserves special mention is the Association of Democratic Jurists, presided over by Dr. Apolinar Díaz Callejas. Attorneys who defend political prisoners make up this association, which is headquartered in Bogotá.

In addition, the Commission held a hearing with a delegation from the Association of Democratic Jurists of Medellín.

In Bogotá, the Commission exchanged ideas with the Association for Colombian Physicians (ASMADES), presided over by Dr. Eduardo Arevalo Burgos.

f) Employees and Trade Workers Unions

The Commission met in Bogotá with leaders and representatives of different labor organizations. It had a full exchange of impressions with the delegates of several trade union organizations in the country through the Consejo Nacional Sindical. These interviews included the Union of Trabajadores de Colombia (UTC); the Confederación de Trabajadores de Colombia (CSTC); and the Confederación General del Trabajo (CGT).

Also in Bogotá, the Commission met with leaders and members of the Sociedad Odontológica Sindical Colombiana, the Sindicato Nacional de Trabajadores de Notariado y Registro, and the

Asociación Nacional de Funcionarios y Empleados del Poder Judicial (ASONAL JUDICIAL). In Cali, the Commission met with representatives of Trade union sectors and in Bucaramanga, with leaders of the Union de Trabajadores de Santander (UTRASAN).

g) Representative of Private Enterprise

In Bogotá, the commission held a hearing for members of different sectors of Colombian private enterprise. These persons were from the fields of law, banking, industry and commerce. It also met with members of the Asociación Nacional de industriales (ANDI) who expressed their points of view about the state of affairs in Colombia to the Commission members.

h) Other interviews and Hearings

In Bogotá, Cali, Medellín and Bucaramanga, the Commission met with and held hearings for representatives of different types of organizations as well as individuals interested in meeting with the Commission.

In the Capital city, the Commission engaged in a full exchange of ideas with members and executives of the Asociación de Estudiantes Universitaríos Colombianos, presided over by Mr. José Antequera.

i) Press Organs

The Commission released three press communiques, which are given in this report. Apart from these, the Commission gave press interviews every day to explain the objectives of its visits and how its work was going. These interviews were with different organs of the mass communication media such as the press, radio and television.

j) Detention Centers and Military Centers

As part of the on-site investigation, the Commission visited a number of detention centers and military centers both during the investigation proper and after it. The purposes of these visits were to meet with the prisoners both political and common, to inspect the conditions of the detention centers and to listed to and receive any chares presented to it.

In Bogotá, the Commission visited to the Villanueva jail, in Medellín, the National jail of Bellavista and in Bucaramanga, the Local Men's Jail and the El Buen Pastor Women's Correctional Jail.

Besides this, the Commission visited to the Artillery School, the Cavalry School, the Military Institute Brigade and the Baraya Batallion.

The chapel of the La Picota Penitentiary was the scene of the military trials against presumed members of the M-19 movement. At the Baraya Batallion, Military trials were held for alleged members of the Fuerzas Armadas Revolucionarias Colombianas (FARC).

k) Hearing of Claims

At the outset of its activities in Colombia, and in its first press release, the Commission invited persons who believed that their human rights had been violated to present their charges.

Thereafter, the Commission heard the charges at its main offices at the Tequendama Hotel located in Bogotá. It received claims from both individuals as well as different organizations.

When the Commission visited Cali, Medellín and Bucaramanga, it heard the charges of a number of individuals and organizations.

Besides this, when it visited the detention centers, the Commission heard the charges and claims of individual prisoners.

These charges that the Commission received during the on-site investigation and after it are reviewed and processed in accordance with the Commission's Rules of Procedure.

C. The Commission and the solution of the problem posed by the seizure of the Dominican Embassy

1. On February 27, 1980, at about mid-day a group of guerrilla commandos, belonging to Movimiento M-19m occupied the Embassy of the Dominican Republic in Bogotá during a diplomatic reception being held to celebrate the Independence Day of the Dominican Republic. The guerrilla group took as hostages more than fifty persons, among them the diplomatic representative of several countries, state officials and members of Colombian Society. [3]/

2. In an interview with the President of the Republic and members of his cabinet conducted April 21, 1980 the participants exchange impressions about the activities to be carried out during the on-site investigation and the status of human rights in Colombia. At this time, the Colombian Chief Executive raised the problem posed by the occupation of the Dominican Embassy. He explained several aspects of the negotiations held up to that time by government delegates. He also stated that 16 conversations had been held between government spokesmen and the captors. He requested the valuable assistance of the Commission with the hope that it might help lead to a legal settlement of the problem that would be acceptable for all parties involved.

Furthermore, a Special Commission of diplomatic agents of countries having hostages in the Dominican Embassy, led by the Apostolic Nuncio of the Holy See in Argentina, Monsignor Pio Laghi, who was also the delegate of His Holiness, Pope John Paul II, in Bogotá on the occasion of the aforementioned event, visited the Commission at its offices in the Tequendama Hotel. His purpose was to request their opportune intervention in bringing about a favorable solution of this problem that has international ramifications.

In furtherance of the mandate regarding its competence, the Commission accepted this request and visited the Dominican Embassy on several occasions, met with the President of the Republic, the Minister of Foreign Affairs and other Colombian authorities, and also held a number of conversations with the members of the guerrilla group and the hostages.

3. Within this context, the Commission and the Government of Colombia reached a decision on a settlement for the problem, by means of an exchange of notes dated April 23 and 24, 1980. The Government note, No. DM.00174, addressed to the Chairman of the Commission, reads as follows:

H.E. Tom Farer, Chairman of the
Inter-American Commission on Human Rights
Other Members

Excellencies:

As you are aware, Colombia has a long tradition of democracy, in which human rights have been observed. Colombia's national laws make provision for the defense on human rights.

Similarly, Colombia has signed international commitments at global and hemispheric levels that obligate it to respect the supreme dignity of the human being.

Taking these considerations into account, the Government decided to extend an invitation, via the Ministry of Foreign Affairs in my charge, to the Inter-American Commission on Human Rights to visit the country and to perform therein the duties of that prestigious organ.

The Government's mayor concern is that civilian and military authorities should not commit abuses of authority at any level. Naturally, it does not discount the possibility that subordinates may exceed the boundaries of their constitutional and legal duties. To tolerate possible violations of this kind is a serious error, to which the Government would never be a party. Therefore, I can assure the members of the Inter-American Commission on Human Rights that no denunciation will go uninvestigated and no guilty party will go unpunished.

In inviting Your Excellencies to visit Colombia, the Government is establishing that its decision is to comply fully with the obligations assumed under the Inter-American convention on Human Rights and to allow the Commission to examine the non restricted part of all proceedings it may wish to examine, so that it may establish that they are being conducted in accordance with the law.

Within the context of this letter, the Government acknowledges that the Inter-American Commission on Human Rights or its authorized representatives may freely exercise, in accordance with the law and throughout the national territory, all its functions and the following activities:

a. To be completely free to contact attorneys representing individuals being tried in Oral Courts Martial and those being tired in military courts.

b. To observe, in accordance with the provisions of the law, the Oral Courts Martial and to assure itself of the procedural guarantees and that the proceedings are being conducted in accordance with the law. It also has the power to make any observation it deems appropriate to the competent authorities, to prevent any violation of the rights of those bought to trial.

c. To guarantee transportation to the airport and departure from the country for all those who have not been indicted or who have been acquitted in those Oral Courts-Martial, when these individuals so desire.

d. To point out any irregularity that might arise in these proceedings and to study all those complaints they receive in connection with trials in which the charges may not have been proven properly or in which the proof may have been obtained by means that clearly violate human rights, so that if such violations are proven, the individuals affected may challenge the validity of the verdict.

e. To apprise itself of the investigations being conducted into abuses of authority and the denunciations of specific cases of violations of human rights, so that any individuals responsible for such reprehensible acts may be punished with all the rigor of the law.

This letter reaffirms the Government's irrevocable decision to honor its international commitments, which parallel its legal obligations in the domestic realm.

On the foregoing bases and if such action is deemed appropriate, the members of the Inter-American Commission on Human Rights, may serve as guarantors vis-à-vis the individuals who took over the premises of the Embassy of the Dominican Republic, of the Government's strict compliance with all clauses of this letter, which takes effect immediately as far as the Executive is concerned.

The Government will continue to regard the freedom of the hostages as a matter of

urgency, as it always has.

I await Your Excellencies' reply, convinced, as I am, that all the facilities the Colombian Government will offer to the Commission to enable it perform its duty properly, will meet with the Commission's satisfaction.

(Signed) Diego Uribe Vargas
Minister of Foreign Affairs

The Commission's note to the Government, through the Minister of Foreign Affairs of Colombia, Dr. Diego Uribe Vargas, reads as follows:

Excellency:

I have the honor to refer to your note No. 00174 of April 23, 1980, which reads as follows:

DM.00174. Bogotá, April 23, 1980
H.E. Tom Farer, Chairman of the
Inter-American Commission on Human Rights
Other Members

Excellencies:

As you are well aware, Colombia has a long tradition of democracy, in which human rights have been observed. Colombia's national laws make provision for the defense of human rights.

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b. To observe, in accordance with the provisions of the law, the Oral Courts Martial and to assure itself of the procedural guarantees and that the proceedings are being conducted in accordance with the law. It also has the power to make any observation it deems appropriate to the competent authorities, to prevent any violation of the rights of those brought to trial.

c. To guarantee transportation to the airport and departure from the country for all those who have not been indicted or who have been acquitted in those Oral Courts Martial, when these individuals so desire.

d. To point out any irregularity that might arise in these proceedings and to study all those complaints they receive in connection with trials in which the charges may not have been proven properly in which the proof may have been obtained by means that clearly violate human rights, so that if such violations are prove, the individuals affected may challenge the validity of the verdict.

e. To apprise itself of the investigations being conducted into abuses of authority and the denunciations of specific cases of violations of human rights, so that any individuals responsible for such reprehensible acts may be punished with all the rigor of the law.

This letter reaffirms the Government's irrevocable decision to honor its international commitments, which parallel its legal obligations in the domestic realm.

On the foregoing bases and if such action is deemed appropriate, the members of the Inter-American Commission on Human Rights, may serve as guarantors vis-à-vis the individuals who tool over the premises of the Embassy of the Dominican Republic, of the Government's strict compliance with all clauses of this letter, which takes effect immediately as far as the Executive is concerned.

The Government will continue to regard the freedom of the hostages as a matter of urgency, as it always has.

I await Your Excellency's reply, convinced, as I am, that all the facilities the Colombian Government will offer to the Commission to enable it to perform its duty properly will meet with the Commission's satisfaction.

(Signed) Diego Uribe Vargas
Minister of Foreign Affairs

In reply, it is my pleasure to inform Your excellency that the Inter-American Commission on Human Rights fully accepts the proposal formulated by the illustrious Government of Colombia in the note transcribed above.

The Commission over which I preside is of the view that the activities listed in that note conform to the function assigned to the Commission in the American Convention on Human Rights and to the obligations that the Government of Colombia has assumed by virtue of that instrument.

In that regard, I am pleased to confirm for Your Excellency that the Commission – either directly or through a delegation which it will appoint from among its members or the attorneys serving within its Executive Secretariat—will conduct freely and in accordance with the provisions of Colombian law and the Rules of Procedure of the Commission, the activities listed in Your Excellency's note.

Further, the Commission is willing to serve as guarantor vis-à-vis the individuals who

took over the premises of the Embassy of the Dominican Republic, of the Colombian Government's strict compliance with all the clauses of Your excellency's communications, which shall take effect immediately.

Accept, Excellency, the assurances of my highest consideration.

Tom J. Farer
Chairman

On April 25, the guerrilla group occupying the Dominican Embassy wrote to the Commission in reference to the notes transcribed above. [4]/

[Table of Contents | Next]

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[1] Amnesty International visited Colombian in January of 1980 at the invitation of the President of the Republic in July 1979. On April 1980, the aforementioned agency handed over to the Colombian government a 44-page document with it made public several days later. This report analyzed the situation of human rights in Colombia and went on to draw conclusions and make recommendations. In a speech to the country on April 19, 1980, the Colombian chief executive referred to that report and refuted several of its points.

[2] The fist press release reads as follows: Today the Inter-American Commission on Human Rights will begin its activities in Colombia. One of its purposes is to promote the observance of human rights in the member states of the Organization of American States. The Commission is made up of the Chairman, Prof. Tom J. Farer, and by the members, Drs. Francisco Bertrand Galindo, Andrés Aguilar, Carlos A. Dunshee de Abranches, Luis Demetrio Tinoco Castro and César Sepúlveda. The Executive secretary is Dr. Edmundo Vargas Carreno, who will be assisted by professional and administrative staff members of this office. Dr. Marco Gerardo Monroy Cabra, the Vice Chairman and members of the Commission, is a Colombian national and will not participate in the investigation, in accordance with the provisions of the Commission's rules of procedure. This rules bar a member from participating in an on-site investigation of the country of which he is a national. The Commission's visit to this country follows an invitation for this purpose issued by the Government of Colombia. The Government has given its fullest assurances that the Commission will have unrestricted freedom and all necessary facilities to it this area.

Charges will be heard at the offices of the Commission located in suite numbers 330 and 332 of the Tequendama Hotel in Bogotá, from Tuesday April 22 to Friday, April 25, from 10:00 a.m. to 1:00 p.m. and from 3:00 p.m. to 6:00 p.m. the Commission hopes that during its stay in Colombia the different sectors of the country will contribute their valuable help so the Commission can gain an impartial understanding of the actual state of affairs in Colombia in the field of human rights.

[3] Following these events, on March 25, 1980, the OAS Permanent Council adopted Resolution CP/RES.303 (417/80), the text of which follows:

THE PERMANENT COUNCIL OF THE ORGANIZATAION OF AMERICAN STATES

Concerned at the serious events that occurred at the headquarters of the Embassy of the Dominican Republic in Bogotá, assaulted by an armed subversive group, calling itself M-19, which took as hostages diplomatic and consular personnel accredited to the Government of Colombia, officials of the Foreign Ministry of that country and other persons,

RECALLING:

The provisions of the Vienna convention on Diplomatic Relations of April 18, 1961 and the resolutions of the General Assembly of the Organization condemning acts of terrorism and especially the kidnapping of persons and related extortion, particularly when perpetrated against representatives of foreign states, because they violate not only human rights but also the standards that govern international relations,

RESOLVES:

1. To express its emphatic rejection of the unacceptable assault on the headquarters of the Embassy of the Dominican Republic in Bogotá and the consequent taking as hostages of diplomatic and consular personnel accredited to the Government of Colombia, officials of the Foreign Ministry of that country and other persons. These acts constitute a flagrant violation of the fundamental rights of man, of the dignity and value of the individual, and of the essential principles of international law.

2. To express its solidarity with the Government of Colombia, confident that the efforts it is making to ensure the well-being of the hostages and to secure their release will lead to an appropriate solution of the problem.

3. To instruct the Committee on Juridical and Political Affairs to expedite the studies it is conducting on this subject in accordance with Resolution AG/RES. 366 (VIII-O/78) of the eight regular session of the General Assembly of the Organization.

In addition, in its 49th Session held on March 27, 1980, the Commission adopted the following resolution on the same matter:

RESOLUTION ON THE TAKING OF HOSTAGES AND THE OCCUPATION OF THE EMBASSY OF THE DOMINICAN REPUBLIC IN COLOMBIA

WHEREAS:

The persons who have taken control of the Embassy of the Dominican Republic in Bogotá invoke for the taking of hostages, in addition to other reason, their concern for the human rights of those detained and at the disposition of justice, whom they hope to liberate:

That invocation implies a serious confusion of values, since human rights cannot be defended by actions which themselves violate the same judicial protections afforded by the rules that recognize human rights:

The taking of hostages is incompatible with the full effectiveness of human rights and fundamental liberties of persons,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

RESOLVES:

To condemn the taking of hostages and the seizure of the headquarters of the Embassy of the Dominican Republic in Bogotá, Colombia.

[4] The letter from the guerrilla group reads as follow: His Excellency, Tom Farer, Chairman of the Inter-American Commission on Human Rights, and other members of the Commission. Bogotá. Excellency: I am pleased to inform you that the members of the Jorge Marco Zambrano guerrilla column have read the contents of both note DM.00174 of April 23, signed by the Minister of Foreign Affairs of Colombia, Dr. Diego Uribe Vargas, and your reply dated April 24, in which the Commission on Human Rights accepts fully the proposal formulated by the Government of Colombia. In that sense, it is our duty to state to you that the exercise of the activities in the two notes represents to us a full guarantee that our comrades in arms who are being held prisoner, accused of crimes of a political nature, will receive the protection of your Commission, will enjoy all procedural and legal guarantees to avoid any violations to their rights and will allow the evidence obtained in clear validity of the trials. Likewise, we are pleased to see that the Government of Colombia recognizes the rights of the Inter-American Commission on Human Rights to “apprise itself of the investigations being conducted into abuses of authority and the denunciations of specific cases of violations of human rights, so that any individuals responsible for those reprehensible acts may firm decision, s M-19 guerrillas, to continue granting to the hostages all the considerations and protection that we have been giving them to date and that we will grant them their liberty as soon as possible. Attentively, Rosenber Pavon Pavon, Commander No. 1, Jorge Marco Zambrano Guerrilla Column.

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

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CHAPTER I

POLITICAL AND LEGAL SYSTEM

A. Political Organization of the Colombian State

1. Colombia is constituted as a centralized republic under the Constitution of 1886, which was decreed "for the purpose of strengthening the national unity and assuring the ends of justice, liberty and peace". [1]/

The Colombian constitutional system, as set forth in the1986 text, has undergone significant amendment. These changes were designed to strengthen separation of public powers. [2]/ Pursuant to Article 2 of that text, sovereignty is vested essentially and exclusively in the nation and from it came the public powers which are exercised according to the terms set forty by the Constitution.

The Constitution upholds that essential principle by asserting, "the branches of public power are the legislative, the executive and the judicial"; and, "the Congress, the President and the judges have separate functions, but collaborate harmoniously in the realization of the aims of the state".

2. The legislative branch consists of the Congress of the Republic, which is bicameral and consists of the Senate and the Chamber of Representatives. The first is made up of two senators for each department and one ore for each 200,000 inhabitants or for each fraction greater than 100,000 inhabitants that the department has in excess o f the first 200,000. The second is composed of two representatives for each department and one more for each 100,000 or fraction greater than 50,000 inhabitants that it has in the direct vote of citizen. Congressional members represent the entire nation and should cast their votes only in the interest of justice and the public good. [3]/

3. The executive branch, or the Government, is made up of the President of the Republic and the ministers of state or chiefs of administrative departments, and in each particular case, the President and the minister or chief of the corresponding administrative department. The President of the Republic is elected in one day by the direct vote of the citizens and for a term of four years, in the manner prescribed by law. The President may not be re-elected in any case for the succeeding term. In the case of the President's complete inability to serve, he is replaced by a designate who is elected by the Congress. [4]/

4. The judicial Brach consist of the Supreme Court of Justice, the highest district courts and all other courts that the law may establish. The Senate performs specified judicial functions and justice is a public service that is responsible to the nation. [5]/

The Supreme Court of Justice is composed of the number of judges that the law prescribes and is divided into sections, which hear their respective matters separately, except those in which the entire court participates. [6]/

The Supreme Court of Justice exercises judicial control for the purpose of maintaining the integrity of the Constitution and carrying out the powers entrusted to it in this area. [7]/

B. Human rights in the Colombian constitutional system

1. The rights that are inherent to the dignity of the human being are contained in the current Colombian constitutional system. In effect, Title III of the 1886 Constitution and its subsequent amendments regulate civil rights and social guarantees. Other provisions of the basic text complement a legal order designed to protect and safeguard human rights.

2. An analysis of constitutional law identifies the following guarantees:

a) "The authorities of the Rep7lic are established to protect the lives, honor and goods of all persons residing in Colombia, and to secure the fulfillment of the social obligations of the state and of individuals." Furthermore, as regards the right to life, the constitution prescribes, that "in no case may the lawmaker impose the death penalty." [8]/

b) The right to personal integrity and liberty means that "no one may be molested in his person or family, or imprisoned or arrested or detained, or have his domicile searched, except by virtue of a warrant issued by competent authority, with all legal formalities and for cause defined previously by law." In no case there "be detention, imprisonment or arrest for debts or purely civil obligations, except for judicial bond." Furthermore, "no one may be compelled in criminal, correctional or police proceedings to testify against himself or against his relatives within the fourth civil degree of consanguinity or second degree of affinity." Prohibition of slavery is provided thusly: "There shall be no slave, "who sets foot in the territory of the Republic, shall thereby be free."[9]/

c) The right to work is viewed as "a social obligation and shall enjoy the special protection of the state"; and "the right to strike, except for public services, is guaranteed." "Public aid is a function of the state." [10]/

d) "Private persons are not answerable to the authorities, only for violation of the Constitution and of the laws. Public officials are answerable for the same violations, and also for exceeding their powers, or for omissions in the fulfillment of their duties." "In the case of manifest violation of a constitutional provision in detriment of any person, the order of a superior shall not exempt from responsibility the agent who executed it. Military in service are excepted from this provision. With respect to them, the responsibility shall devolve exclusively on the superior who gave the order." [11]/

e) The judicial guarantees state, "no one may be tried except in conformity with laws enacted prior to the commission of the offense with which he is charged, by courts having competent jurisdiction, and in accordance with all formalities proper to each case. In criminal matters, a permissive law or favorable to the defendants, even if enacted after the law, Commission of the alleged offense, shall be applied in preference to a restrictive or unfavorable law." [12]/

f) "Private property is guaranteed," as well as rights acquired by individuals and corporate bodies, but private property is viewed as having a "social function that entails obligations." Expropriation through judicial ruling and prior indemnity must be consistent with reasons of public utility or social interest as defined by the legislator. However, in case of war and in furtherance of the re-establishment of public order, non-judicial authorities may decree expropriation and the indemnity does not have to be prior, but the real property may be occupied only temporarily. The Constitution also guarantees, "freedom of enterprise and private initiative within the limits of the common welfare." It establishes that "the penalty of confiscation may not be imposed." [13]/

g) The inviolability of the domicile and of correspondence means that no one's domicile may be searched "except by virtue of a warrant issued by a competent authority" and in compliance with all legal formalities, and "correspondence by telegraph and mail is inviolable." Likewise, private letters and papers may not be intercepted and searched, except in legally designated cases. [14]/

h) "Freedom of education is guaranteed," and the state is responsible for "final inspection and supervision of institutions of learning, public and private." Primary education shall be free in all school of the state and compulsory to the extent determined by law." [15]/

i) Freedom of thought and expression are put in the following terms: "The press is free in time of peace, but responsible, under the law, for attacks on personal honor, the social order or the public tranquility." [16]/

j) Freedom of association is recognized constitutionally: "It is permitted to form companies, associations and foundations that are not contrary to morals or to lawful order. Associations and foundations may obtain recognition as juridical persons." Religious associations require authorization issued by the respective ecclesiastic superior. [17]/

k) The right of assembly is established in the following terms: "Any number of people may assembly peacefully. The authorities may disperse any assembly that degenerates into disorder or riot, or which obstructs public thoroughfares. "Permanent political assemblies of the people are prohibited." [18]/

l) The right to petition is conceived as the right of every person "to present respectful petitions to the authorities, on matters of general or private interest, and to obtain prompt action thereon." [19]/

m) The fundamental text provides that, "the laws shall determine the responsibility to be incurred by public officials of all classes who violate" civil rights and social guarantees recognized in the constitution. [20]/

3. Article 28 of the Colombian Constitution, which is under the title of civil liberties and social guarantees, has been the subject of various controversies because it is considered that its application on a road scale is associated. In practice, with the power that Article 121 confers upon the President of the Republic in connection with the implementation and enforcement of the state of siege.

The aforementioned constitutional standard provides the following:

"Even in time of war, no one may be p7nished ex-post facto, except under the

terms of law, order or decree in which the act has been previously prohibited and the corresponding punishment determined.

This provision shall not prevent, even in time of peace, when there are serious reasons to fear disturbance of the public order, apprehension and holding by order of the government, after a decision by the ministers, of persons suspected, from serious indications, of attempting to disturb the public order.

If the persons retained have not been set free after ten days of apprehension, the Government shall proceed to order their freedom or place them at the disposal of competent judges with the evidence alleged so that the judges may make their decision in accordance with law.

4. Other aspect concerning human rights are regulated in the Colombian Constitution as follows:

a) Nationally and citizenship are the subjects of Title II relating to residents, both national and foreign. This part established the conditions and legal requirements in both cases. To the end, “it is the duty of all nationals and foreigners to live in accordance to the Constitution and the laws, and to respect and obey the authorities.” Foreigners enjoy the same civil liberties as those granted to Colombians and the same guarantees as those accorded to nationals, except for special commissions and limitations set forth in the law and established by the Constitution. Political rights are reserved to nationals of the country and “the status of active citizenship in an indispensable prior condition for exercising the right to vote and be elected and to hold public office that entails related authority or jurisdiction.” [21]/

b) The freedom of conscience and religion is the subject of Title IV on religion and relations between the church and the state. “The state guarantees the freedom of conscience.” “No one shall be molested y reason of his religious opinions nor compelled to profess beliefs or to observe practices contrary to his conscience.” Likewise, “freedom is guaranteed to all cults that are not contrary to Christian morality or to the laws.” [22]/

c) In the area of political rights, besides the freedoms of association, assembly and performance of public duties mentioned above, Colombia’s constitutional systems stipulate, “suffrage is exercised as a constitutional function. Any person who votes for or elects a candidate does not impose obligations on the candidate nor confer a mandate to the official elected.” Furthermore, it provides, “the law shall regulate all other matters concerning elections and vote counts and safeguard the independence of both functions; it shall define the crimes that impair the truth and freedom of voting an d shall establish the appropriate penalties.” [23]/

d) The Constitution also states, “no person or corporation may exercise simultaneously, in time of peace, political or civil authority and judicial or military authority.” One of the powers of Congress is that of granting for serious reasons of political advisability, ""General amnesties or pardons for political offenses."" The legislative body is prohibited from “decreeing acts of proscription or persecution against persons or corporations.” Among the powers of the President of the Republic are the following: i) “Ensure that throughout the Republic justice is administered promptly and enforced, and to provide judicial officers, under the terms of law, such help as may be necessary for the enforcement of their decisions”; ii) “Grants pardons for political offenses in accordance with the laws regulation the exercise of that power”; iii) “preserve the public order throughout the territory and re-

establish it wherever it has been disturbed." Finally, "the President of the Republic, or whoever is acting in his place, shall be liable for his acts or omissions in violation of the Constitution or the laws." [24]/

C. The Constitutional Reform of 1979

1. By legislative Act. No. 1 of November 21, 1979, the Congress of the Republic adopted the most recent constitutional reform of Colombia's basic juridical structure. This reform includes, in addition to other aspects, the establishment of the Attorney General's office, changes in the Procurator General's Office and as part of the latter, the Organization of the office of the Assistant procurator General for Human Rights.

The aforementioned law introduced substantial modifications, especially to the section on administration of justice. It established new offices in this area and led to the exercise of new powers aimed at effective observance of human rights. [25]/

2. The reforms gives the Procurator General of the nations specific powers to defend human rights. In particular, the provision expresses the following:

> The Procurator General of the nation and his agents are responsible for defending human rights, securing social guarantees, the interest of the nation and the patrimony of the state, and supervising public administration. In furtherance thereof, he shall have the following special powers:
>
> 1) Rule of charges he receives concerning violations of human rights and social guarantees by public officials or employees, verifying them and giving hen due legal processing;
>
> 2) Safeguard the integrity of the right to a fair trial and the legality of penal proceedings;
>
> 3) Watch over the official conduct of public officials and employees and exercise disciplinary power over them, directly or by threatening the imposition of penalty, without prejudice to the powers of the respective superiors in rank. Membership in career service shall be no obstacle to the correction that may be due;
>
> 4) Bring before competent authorities any investigation of criminal infractions that public officials or employee may have committed;
>
> 5) Monitor the conduct of officials and employees of the judicial branch and bring suit before the Supreme Council of Judicature or appropriate disciplinary action;
>
> 6) Demand all information that he considers necessary for implementation of his powers, to which there may be no objection, except or the matters contained in No. 4 of Article 78;
>
> 7) Represent judicially, by himself or through his agents, the interest of the nation, without prejudice to the interested agency establishing its own special agents when it deems advisable;
>
> 8) Promote the enforcement of the laws, judicial sentences and administrative provisions;
>
> 9) Submit an annual report to Congress on the exercise of his functions;

10) Submit to the Congress for its consideration draft laws on matters within his area of responsibility, especially the defense of human rights and social guarantees;

11) Appoint assistant Procurator Generals to the administrative law system in the manner and for the terms called for by law, appoint and remove other agents and employees in his dependent units and take care that the duties of this office are performed faithfully.

The Delegate procurators General to the administrative law judicial system shall have the same qualities, compensation and benefits as the members of the body before which they perform their functions.

12) All other powers given by law. [26]/

3. As a measure to help implement the constitutional reform of 1979 with respect to the office of the Procurator General. This office submitted to the Congress of the Republic for its consideration and future approval, a draft law setting forth the structure, functions, powers and organization of that office of the Colombian State. In that draft law, Articles 28 and 34 inclusive, established the office of the Procurator for the defense of Human Rights. An examination of its precepts lead to the following deductions: (1) This specific Procurator's office is responsible for watching over effective fulfillment of the human rights guaranteed in law 74 of 1978 and the rights and social guarantees contained in Title III of the national Constitution. In furtherance of that power, the corresponding public official shall: a) receive charges and claims regarding violations, by public officials, official agencies or private persons of any class or level, of these rights and guarantees, and transmit them immediately; b) request information and documents immediately that it may consider advisable for that office or official of any rank; c) request from officials of the judicial branch, without exception, all necessary reports on acts being investigated, or if they are being investigated in connection with the violation of human rights or social guarantees by public officers of any rank, and proceed, if the evidence warrants it, to order the corresponding disciplinary investigation and, through his agents, to bring whatever suit is necessary to decide on the pertinent civil liability to indemnify the victim. For the purposes of this article, in no case may the secrecy of judicial investigation be invoked to withhold information but staffs members of the Procurator's Office may not make public the data and reports that belong to that office. (2) The office of the Procurator for the Defenses of Human Rights is also responsible for undertaking, through its agents, at the government's initiative or at the request of any person or agency, visits, to establishments or institutions where violations of human rights or public liberties have been denounced, and to render, within a set time, a report on the conclusions reached and measures that may e taken to remedy the situation. (3) When irregular situations arise from these visits, the delegate procurator or the regional or the sectional procurator, depending on the case, shall write to the competent agencies and inform them of the situation and make all necessary suggestions and demand the measures that can be taken to remedy the situation and, at the same time set a reasonable time period for fulfillment of those measures. In either orally or in writing, in the same sense and for the same purposes the President of the Republic, the ministers or the commanders of the armed forces. (4) The Procurator general may commission one or more of his agents on a permanent or temporary basis. To perform his functions in agencies or institutions that are responsible for task associated with human rights for the purpose of watching over the fulfillment of those rights and helping to have them respected and protected. (5) When the function of enforcing and against any public official, the action shall be conducted thought the general procedures established in the law. (6) When an act or situation resulting in a violation of human rights is the subject of some judicial action or of administrative proceedings, the Public Ministry shall intervene, if necessary, only to monitor the individual proceedings, to demand that the processing be given priority and to take part in it if the defends of rights and liberties so requires. In this case, the Public Ministry shall have all the rights recognized to the party in the process. [27]/

4. With respect to the Office of the Attorney General of the Nation, the draft provides that this office will prosecute crimes, at the Governments initiative or following charges made by any person, and present charges against alleged infractors to competent authorities, under the terms and in the cases pointed out by law. The Attorney General shall be Chief of the national Police. The Attorney General shall be appointed by all the members of the Supreme Court of Justice from a list referred to them by the President of the Republic. The Attorney has, in addition to other special powers, the investigation of crimes either personally of through his agents, ensuring the presence of alleged criminal at the proceedings and initiating suits against them, all subject to the prescriptions of the law. He is also responsible for seeing to it that measures handed down by penal judges are executed. The public Ministry is exercised by both the Procurator General and the Attorney General and by any other officials that the law may determine. [28]/

5. The Constitutional reform creates a Superior Council of the Judicature composed of the number of magistrates that the law may set. This Council will have the same rank as the Supreme Court of Justice and the Council of State. Among its powers are those of administering the judicial career service and seeing to it that justice is enforced and administered promptly. For this purpose it shall examine and punish any misconduct of staff members and employees of the judicial branch. It is also responsible for resolving any conflicts of competence that arise between different jurisdictions. [29]/

6. Article 121 of the Constitution is also amended. The draft states that the Government shall send to the Supreme Court, on the day following their issue, all legislative decrees for the purpose of allowing the court to declare, in definitive form, whether these decrees have been issued in full compliance with the formal provisions of that article, and whether the norms they contain are in accord with the powers of the Government during the state of siege. If the Government does not comply with this duty, the Court will place the decrees under review immediately on its own initiative furthermore, the decrees submitted to review might be declared unconstitutional. [30]/

7. The Supreme Court of Justice is entrusted with protecting the integrity of the Constitution. As part of this competence, it hands down final decisions on questions of the unconstitutionality of legislative laws because of errors of form. One of the rules that forms the background for the actions of the Supreme Court of Justice is the rule which states that any citizen may exercise the actions set forth in Article 214 -–relating to the guardianship of the Constitution and unconstitutional laws—or intervene in related proceeding as prosecutor or defender. Furthermore, it provides that in all cases of incompatibility between the Constitution and the law, the constitutional provisions shall be given preference. [31]/

Since Legislative Act No. 3 of 1910 has been in force, all persons have had the right to bring before the Court a public suit for unconstitutionality of any law or decree which is the competence of the Court when the person believes that the law violates the Constitution. The constitutional Reform of 1979 expanded the competence of the Court to include cases of the unconstitutionality of legislative acts but only for errors of form.

D. Other Legal Structures

I. The new penal code

1. On January 23, 1980 the President of the Republic decreed the new Penal Code of Colombia. [32]/ This legal system is aimed at refurbishing the traditional system of criminal investigation of crimes by setting up new mechanisms for this area and developing an efficient system for criminal acts and applicable penalties. [33]/

2. Among the guidelines for Colombian criminal law contained in the code, the following are defined:

a) Legality: No one may be punished for an act that is not expressly stated as punishable y the current penal law at the time when the act is committed, nor subjected to penalty or security measure not established in it.

b) Punishable act: For any conduct to be punishable, it must be of typified, unlawful and culpable.

c) Favorability: The permissive or favorable law, even when after the fact, will be applied in preference to the restrictive or unfavorable law. This principle also holds for those who have already been sentenced.

d) Equality before the law: The penal law shall be applied to persons without taking into account any consideration not established in the law.

e) Nature judge: No person may be tried by a special judge or court established after the commission of the punishable act nor may there be any violations of the correct forms of each trial.

f) Functions of punishment and security measures: Punishment has retributive, preventive, protective and social recovery functions. Security measures seek to cure, instruct and rehabilitate. [34]/

3. Punishments are subdivided into major and accessory. The first include imprisonment, confinement and fine. The second, house restriction, loss of public or official employment, interdiction of civil rights and functions, prohibition from exercising some art, profession or vocation, suspension of patria potestad, expulsing form national territory of foreigners, and prohibition of alcoholic drinks. The maximum duration of the punishment is as follows: imprisonment, up to thirty years; home restrictions, up to five years; interdiction of rights and public functions, up to ten years; prohibition from exercise of an art, profession or vocation, up to five years; suspension of patria potestad, up to fifteen years; and prohibition from alcoholic drinks, up to three years. Safety measures are admission to a psychiatric establishment or suitable clinic, admission to a study or work house and supervised liberty.[35]/

4. In regulating crimes in particular, the Colombian penal code classifies them into crimes against the existence or security of the state; against the Constitutional system; against public administrations; against legal authority; against the economic and social order; against voting; against the family; against individual liberty and other guarantees; against sexual freedom and decency; against moral integrity; against life and personal security; against economic worth. [36]/

5. Crimes against the constitutional system are rebellion, sedition and riot. Crimes against public safety are conspiracy to commit crime, terrorism and instigating the commission of a crime. Crimes against suffrage are electoral disturbance, constraining the elector, electoral violence and fraud corruption of the elector, fraudulent vote and promotion of fraud, electoral corruption of the elector, fraudulent vote and promotion of fraud, electoral fraud, delay in the delivery of voting documents, alteration of electoral votes, hiding, withholding and illicit possession of voting certificates, and guarantees, include, in their different forms, kidnapping, arbitrary detention, crimes against personal independence, cremes against the inviolability of the home or place of work, violation of secrets and communications, crimes against freedom of work and association, crimes against the exercise of political rights, and the crimes against religious thought and respect for the dead. Crimes against life and personal security include homicide, personal injury abortion, and abandonment of minors and invalids. [37]/

II. The new code of Criminal Procedure

1. Through Decree No. 0181 of January 29, 1981, the Government issued the Code of Criminal procedure, which will go into effect on January 29m 1982. This replaces the present criminal procedure structure contained in Decree 409 of 1971. The new code introduces the accusatorial system, eliminates the civil aspect from the criminal process, sets forth the functions of the Attorney General of the nation and the procedures to follow before arraignment Prosecutors and Trials Judges.

2. It should be noted that this legal system follows the accusatorial procedure in the criminal investigation so as to guarantee a more expeditious criminal procedure.

III. The Military Criminal Justice Code

1. The Military Criminal Justice Code was adopted though Decree No. 0250 of July 11, 1958, and adopted as a law of the Republic in law 141 of December 16, 1961. It was issued by the military junta that government at that time, basing its decision on the powers contained in Article 121 of the Constitution pertaining to the state of siege.

According to the considerations set forth in that decree, the promulgation of this code was owing to two reason": one, that through Decree 3518 of 1949, the public order had been declared disturbed and the state of siege put into effect for the whole territory of the Republic; and two, because it was decided that only one legal instrument on this matter, rather than many incomplete decrees, should set out an organized and methodical approach to this type of justice, the procedure involved and the substantive rules that were to be applied.

2. The Military Criminal Justice Code regulates the following areas: 1) crimes and punishments in general; 2) military crimes and punishments; 3) jurisdiction, competence and organization of military criminal justice; 4) procedure to be followed in the investigation of crimes and application of military criminal punishment. [38]/

Military punishments are major and accessory. The major punishments and their duration are as follows: imprisonment, from on e to 24 years; incarceration, six month to 12 years; confinement, one day to five years; and fine. Accessory penalties and their duration are as follows: full discharge from the armed forces; temporary separation from the armed forces, from six months to two years; interdiction of rights and public functions, up to 24 years; loss of patria potestad, pr suspension of patria potestad, six months to 12 years; loss of retirement pay, pension or compensation; prohibition from living in a particular place, from three to five years; good conduct bond; banishment to penal agricultural colonies, from one to ten years; and expulsion of aliens from national territory. The code also stipulates certain security measures. [39]/

The code classifies and regulates the following types of crimes: against the existence and security of the state; against the constitutional system and the internal security of the state; against discipline; against service; against the interest of the armed forces; against administration; against life and personal integrity; against military honor; against the civilian population; against the property of the state; against the security of the armed forces; against international law; special crimes and those relating to the navy and the air force; special provisions relating to police and students of the officers schools, and other military crimes. [40]/

3. In matters pertaining to criminal litigation, the code says that every violation of military criminal law originates a criminal proceeding and that, under military jurisdiction, infractions of the common criminal law can result in civil actions. Military criminal jurisdiction is an authority the Republic possesses to administer justice in this area. Several categories of persons are subject to its jurisdiction. These are military personnel in active service, military personnel in reserve or retirement status, foreign military personnel in the service of

the armed forces, prisoners of war and spies, civilians who are part of the armed forces, and private person, that is; civilians who are not in the service of the armed forces, who commit specific crimes of civilians, as set forth in the Military Criminal Code which also typifies the crimes which fall under military criminal jurisdiction. The code also establishes that military authority has the duty to request from civil authorities accused persons whom they may put on trial and the civilian authorities must place such persons at the military's disposal. At any stage in criminal procedures under military criminal jurisdiction, but before the verdict is found in the first instance, the Supreme court of Justice may shift the venue of a military criminal proceeding; after hearing the opinion of the venue of a military criminal proceeding, after hearing the opinion of the Procurator general for the armed forces, either at its own initiative or at the request of a party, when it considers such a change advisable for proper application of justice or a serious illness of the accused person so requires. [41]/

Military criminal jurisdiction is exercised by the Supreme Court of Justice, the Superior Military Court, judges of first instance and by those who replace them in special cases, by the presiding officer of the oral courts-martial, and by officials of military criminal proceedings. The Supreme Court of Justice, penal law section, has a number of powers in relation to military criminal justice. These are hearing appeals and reviewing the second instance verdicts of the superior Military Court, deciding on applications for pardon, and ruling on conflicts of competence that arise between military criminal justice authorities and between these and other jurisdictions. The code establishes ordinary recourses, which are reversal, appeal and review of facts as well as law, along with extraordinary appeals, which are cassation and rehearing, and also decides on the organization and operation of oral courts-martial. [42]/

4. Military criminal jurisdiction is based on Article 170 of the political constitution. This article provides, "Courts-Martial or military tribunals shall take cognizance, in accordance with the provisions of the Military Penal Code, of all offenses committed by military personnel in active service, and in relation to that service."

The foregoing notwithstanding, during the period the state of siege is in effect, military jurisdiction has been extended to trials of civilian for certain crimes. Substantive provisions and the procedures set forth in the Military Criminal Justice Code are applied to these persons through the rules contained in constitutional legal exceptions. This situation has given rise to controversies of differing scopes because it is considered that the situation itself interferes with the full procedural guarantees and the effective separation of public powers by displacing the competent judicial branch as defined constitutionally.

The existence of military courts in Colombia was declared to be in accordance with the National Constitution, when their constitutionality was challenged, through a ruling of the Supreme Court of Justice. [43]/

[Table of Contents | Previous]

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[1] Article 1 and Preamble of the Political constitution of Colombia

[2] Amendments and laws amending the constitution that were developed in 1910, 1936, 1947, 1975, 1977 and 1979.

[3] Articles 93, 99, 105 and 114 of the Political Constitution.

[4] Articles 57, 114, 124 and 129 of the Political Constitution.

[5] Article 58 of the Political Constitution.

[6] Article 147 of the Political Constitution. According to the law governing it, the Supreme Court is divided into sections of penal appeals, civil appeals and labor appeals. a 1968 amendment established the constitutional section. The highest court for administrative law matters is the State Council composed of a number of representatives determined by law. This court is divided into chambers or sections to separate the functions assigned to it from all the others that the constitution and the law assign to it. The Supreme Court of Justice and the State Council are of equal rank.

[7] Article 214 of the Political Constitution.

[8] Articles 16 and 29 of the Political Constitution.

[9] Article 22, 23 and 25 of the Political Constitution.

[10] Articles 17, 18 and 19 of the Political Constitution.
[11] Article 20 and 21 of the Political Constitution.
[12] Article 26 of the Political Constitution.
[13] Article 30, 32, 33 and 34 of the Political Constitution.
[14] Article 23 and 38 of the Political Constitution
[15] Article 41 of the Political Constitution
[16] Article 42 of the Political Constitution.
[17] Article 44 of the Political Constitution.
[18] Articles 47 and 47 of the Political Constitution.
[19] Article 45 of the Political Constitution.
[20] Article 51 of the Political Constitution.
[21] Article 8 and following of the Political Constitution.
[22] Article 53 of the Political Constitution.
[23] Article 179 and 180 of the Political Constitution.
[24] Article 61; Article 76, No. 19; Article 78, No. 6; Article 119, Nos. 2 and 4; Article 120, No. 7; and Article 130 of the Political Constitution.
[25] In signing the Legislative Act No. 1, the President of the Republic discussed the following matters in addition to others: "This is an operational reform which, in stressing ethical and social values, covers two of the three branches of public power. The reform we are approving today is not an attempt to rival any earlier reforms or to tear down old state structure to replace them by new, more novel ones. The purpose was, and I believe this was achieve, to make national planning, justice and the Congress more functional and to widen the orbit of the Public Ministry in the very sensitive areas of criminal proceedings and protection of human rights."
[26] Article 40 of Legislative Act No. 1, which amends Article 143 of the Political Constitution. Likewise, Article 59, No. 2 of the aforementioned law, which amends Article 215 of the Constitution, provides that the Procurator General shall act in all cases in which the Supreme Court of Justice must carry our its judicial functions.
[27] Articles 28 and 34 of the aforementioned draft law. The statement of Reasons that the Procurator General of the Nation attached to the draft includes, among others, the following concepts: "The new constitutional text of Article 143 sets up the procurator General's office as the defender and watchman of human rights and gives it responsibility for seeing to it that the right to a fair trial is not infringed upon and that penal proceedings are lawful. As for the first of these, since it is difficult to define or enumerate them, the draft has followed a system of referring in general to those processes that are already pointed out in law 74 of 1968 which adopted several international agreements on this matter. It also mentions the social guarantees and civil rights cited in Title III of the constitution. It excludes those guarantees and liberties, which are under the protection and defense of other authorities, pursuant to the requirements of the Constitution itself. The purpose of this is to avoid interference, duplication of authority and different functions, or competence held by different authorities. In this connection, however, the Procurator General and his agents are given a number of very important powers to see to it that human rights are respected and defended at all times, either directly or through activities such as visits, reports, suggestions and even penalties for those agencies or authorities to which the law has entrusted in some fashion the care of the task of function related to those rights. As for the second part the work of protecting the right to a fair trial, and the legality of legal processes, regardless of the jurisdiction responsible for them, is of highest importance that cannot be carried out except in a dynamic and ongoing manner through the special agents of the Procurator General's office. These agents can be parties to those processes and, from that position, they do as much as they can, within the law, to see to it that the integrity and legality are always well protected. This work shall be done, in conjunction with the task of protecting human rights, through individual offices of Delegate procurators who will act permanently through inspectors and agents of the Procurator General."
[28] Articles 38, 41, 42 and 43 of Legislative Act No. 1, which amends Article 144, 145 and 146 of the Political Constitutions.
[29] Article 44, 52 and 61 of Legislative Act No. 1 which amend Articles 148, 161 and 217 of the Political Constitution.
[30] Article 34 of Legislative Act No. 1, which amends Article 121 of the Political Constitution.
[31] Articles 58, 59 and 60 of legislative Act No. 1 which amend Articles 214, 215 and 216 of the Political Constitution.
[32] Decree No. 100. Article 3 of its general provisions stipulates that the code shall go into effect one year after its issue. Decrees 141 and 172 of January 25 and 28, 1980, respectively, clarified several provisions of the new legal structure.
[33] Colombia had been following the penal code contained in law 95 of April 24, 1936, which took effect on January 1 of the following year.
[34] Colombia had been following the penal code contained in law 95 of April 24, 1936, which took effect on January 1, of the following year.
[35] Article 41, 42, 44 and 93 of the new penal code.
[36] Penal code, Second Book, Titles I through XIV
[37] Penal code, second Book, Titles I, V, VII, X and XIII.
[38] Article 1 of the Military Criminal Justice Code.
[39] Article 39, 40, 41, 47 and 61 of the Military Criminal Justice Code.
[40] Military Criminal Justice Code, Book Two, Titles I to XV.
[41] Articles 300, 306, 307, 308, 312 and 316 of the Military Criminal Justice Code.
[42] Articles 319, 320, 431, 566 and 597 of the Military Criminal Justice Code.
[43] Ruling of the Supreme Court of Justice of August 13, 1970 (G.J. No. 2338 Bis, p. 314)

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Organization of American States

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REPORT ON THE SITUATION OF HUMAN RIGHTS IN THE REPUBLIC OF COLOMBIA

CHAPTER II

THE RIGHT TO LIFE [1]/

A. General Considerations

1. The 1886 Constitution of Colombia guarantees the right to life by stating, "the authorities of the republic are established to protect the lives, honor and property of all persons residing in Colombia and to secure the fulfillment of the social obligations of the state and of individuals." In addition the constitution states, "In no case may the lawmaker impose the death penalty." [2]/

Likewise, the new Colombian criminal code that went into force on January 20, 1981 introduces specific provisions to guarantee and safeguard the right to life. [3]/ In addition, the military criminal justice code contains several provisions referring to crimes against the right to life. [4]/

2. Before the on-site investigation of April 1980, the Commission had received two claims referring to violations of the right to life y public agents of the government of Colombia.

During the on-site investigation and after it, the Commission received additional information about these charges as well as others referring to this same right.

3. The claims received by the Commission are being handled in accordance with its pertinent regulations. The relevant parts have been transmitted to the Government of Colombia, which has been furnishing the Commission with the information that has been requested of it.

B. Case 4667 Arango and Pabon Vega

1. The two claims were opened for appropriate processing. The claims refer to the alleged murder of Messrs. Dario Arango and Armando Pabon Vega by public agents of the Colombian Government. [5]/

2. In a note dated October 20, 1979, the Commission received the following claim:

> The basic purpose of this is to denounce before that important international agency the political repression carried out in Colombia by the Government of that country through application of the ominous Security Statute against popular and trade union leaders of our country who have been tortured sufficiently to cause death, as in the case of Dario Arango of Puerto Berrio (Antioquía), or treacherously murdered as in the case of Armando Pabon Vega from Apartado (Antioquía), in addition to other leaders. This violates the fundamental clauses of the charter of the human rights defended by that organism.
>
> We request the Organization of American states to intervene in the name of democracy to prevent the continuation of abuses against the people and their worker leaders and to request the Colombian Government to suspend application of the security Statute and to lift the state of siege under which the country has been living for more than thirty (30) years.

3. The Commission wrote to the Colombian Government on November 9 of the same year and transmitted to it the pertinent parts of the charges and requested information about them. In its reply of April 3, 1980, the Colombian Government informed the Commission of the following;

1. Military criminal judge 108 ordered the arrest of DARIO ARANGO on October 4, 1979, along with a number of other individuals who were the alleged perpetrators of the violent murder of a non-commissioned officer and six soldiers. On October 7, the accused person showed symptoms of illnesses and died moments later. By Resolution No. 305 of October 9, 1979, Dr. Alberto Torres Rodríguez was commissioned to undertake an

administrative disciplinary investigation to determine the exact causes of death of town counselor Arango. On the basis of statements received and expert legal medical opinion, in particular, it was concluded that the death of Dario Arango came about as a result of cardiovascular collapse, totally unconnected with the circumstances surrounding his confinement at the military installation. The delegate procurator General for the military Forces took the report of the inspector and ordered the case closed. This decision was communicated in Note No. 12897 of November 7, 1979, to the Procurator General of the Nation.

I am attaching t this letter the documents relating to the medical opinions that discuss the causes of death of Mr. Dario Arango.

2. As for Mr. Armando Pabon Vega, the only available information about him is that he was the victim of an armed action of the FARC subversive group in Apartado (Antioquía). [6]/

4. The pertinent parts of the Government's reply were remitted to the claimants on May 22, 1980. They were requested to make their observations and to provide any new or supplementary information with respect to their claim. To date, the Commission has not received any reply from them. [7]/

C. Other Charges Concerning this Right

1. During the on-site investigation and after it, the Commission received charges concerning violations of the right to life that point to Colombian public officials as the persons responsible for them. These claims are being processed by the Commission. The Commission has transmitted to the government the pertinent parts of these claims for appropriate purpose. Among these claims are the following:

a) Case 7348: Luis Arcesio Ramírez

The youngster Luis Ramírez was arrested an d tortured on February 5 in the presence of Caycedo and was murdered during the night of February 5 in the presence of several arrested persons.

b) Case 7547: Fabio Vasquez Villalba

The victim was arrested on April 22, 1978, and taken to the Voltigero Batallion, where he was held incommunicado, tortured and murdered. The family of the victim is being threatened by an army officer. [8]/

2. The request for information about these claims were answered by the Colombian Government as follows:

a) Luis Arcesio Ramírez (minor), appears as Luis Arcenio Ramírez, who died in combat with troops in the Chile River (Roncesvalles) on February 13, 1979. Assistant Judge Advocate 13 of the Sixth Brigade is conducting the investigation.

b) Fabio Vasquez Villalba – Military Criminal Instruction Court 32 conducted a criminal investigation into the death of Vasquez Villalba and found no military personnel involved in it. Vasquez was a guide for a military patrol in an area where subversive forces were at large and his death came about as a result of an ambush of the military patrol by unknown persons on April 27, 1978. After appropriate processing, the case was closed in accordance with provisions of Article 473 of the code of criminal procedure, the text of which is given below:

> Article 473 – Closing of case. If no processed person is included in the investigation, as much additional testimony as necessary may be ordered and for as long as is considered advisable for full clarification of the events and the discovery of the persons responsible and the participants. For this latter purpose, the intervention of the judicial police may be sought. But if a year has passed since the starting date of the case, and no order has been issued to question any person due to insufficient evidence even though additional proof may be gathered to complete the investigation, the case shall be closed following a resolution with statement of reasons, without prejudice to reopening the case at a later time if proof connecting a person to the case is uncovered and the time limitation for criminal action has not expired.
>
> This rule shall apply to all cases currently in the statutes described in the foregoing paragraph. [9]/

D. Other Cases Investigated

1. The Commission has investigated other cases relating to alleged violations of the right to life attributed to Colombian authorities. In these cases, the claims were not presented earlier for formal processing in accordance with regulatory provisions in effect. In

this sense, the Commission has compiled and analyzed documents and information on the following cases:

a) Case 7348: Zambrano Torres

The Commission was informed that on February 23, 1980, Mr. Marcos Zambrano Torres died at the Pichincha Infantry Batallion in the city of Cali, Colombia. Zambrano Torres was being held there under arrest in the company of Messrs. Camilo Restrepo Valencia, Oscar Ortega Corredor and Luz Mery Bedoya Castro. All of them had been captured the previous day by a police patrol and were accused of attempting to kidnap Mrs. Raquel de Pinsky.

At the request of the Commission, the Colombian Government and agencies defending human rights in Colombia delivered to it documents and information on this case. The claim is being processed in joint case No. 7348 for alleged members of the M-19.

According to documents turned over by the delegate procurator General for the Military Forces, under the Public Ministry, on June 15, 1979, military criminal instruction court 48 decreed that Mr. Zambrano Torres, a person accused of the crime of rebellion for belonging to the subversive M-19 movement should be taken into preventive detention and he was declared a missing prisoner.

At the same time, the aforementioned document indicates that these persons were being held at the Pichincha Infantry Batallion headquartered in the city of Cali. On February 23, 1980, Mr. Zambrano died while under the custody of the Third Brigade Intelligence Group. It is added that on the same date, the Brigade Commander instructed military criminal instruction judge 107 to open an investigation into this matter. On March 14, 1980, the instruction court issued a warrant for the preventive detention of Second Lieutenant Norberto Plata Sanchez and Sargent José Rodrigo Hernández Granados, for the crime of homicide.

As a result of the foregoing, an oral court-martial was convoked to judge the persons allegedly responsible for the death of Mr. Zambrano. The members of the aforementioned military court handed down a verdict of not guilty for those accused. However, the presiding officer of the oral court-martial declared that verdict contrary to the evidence surrounding the facts, referred the case to the Superior Military Court, and requested nullification of the procedural case. This was decreed. This led to the convocations of a new oral court-martial for the accused for final determination of their responsibility. [10]/

It should also be pointed out that the other persons accused of having attempted to kidnap Mrs. Raquel de Pinsky, that is Messrs. Camilo Restrepo Valencia, Oscar Fernando Ortega Amador and Luz Mery Bedoya Acosta, were tried by an oral court-martial in which the

sentence was handed down on June, 20 1980 in the war room of the Pichincha Batallion. The accused was sentenced to 12 years, eight years and eight years of imprisonment, respectively, as being members of the M-19 subversive movement. The reading of this sentence was witnessed by an attorney, an official of the Commission. [11]/

In connection with this case, the Government replied to the Commission in communication No. 00144, as follows:

> CAMILO RESTREPO VALENCIA and JORGE MARCOS ZAMBRANO were detained in the company of other persons by an F-2 patrol on February 22, 1980, in Cali. After they were arrested arms, grenades and false identification papers were taken from them. The subjects were placed at the disposition of the Third Brigade at he Pichincha Battalion on the same day, February 22, 1980.
>
> CAMILO RESTREPO V., was placed at the disposal of military criminal trial judge 48 on February 25, 1980. When he was called upon to make his statement, at his own request, the court appointed an attorney for him. An arrest warrant was issued for him on March 8, 1980 for the crimes of rebellion and the attempted kidnapping of Raquel de Pinsky. The oral court-martial was called for June 11, 1980, a verdict of guilty was handed down on July 20 and he was sentenced to 12 years of prison. On July 3, 1980, the case was appealed to the Honorable Superior Military Court.
>
> With respect to the death of MARCOS ZAMBRANO, the Commanding Officer of the Third Brigade ordered a criminal investigation of Second Lieutenant Plata Sanchez Norberto and Sargent Rodríguez Hernández J. An oral court-martial was held for these two military personnel on July 31, with the verdict being not guilty. The verdict was declared contrary to the evidence. At this time the case is in consultation before the Honorable Superior Military Court.

b. Case 7756: Rubio Alfonso

During its on-site investigation the Commission took information concerning Mr. Humberto Rubio Alfonso, a student of the Univesidad Externado of Colombia, who has died as a result of being shot, at the time of his capture, by an agent of the judicial police on May 3, 1979, in a police operation carried out in the capital city of Colombia.

The Commission took up this case with Colombian authorities for the purpose of establishing what measures have been taken to determine the responsibility of those involved on this act. Following this, through the Office of the Procurator general of the

Nation, the Colombian government turned over a summary of the investigation made into the death of the citizen, Hernando Rubio Alfonso. This document is contained in file No. 01038 of April 29, 1980, concerning 107 cases, which were sent to the Procurator general of the Nation, Dr. Guillermo González Charry, by the Delegate Procurator general for the military forces, Major General Francisco Afanador Cabrera.

The text of this summary is as follows:

1. Judicial police agent, badge No. 2363, in a written statement to military criminal trail judge 115, made on May 3, 1979, stated that according to the version given by the arrested person, Luis Alberto Arroyo Vega, on that date he was to meet at 8:00 p.m., at 57th Street and 13th Road in this city with a person called, "Jaime," who belonged to the self-armed subversive movement, 'PLA' with whom Arroyo Vega had worked in several "actions." The police agent requested an arrest warrant for that person.

2. Through the warrant, which included the statement of reasons, military criminal instruction court 115 ordered on May 3, 1979, the arrest of the aforementioned "Jaime," and commissioned members of the judicial police attached to the Military Institutes Brigade to carry it out and issued the arrest warrant on the same date. The warrant stated that the person who was to be arrested was to be pointed out by Luis Alberto Arroyo Vega when they met on that same day at 8:00 p.m. at 57th Street and 13th Road of this city.

3. On May 4, 1979, Captain Salvador Angarita Dodino, a member of the judicial police of the Military Institutes Brigade, DAS agent, Carlos Julio Canizares Ovalle and the arrested man, Luis Alberto Arroyo Vega, went the previous night at approximately 8:00 p.m. to 57th Street and 13 Road of this city and being there, Mr. Arroyo Vega personally pointed out the man who called himself "Jaime." At his point agent Canizalez told "Jaime" he was under arrest but the aforementioned person immediately attempted to assault him and for this reason the officer had to subdue him. At his point, "Jaime" hurled himself against the judicial police agent, resulting in a struggle at the end of which a shot rang out, resulting in injury of "Jaime," who immediately was taken to the central Military Hospital where he arrived at 8:15 p.m. he was pronounced dead at 8:20p.m. It was noted that he had a wound produced by a firearm in the frontal region of the upper body, approximately between the sixth and seventh ribs."

4. Based on the foregoing information, on the same day, May 4, 1979, court 115 opened a criminal investigation and carried out the following activities, in addition to others:

a. Luis Alberto Arroyo Vega was head in testimony on May 4, 1979, and he said there, in addition to other things, that on the previous day at 8:00 p.m. at 57th Street and 13th Road of this city, he had an engagement with a person who was called "Jaime," whom he pointed out and that "Jaime" put up resistance. He also said that "Jaime" had engaged in subversive activities.

b. María del Carmen Alfonso de Rubio, Marco Aurelio Rubio Bautista, Arturo Quiroga, Gustavo Mantilla, Claudio Castillo, Salvador Angarita, Horacio Urquijo, Arcesio Joven, Alvaro Ceron, Alicia Riveros, Teodoro Villamizar also made statements in the investigation.

c. The DAS judicial police agent, Carlos Julio Canizales Ovalle, was brought into the case b means of an unshorn statement.

d. The formalities taken in this case were the judicial inspection, the reconstruction of the events, the note of removal of the cadaver, the autopsy protocol and the civil death certificate.

e. In the opinion of the senior Judge advocate of the Military Institute Brigade dated August 27, 1979, there was sufficient merit in the case to convoke the oral court-martial to judge the behavior of the DAS agent, Carlos Julio Canizalez Ovalle.

f. The Commanding Officer of the Military Institutes Brigade, in a ruling on December 7, 1979, declared that there was insufficient evidence to convoke the oral court-martial that was to judge the DAS agent, Carlos Julio Canizalez Ovalle, for the death of Marco Hernando Rubio Alfonso, and ordered the halt of all criminal proceedings and referral of the decision for consultation.

g. The case in now in the Office of Prosecutor 10 of the Superior Military Court, where it has been since March 21, 1980, and a ruling is being awaited.

5. It should be noted that criminal instruction court 45 initially started an investigation into the same events by later remitted this work to the military courts since they had competence in this matter.

Furthermore, the Attorney General of the Nation turned over to the Commission a report on the investigation to establish background and causes in connection with the death of the student Hernando Rubio Alfonso. This report was contained in a note sent to the Delegate Procurator General for the judicial police on May 25, 1979, by the visiting attorneys responsible for the investigation. The text of this document contains, in addition to others, the following points:

> Based on the foregoing, we believe that Mr. Hernando Rubio Alfonso was an ordinary person who on the day of the events was engaged in his normal activities. He went to the Universidad Externado of Colombia in the morning and to INTRA in the evening, to carry out his regular work. He left INTRA at the normal time and from there on, nothing more was known of him until the time he was taken dead, by members of the B.2, to the military hospital. It can be easily concluded, then, that these men are the only persons who can and who must respond for the death of Hernando Rubio Alfonso.
>
> Since it appears that these persons are members of the B.2, which is part of the intelligence group of the Military Institutes Brigade, kindly, Mr. Procurator General, act in the manner that you deem advisable.
>
> We also inform you that at this time the pertinent investigation into this case is under way in the military penal instruction court 115 and criminal trial court 45. [12]/

In connection with this same case, the Government of Colombia later reported the following to the Commission"

> The Investigation was started by criminal trial court 81 on May 19, 1979, in the city of Bogotá, and continued by criminal trial court 45, which considered it on June 11, 1979, after evidence had been gathered. By area of competence, the investigation was the responsibility of the Commanding Officer of the Military Institutes Brigade. The Commanding Officer transferred the case to the senior judge advocate that decided that the accused person Canizalez should appear before an oral court-martial as responsible for the culpable crime upon the person of Hernando Rubio Alfonso.
>
> The court of first instance, in a statement dated December 8, 1979, declared that there was not sufficient merit in the case to judge the accused in accordance with the oral court-marital procedure and as a result, he ordered the entire proceedings halted. In an appeal to the Superior Court on December 13, 1979, the case was ordered returned to the office of origin (January 21, 1980), in consideration of the fact that the notification to the parties had not been legal. After this the irregularity was

corrected, the case was transferred to prosecutor 10 who issued a decision to the effect that the measure calling for a halt to the entire proceeding should be confirmed. As of May 13, 1981, the judge, Dr. Gersain Serna Giraldo, who writes the opinions, has had the draft of the finding ready for submission to the decision section.

c) Case 7757: Camelo Forero

The Commission acquainted itself with the case of Mr. José Vicente Camelo Forero, who died while being held at the installations of the Colombian Air Force at Palanquero on July 5, 1979. Camelo Forero had been captured by military authorities on July 1, in the area of Mariquita, Tolima. The Colombian press made this case public on the basis of information and declarations provided by Corporal German Pinzon Zora who stated that Mr. Camelo Forero had been tortured. Pinzon Zora later took asylum at the Embassy of Costa Rica. Military authorities stated that the aforementioned non-commissioned officer had been discharged from the military forces by resolution on a disciplinary court whose verdict was confirmed on appeal. The authorities said that his discharge was the result of a hearing that looked into serious misconduct on the part of the corporal while in military service. They also said that the statements and information he gave to the press did not jibe with the truth surrounding the events.

In taking up this case, the Commission requested Colombian authorities to furnish all possible information both during the on-site investigation and after it. The Government turned over several documents about the case to the Commission. [13]/

In the part on procedures contained in the report of the inspector attorney appointed to investigate the case, the following is stated: "Since this is an attempt to establish the truth regarding the matters published in the magazine, Alternative, using information given by Corporal German Pinzon Zora, currently in asylum at the Costa Rican Embassy, because, according to him, he is being chased by the state secret services for having given information to the newspaper, El Bogotano, concerning the death of José Vicente Camelo Forero, the investigation was oriented in such a way as to take into account the statements made by the corporal." Among the report's conclusions are the following:

a) It was established that Corporal German Pinzon Zora, a specialist in meteorology, is not a non-commissioned officer who has been persecuted, but a person who failed to conduct himself properly during his air force service, as can be seen in his biographical file. His conduct was so bad that in his own deposition dated July 18, 1979, which he himself signed, he stated that he agreed with the punishment given to him because he made deliberated mistakes to reflect badly on the Colombian air force and that what he really wanted was to provide grounds to the Air Force to all a disciplinary tribunal against him.

g) Corporal Pinzon Zora could not have been selected a member of any group of "torturers" as he said, first, because it has been established that the base had no such group and second, because the corporal's specialty was meteorology and he remained working in that specialty throughout the entire time he served as a non-commissioned officer, as his personal file shows.

h) According to declarations of personnel not associated with the investigation, José Vicente Camelo Forero was never tortured; the number of soldiers on guard the night he died was not ten, but four and of those, the soldier Juan José Mendez Castro was the person who acted directly and who killed Camelo after having tried to subject him so that he could not escape; the soldier Hector Morato Ríos ran to the control officer to tell him what was happening; and the soldiers Florencio Vanegas Tellez and Jairo Vargas Hernández kept the rest of the prisoners in the facility under guard.

i) Furthermore, the eye which Corporal Pinzon says that Camelo lost because of the blows he received was actually a false glass eye, which he had used for 34 years and which naturally was removed from his body when he died. It is also a lie that the death of Camelo occurred at 9:00 p.m. on the banks of the Magdalena River. In fact, this event took place on the morning of July 5, 1979, at 1:40 a.m. in the prisoner's area of the base. C.C. No. 2341727 on Camelo shows a notation of a glass right eye.

k) The case concerning the death of José Vicente Camelo Forero in which the soldier Juan José Mendez Castro is accused of the crime of homicide is now before the Superior Military Court, for all matters within its competence.

n) In connection with the statements made by Corporal Pinzon about tortures of prisoners and José Vicente Camelo Forero. In particular, other statements and documents indicate there were no such tortures that the statements and documents indicate there were no such tortures, that the statements are false and that the information given by the corporal is possible biased.

r) Two cases are involved in the investigation into the death of José Vicente Camelo, one started at Puerto Salgar by military criminal trial judge 46 and the other started by criminal trial judge 1 at Mariquita. Both of these cases were combined in view of considerations of competence and the case I s currently before the Superior Military Court, for all matters within its competence.

Likewise, the Commission received documents about this case from persons

associated with family members of Mr. José Vicente Camelo Forero. [14]/

d) Case 7758: Contador

On April 13, 1978, the police raided the house located at Transversal 31, No. 136-67, in the neighborhood known as Contador, in the city of Bogotá. In this raid seven persons were left head at the hands of public agents.

During the on-site investigation, the Commission acquainted itself with this case and sought information that would enable it to find out about the investigation and the measures adopted by Colombian authorities to date with respect to these events.

In January 1981, the government provided the Commission with the following report:

1. BACKGROUND AND EVENTS

After the death of JESÚS ANTONIO CÁRDENAS TRIGUEROS (alias, the Yanki), a review of documents yielded certain addresses and telephone numbers. Among them was No. 581016, the telephone number of the address, Transversal 31, No. 136-67. A permanent watch was ordered for that house. The watch revealed that suspicious persons went to that residence at late hours of the night, using different vehicles. One of the vehicles marched the description of that used in the kidnapping of Dr. MIGUEL DEL GERMAN RIBON. Base on this information a request was made to Military Criminal Trial Judge 77 to issue a search and seizure warrant or the aforementioned residence. This request was approved. The secret personnel involved in the raid were the following officers: Major Castano Rozo, Carlos Julio; Captain Patarrovo Barbosa, Jaime; Captain Barreto Rodríguez, Jorge Noel; Captain Mendoza Contreras, Alvaro; Lieutenant Bravo Sarmiento, Manuel Antonio; Corporal Martin Moreno, Arturo; and Agents Alarcón Toro, Joel de Jesús; Domíngues Leyton, Joaquín; Morales Cárdenas, Efraín; Ospina Ríos, Gustavo; Quiroga Jaime and Baquero José de los Santos. These individuals carried out the court order and kept watch On the place in order to arrest the alleged kidnappers. It was approximately 12:30 a.m. when several persons arrived at the residence. When told they were under arrest, these persons did not surrender and decided to open fire on the members of the F-2. The F-2 returned the fire, resulting in the deaths of the following persons: MARÍA FANNY SUAREZ DE GUERRERO, BLANCA IDALY FLOREZ VANEGAS, EDUARDO SABINO LLOREDA, ALVARO ENRIQUE VALLEJO QUIÑONEZ, JUAN BAUTISTA ORTIZ RUIZ, JORGE ENRIQUE SALCEDO AND OMAR REYES LEYTON.

2. ARMS AND VEHICULES SEIZED

The following elements were seized during this operation and placed at the disposal of military criminal instruction judge 77:

M-1 carbine, No. 344996, Smith & Wesson revolver, caliber 32 long; Smith and Wesson revolver, caliber 38 long, No. 615881 and Smith and Wesson pistol, caliber 9 mm., No. 387816.

Renault 12 automobile, model 77, carrot colored, license plate FB-1142, stolen from Jaime Alberto Muñoz González during an armed holdup; Renault 12 automobile, model 77, white, license plate AL-0296, stolen from Rosalba Diaz de Giraldo during an armed robbery; a Renault 12 pickup truck, model 1975, cherry color, license plate AF-4692, owned by Fanny Saurez de Guerrero, Kawasaki motorcycle, 1978 model, red color license plate DM-7927, stolen from Rodolfo Silva Luna.

3. INTERVENTION OF THE PROCURATOR GENERAL;S OFFICE

The Delegate procurator General for the National Police ordered a prompt investigation into these events. On the basis of the evidence seized in a ruling dated May 8, 1980, he decoded to remove from office Captains JAIME ALBERTO PATARROYO BARBOSA, JORGE NOEL BARRETO RODRÍGUEZ, ALVARO MENDOZA CONTRERAS, LT. MANUEL ANTONIO BRAVO SARMIENTO, CP. ARTURO MARTIN MORENO and Agents JOEL DE JESÚS ALRCON TORO, JOSÉ JOAQUÍN GUILLERMO DOMÍNGUES LEYTON, JAIME QUIROGA, GUSTAVO OSPINA RÍOS, EFRAÍN MORALES CARADENAS and JOSÉ SANTOS BAQUERO, because in this opinion the accused persons disregarded the guarantee of the inviolability of the domicile and used excessive force and unjustifiably deprived the victims of their lives. These errors are defined in the disciplinary rules in force at the time of those events. He also ordered that a copy of the disciplinary case be sent to the Superior Military Court for placement in case No. 1729 relating to the same events, which is being investigated by that court.

4. PROCEDURAL EFFECTS

In furtherance of the instructions of the military court, the police officials were placed under arrest. The time period for the case was extended and after hearing the opinion of the legal advisor, a resolution was issued ordering that an oral court-martial be held to judge the conduct of those accused of the crimes of homicide, committed together and violation of domicile.

The presiding officer of the court-martial set December 17, 1980, as the starting date of the hearings. The court-martial ended on December 30 of the same year. The verdict on the 81-indictment put to the jury was a unanimous finding of non-responsibility for the crime. At this time, the case is awaiting a final ruling from

presiding officer of the court-martial. [15]/

In addition, it should be noted that the Government of Colombia reported to the Commission that when these events took place, the office in charge proceeded immediately to make a detailed investigation of the case and reached a conclusion that several F-2 agents were culpable. These agents were discharged. As for the criminal case, it was reported that it is now under the military criminal justice system, through an oral court-martial and, subsequently, the matter was referred to the Superior Court level where it has been pending since March 6, 1981, in the office of the Third Prosecutor.

However, the Ministry of Foreign Affairs turned over to the Commission documents indicating that two types of investigations have been conducted into this case. One, an administrative investigation carried out by the delegate Procurator general for the national Police, ended as stated above with the removal of the agents in the group that participated in that police operation. The other, a criminal investigation, also discussed above, involved the convocation of an oral court-martial which had the outcome noted above.

The documents also indicate that the trial of the police agents was carried out in conformity with the Code of Military criminal Justice. [16]/

[Table of Contents | Previous | Next]

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[1] The American convention on Human Rights, Article 5, which officially recognizes the right to life, establishes the following in its paragraph No. 1: "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrary deprived of his life." The remaining paragraphs of this article deal with capital punishment.

[2] Articles 16 and 29 of the Political Constitution.

[3] New Criminal Code, title XIII on crimes against life and personal security, which has four chapters regulating homicide, personal injuries, abortion and abandonment of minor and invalids, respectively, Articles 323 to 348, inclusive.

[4] Military Criminal Justice Code, title VII in crimes against life and personal security, which has five chapters on classification, homicide, personal injury and dueling, and the provisions common to the previous chapters, respectively, Articles 193 to 215, inclusive.

[5] Joint case No. 4667.

[6] A press release datelined Bogotá, September 21, 1979, of the Permanent Committee for the Defense of Human Rights, says the following about the death of Mr. Armando Pabon Vega: "On Wednesday, September 19, at 6:30 p.m., the trade union leader, Armando Pabon Vega, 30 years of age, was shot (five times) in Apartado as he was leaving the offices of the Banana Industry Workers Union where he was a leader. At the time of his murder, he was preparing a list of petitions for banana workers. Pabon was moved immediately at FEDETA headquarters. He will be buried Saturday at 4:00 p.m. The Antioquía Departmental Committee for the defense of Human Rights joins with the national Committee in making its most vigorous protest for this crime against Armando Pabon Vega, a member of the Communist party and a much-loved trade union leader."

[7] With respect to the investigation made to establish the causes of death of Mr. Dario Arango, the Government of Colombia turned over to the Commission a number of documents, including note No. 636 of October 19, 1979, to Judge 108 of the military criminal instruction court of Medellín from the Chief of the sectional Legal Medicine Institute of that city. This institute is part of the Ministry of Justice. Another of these documents was the opinion of the chief physicians of the La Cruz Hospital of Puerto Berrio. The conclusion drawn from these documents is that the demise of Mr. Arango was due not to violence but to cardiovascular collapse.

[8] The claim for Luis Arcenio Ramírez is dated April 25, 1980 and is combined with the case of Hans Caycedo Amador in the joint case No. 7348 for the M-19. This claim was transmitted to the Colombian government from the Commission on November 3, 1980. The claim concerning Fabio Vasquez Villalba is dated April 25, 1980, and was transmitted to the government as an individual case in a note dated November 17, 1980.

[9] Government notes to the Commission dated January 19, 1981 and February 6, 1981. The pertinent parts of

the government's reply were transmitted to the claimants by the Commission, in accordance with its rules.

[10] In this case, the Commission has the opinion of the senior judge Advocate, dated July 22, 1980, to the Commander of the Third Brigade, headquartered in Cali. This reads as follows: "From the evidence contained in written documents, we see that on February 23, of this year, at the installations of the Pichincha Battalion the civilian, Jorge Marcos Torres died as a result of 'severe anoxia of an etiology under study,' and according to the most likely diagnosis of the cause of his death, it was 'asphyxia by submersion in water resulting in deprivation of oxygen and severe anoxia, the result of which could be the pulmonary edema observed,' according to the forensic medical opinion. This death occurred when Jorge Marcos Zambrano was under the direct responsibility of Second Lieutenant Norberto Plata Sanchez and Sargent José Rodrigo Hernández Granados, who were interrogating him at the time. The conduct of the accused persons Plata Sanchez and Hernández Granados is described in Book Two, Title VII, Chapter II of the Military Criminal Justice Code, and for this reason there is sufficient merit to determine, through the procedure of the oral court-martial that is established in Chapter II, Title VI, Book Four of the aforementioned code, to determine their criminal responsibility in the present case." On July 23, 1980, the Commanding Officer of the Third Brigade issued Resolution No. 073 which convoked an oral court-martial to be heard at the Cali Garrison to try the accused military persons in accordance with the procedure established persons in accordance with the procedure established in the military criminal justice code. Furthermore, the Commission has on hand the resolution of August 16, 1980, of the presiding officer of the court-martial which states the following: "To declare clearly contrary to the evidence of the facts the verdict of the jury handed down in the present oral court-martial." The conclusions of the resolution point out, "…the presiding officer concludes that the verdict of acquittal is contrary to the evidence in the case, that is, the evidence brought to light in the matter is sufficient to form a well-founded decision and therefore, this should be so declared." In addition to other points, it makes the following: "Bearing in mind all the foregoing, we have then sufficiently proven the following" evidence of presence, since the accused persons were up to the last minute present at the place of the events in which the individual Jorge Marcos Zambrano fell dead. Evidence of prior statements: one of which is having stated to the accused that they were going to take him to La Remonta, knowing perfectly well the general, notorious reputation that place has. That is the so-called oral threat. Evidence of understanding. Since the accused state in their declaration and in the statement of reconstruction of events their full agreement to take the arrested person to La Remonta. However, the accused Hernández, José Rodrigo, in his statement, affirms categorically that they in no way intended, and has not agreed, to take the arrested person to La Remonta and they said in the reconstruction of events that if there was any such agreement, it was merely with the intention to scare the prisoner psychologically, thereby establishing evidence of poor justification. Evidence of later signs: such as the concealment of the name of the victim, the statements circumstances and facts presented to the agent in the departmental hospital, emergency section, which do nor correspond to the truth. Evidence of a material nature: this evidence is that the clothing of the murdered person, Jorge Marcos Zambrano, was wet, as determined by the agent who accepted the lifeless body and who noted this fact in his statement. Other was the superficial laceration on the left knee of the victim and the extensive hematoma on the cadaver of Jorge Marcos Zambrano, specifically, in the hairy skin of the frontal region of the head. Evidence of motive: this is none other than the situation of intimidation that was of motive: this is none other than the situation of intimidation that was attempted by the fact of taking him to La Remonta, on the initiative of the accused persons themselves, and to use this as an effective way to produce fear and to lose self-control and thereby obtain positive results. Evidence of intellectual capacity and personal opportunity: this is the capacity and the physical disposition required for the action by the accused persons such as there being two persons against one and those two persons being armed during the questioning.

All of this taken together with the statements made by the witness, Camilo Restrepo, a fellow prisoner of Jorge Marcos Zambrano, which he made with respect to the interrogation in a pool, submergence in it and the drowning attempts, the forensic medicine opinion that rules out an infarct and the cause of death necessarily lead to the conclusion that there was the real intention of responsibility in the events charged to the accused persons. This is the conclusion in view of the fact that the circumstances of the event and the evidence given above are precise and consistent."

[11] II. Case No 7348, opened by the Commission, which involves a multiple case referring the M-19, includes the charge made on April 23, 1980, with respect to Mr. Camilo Restrepo Valencia. This charge was transmitted to the Colombian Government on November 3, 1980. At the end of that statement, the following is said: "A comrade (Zambrano) was arrested at the same time and torture, and later murdered during his detention."

[12] On May 29, 1979, in consideration of the foregoing facts, the Procurator general of the Nation wrote to the Delegate Procurator General for the military forces in connection with this case, as follows: "Enclosed please find the file containing the records of information gathered by the judicial police in connection with the death of the student Hernando Rubio Alfonso, and kindly turn them over to the trial judge for all the effects of this case and for carrying out a special judicial examination of the progress on this case.

[13] Through the office of the Procurator General of the nation and the Ministry of Defense, the government turned over to the commission the following documents: a) Note from Combat Air Command No. 1 of Puerto Salgar, dated July 5, 1979: b) Report of the commanding officer of that command, July 11, 1979; c) a note form the commanding officer of the Colombian Air Force date July 30, 1979; d) A report on administrative-disciplinary investigation No. 290830R to the delegate Procurator General for the Armed Forces, by the inspector attorney, dated January 29, 1980; e) Formal procedures conducted by the office of the Delegate Procurator general for the armed forces, dated January 29, 1980; f) Note 00270 from Delegate Procurator General for the Armed forces to the commanding officer of the Colombian air Force, dated January 31, 1980; g) Note from the commanding officer of the Colombian Air Force dated February 17, 1980; h) List of special inspection visits regarding the case, sent by the Delegate procurator general for the Armed Forces to the Procurator General of the Nation in Note No. 01050, dated April 30, 1980. In the letter from the commanding officer of the Colombian Air Force, dated July 30, 1979, the following is stated: "1. The Aforementioned individual was taken prisoner in the Village of Mariquita, Tolina, for alleged ties with the urban network of the FARC; several arms and ammunition of different caliber's, found in his residence, were confiscated. 2. Camelo Forero was imprisoned in the aforementioned unit in a place for person's accused of violating the criminal law, where both he and other prisoners enjoyed and still enjoy full legal guarantees. 3. On July 5, the aforementioned citizen attempted to escape twice from the jail. For this reason, the guard told him to stop his attempts. In response to this, Camelo Forero attacked the guard and tried to take his weapon away from him. For this reason, the soldier was forced to use the weapon, mortally wounding the aggressor. R. After the death of José Vicente Camelo Forero, military criminal instruction judge 46 called immediately for an investigation, an examination of the cadaver, the respective autopsy and all other steps under the rules of criminal procedure. 5. Consistent with the foregoing, this command reports that the version given by certain communications media about the events that led to the death of Camelo Forero have no foundation in fact; the same is true of the statements being made about tortures by informed personnel." In another letter from the same air force commander, dated February 7, 1980, the following is

stated: "You are reminded that on the occasion of the death of Mr. José Vicente Camelo Forero (QEPD), military criminal instruction judge 46 initiated the corresponding criminal investigation immediately after the occurrence of the events. The person accused in this investigation is the soldier, Juan José Mendez Castro, whom the corporal called a "softie." It was established that Mendez Castro belonged to the First Contingent of 1978, which will no be discharged until April of this year and therefore 3what the non-commissioned officer said not true."

[14] On April 20, 1980, the attorney of the widow of Mr. José Vicente Camelo Forero sent a letter –which is also signed by the widow—to the President of the Republic. The letter protests the Chief Executive's confusion over her name in an incident in which she was referred to as the mother of Mr. Alfredo Camelo Franco, indicated and tried as one of the murderers of former minister Rafael Pardo Buelvas. The confusion came about is a speech that the Colombian President delivered in April 1980, when the Embassy of the Dominican Republic in Bogotá was taken and the report of Amnesty International was published. President Turbay Ayala recognized the error and apologized for having made it in a reply to the widow of Mr. Camelo on the following day. The letter reads as follows: "Mrs. Elpidia Cáceres de Camelo (widow) My dear lady: This is to acknowledge receipt of your letter dated April 20 on which you, quite correctly protest the mistake I made when I referred to you as the mother of Alfredo Camelo, one of the perpetrators of the assassination of Minister Pardo Buelvas. This statement was made on the basis of information provided to me by my assistants who, in good faith, believed that the relationship mentioned exited between you and Alfredo Camelo. For myself, and since it was not my intention to bother you or to use your name for any ulterior motive, I have no problem whatsoever in telling you that I am mortified by the unintentional mistake I made and I offer to you my fullest apologies. (signed) Julio César Turbay.: The letter from Mrs. Camelo's attorney to the Chief Executive states, inter alia: "With great attention we listened to your speech on the problem of the Dominican Embassy and your forceful ides in your official reply to the reported recommendations of Amnesty International. We will not go into any analysis of the content of those statements but obviously we cannot agree with it in its entirety although we respect your statements since they are made by the Chief of State. We simply wish to tell you, Mr. President, that you are extremely ill informed about several points and more than likely you did not have enough time before you spoke to verify the false information that your advisors furnished to you. Specifically, we refer to what you said when you mentioned and listed the persons and agencies that the delegates of Amnesty International met with. These unmistakable words are on a tape in our possession and these were also published by all the communications media of the country. You said, Mr. President, verbatim: "…with MRS. ELPIDIA CÁCERES DE CAMELO, A WIDOW, THE MOTHER OF ALFREDO CAMELO FRANCO, ONE OF THE PERPETRATORS OF THE ASSASSINATION OF FORMER MINISTER RAFAEL PARDO BUELVAS…" Naturally, Mr. President, unbeknownst to your immediate collaborators or, if they are aware of it, they are hiding this from you, the facts are as follows: Mrs. ELPIDIA CÁCERES DE CAMELO, widow, to whom you refer in your speech, is no the mother of ALFREDO CAMELO FRANCO. She is the wife of Mr. VICENTE CAMELO, a cattleman of Mariquita who was murdered at the Palenquero Military installation. Mrs. Cáceres has only one male child and his name is ENRIQUE CAMELO CÁCERES who is a university student, has never worked at El Siglo and had nothing to do with the death of former Minister Pardo Buelvas. We, that is Mrs. Cáceres, the widow of the late José Vicente Camelo, and I as her attorney, met with the delegates of Amnesty International strictly and exclusively for the purpose of informing them in detail of the case of Mr. Camelo, that is, of the undeniable tortures of José Vicente Camelo after being arrested at his home in Mariquita and taken to the air force installation at Palanquero. These tortures were noted in the exhumation records held by the examining judge and the forensic legal physician of Armero, s was the cause of death which was 'cardiorespiratory stoppage caused by two rifle bullets in the back.' As a result, our interview with the representatives of Amnesty International had nothing to do with Mr. Camelo Franco or with the death of the former Minister Pardo Buelvas but with the death of José Vicente Camelo. The investigation into this case is still being conducted by the military criminal justice system which up to now has yielded results pointing to complete absence of guilt. Why do your immediate assistants, Mr. President, hide the true identity of Mrs. Cáceres and why have they not informed her about the investigation into the murder of her husband, Mr. José Vicente Camelo, in which not even one single person has been arrested? Why, when the alleged criminals in a investigation as important as this are military people on active service, can we civilian attorneys do nothing and why are we denied status as a civilian party? Why are we following this system of exception to normal rules of responsibility? With these events and situations being the true case, can the report of Amnesty International be mistaken and biased?

[15] Report of the Chief Inspector of the National Police, contained in letter No. 0027 of January 15, 1981, to the Minister of national Defense.

[16] Article 284 of the Code of Military Criminal Justice reads: "For the effects of this code, the term 'military personnel' refers to members of the police forces, with the exceptions noted in chapter IV, Title IV, Book II"; and Article 8 of Decree No. 2347 of 1971 which reads: "Officers, non-commissioned officers and agents of the national police force who, during their service or as a result of it or functions inherent in their position, commit a crime, shall be tried under the rules of the Code of Military Criminal Justice."

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

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REPORT ON THE SITUATION OF HUMAN RIGHTS IN THE REPUBLIC OF COLOMBIA

CHAPTER III

RIGHT TO PERSONAL LIBERTY [1]/

A. General Comments

1. Colombian law protects the right to personal liberty. The Constitution states, "No one may be molested in his person or family, or imprisoned or arrested, or detained, or have his domicile searched, except by virtue of a warrant issued by competent authority, with all legal formalities and for cause previously defined by law." It goes on to say, "In no case shall there be detention, imprisonment or arrest for debts or purely civil obligations." [2]/

2. The Colombian Constitution also contains a provision, article 28, which empowers the Government, after receiving the opinion of a council of Ministers, to apprehend and jail persons during times of peace when there are serious reasons to fear disturbances of the public order and there is good reason to suspect that such persons are acting against the public peace. The exercise of this power requires the observance of certain precise conditions: "If ten days have elapsed since the time of the arrest and the detained person has not been set free, the government shall proceed to order his liberty or shall place him at the disposal of competent judges with the alleged evidence in order that they may reach a decision in accordance with the law." [3]/

3. Furthermore, the Constitution states in Article 121 on the power of the President to declare the public order disturbed throughout the entire county or part of it in a state of siege, that through such a declaration. "The government shall have, in addition to the powers conferred by domestic law, such powers as the Constitution grants for time of war

or of disturbance of the public order, and those which, in accordance with the rules accepted in the law of nations, exist in time of war between nations." [4]/

B. Charges in connection with this right

1. In 1979, in particular during the first few months of that year, the Commission received several claims relating to violations of the right of personal liberty. These charges mentioned irregularities and abuses of authority in arrest procedures, massive arrests of citizen, violations of constitutional guarantees and improper exercise of Article 28 of the Constitution by Colombian authorities.

2. During the on-site investigation of April 1980, and after it, the commission received new information regarding the same charges. The charges relate to the following events: a) arrests following raids; b) detention, including warrants; c) jailing, with the use of violence; d) detention including removal of personal effects; e) damages during the raids; f) jailing for more than ten days; and g) being held incommunicado for lengthy periods. [5]/

The Commission transmitted the pertinent parts of the charges to the Colombian Government, which has replied to the request for information. The government has states that, with respect to these matters, it has complied with the terms and formalities set in Article 28 of the Constitution and with the provisions relating to the Code of Criminal Procedure. In addition, it made a number of clarifications, which it considered appropriate.

Several examples of the Government¢s replies follow:

a) "The terms of Article 28 of the national constitution were complied with by keeping him in jail for a period of ten (10) days, as ere the terms on holding persons incommunicado and definition of legal situations as set out in Article 434 and 437 of the Code of Criminal Procedures;"

b) "Starting with the arrest, his legal situation was resolved opportunely and in accordance with the precepts and rules of Article 286 of the national Constitution, and Articles 431, 434 and 437 of the Code of Criminal Procedure;"

c) "For his transfer for the purpose of preventing his escape from the town of Bolivar to Bucaramanga and from Bucaramanga to Bogotá, he was taken under security arrangements in accordance with the Jail Code (Decree 1817 of

1964). In addition, there was no need to hold him incommunicado since, when he was arrested, his juridical situation was already defined." [6]/

3. The Commission received a document on irregular arrests from a group of defense attorneys, which states:

As can easily be seen in this case, most of the accused persons were jailed, were deprived legal counsel, were held for terms of more than then days without being placed under the orders of the competent judge and were subjected to irregular interrogations. It is not true that there were orders to hold them under Article 28 of the National Constitution and therefore, rules set forth in Colombian law and in the United nations Charter were violated. These rules prevent authorities from acting this way and from holding persons for such lengthy periods without legal counsel and being subject to illegal and irregular measures.

A look at the file on the arrest warrants, place of imprisonment, length of time held and the lack of legal counsel in the interrogation will show this. These persons were kept at places other than normal jails, beyond all control. [7]/

4. Among the charges it received, the Commission processed the claim for Mr. Sergio Roman Betarte Benitez, an Uruguayan. In the pertinent parts this claims states that he was arrested on January 3, 1979 after having given unsworn testimony to the judge and held at the Cavalry School and later on, at the La Picota Penitentiary in Bogotá. [8]/

In a letter dated January 19, 1981, the Government of Colombia answered the Commission as follows:

SERGIO ROMAN BETARTE BENITEZ, accused of the crime of rebellion, was captured on January 3, 1979 by troops of the Military Institutes Brigade. Testimony taken on January 11, 1979, by the first Military Criminal Instruction Court. In this procedure, he was represented by Dr. José Luis Rois Aguilar, and later by Dr. Arturo Fúene Macías. In his unshorn statement, he makes no reference to mistreatment.

The office that conducted the investigation ruled on January 20, 1979, that he should be held under preventive detention. While being tried by court-martial, he was sent to the Superior Court (division) of Bogotá since it had jurisdiction and there he was set free.

On March 3, 1981, the claimant commented on the government¢s reply. The pertinent parts of those comments, which were transmitted to the Colombian Government in letters dated march 18 and April 3, 1981, are as follows:

> I have reread several times the letter dated January 19, 1981, in which the Colombian Government notified you to the following effect: “Sergio Román Betarte Benítez, accused… while being tried by court-martial, was sent to the Superior Court (division) of Bogotá since it had jurisdiction and there he was set free.”
>
> Mr. Betarte Benítez is a prisoner at the central penitentiary of Colombia (La Picota) in cell block No. 1, cell No. 329, at the disposal of Judge 106 of the military criminal instruction court, following a ruling issued by the Commanding Officer of the Military Institutes Brigade, Brigadier General Josue Leal Barrera, on February 26, 1981.
>
> Mr. Betarte Benítez in under the orders of Judge 106 of the military criminal instruction court and is accused of a crime that is being tried in an oral court-martial which is now in the public stage and is being conducted for those accused of belonging to the April 19 movement (M-19).
>
> This is a flagrant violation of the unity of the case, as contained in Article 26 of the Constitution of Colombia.
>
> He was separated from this court-martial on January 13, 1981, when, on the instructions from the presiding officer of the court-martial, he was placed at the disposal of the commanding officer of the Military Institutes Brigade.
>
> On January 22, 1981, a request to revoke the warrant of imprisonment against him was submitted to that commanding officer. The request was denied, in said document of February 26, 1981.
>
> It is also true that he has been tortured, as previously communicated to you.
>
> Mr. Betarte Benítez was never placed at the disposal of the civil or ordinary system of justice and has been in jail since January 3, 1979, without ever having gained his freedom during that time.

In March 1981, the Commission met with Mr. Betarte at the La Picota prison. Mr. Betarte turned over documents relating to his case and requested the Commission to intervene on his behalf before the Colombian government so that he could be deported to Sweden a county that had granted him a visa. A ticket for this trip was given to him through the offices of the United Nations High Commissioner for Refugees, which, as he stated, declared him a political refugee on November 20, 1980. The Commission made this known to the Government on March 18, 1981, and requested that it consider the matter in light of Colombian law.

On June 16, 1981, the Colombian Government replied. The pertinent parts of the government¢s reply are as follows:

> 1. The presiding officer of the oral court-martial against the members of the M-19 subversive movement, for rebellion and other crimes, separated Sergio Román Betarte Benítez from that case in January, 1981 and placed him at the disposal of the Military Institutes Brigade where he is being tied for kidnapping former Ambassador Miguel de German Ribón. The accused is in the La Picota jail of Bogotá.
>
> 2. Due to an error in the source of information on this case, it had been communicated that Betarte Benítez had been set free when in fact that release had been accorded to another Uruguayan citizen also associated with the M-19 case. That error is hereby corrected.
>
> 3. With respect to the unity of the case mentioned by the attorney of Betarte Benítez, this is a technical procedural question dealt with by the presiding officer of the court-martial, whose decisions the national government may not review and in any case, it does not constitute a violation of a human right.
>
> 4. As so explained the recourses of domestic jurisdiction nave not yet been exhausted.

C. Application of Article 28 of the Constitution

1. On April 16, 1979, the Commission received and processed a claim dealing with the application of Article 28 and alleged violations of the provisions of the American Convention on Human Rights. The pertinent parts of the charges are as follows:

In accordance with Article 46 of the Convention, the remedies under domestic law have been exhausted and, there has also been an unjustified delay in the decision of the Government of Colombia with respect to may request of February 8, 1979.

Concretely, on February 8, 1979, I sent a respectful petition to the President of Colombia in which I requested suspension, as promptly as possible, of the application of Article 28 of the National Constitution because it was being used not only to deny habeas corpus in cases of arbitrary detentions and other basic procedural guarantees, but also to violate the American Convention on Human Rights of 1969 and the International Pact on Civil and Political Rights of the United nations of 1966. Both of these international instruments were signed and ratified by Colombia and put in effect in this country.

On February 13, I received telex No. 014138 from Diana Turbay Quintero, the private secretary of the President, in which she acknowledged receipt of my note dated February 8, 1979, to the President. On the same day, through another telegram, I requested the President of the Republic "to make an urgent, thorough reply to may attentive request of February 8, with respect to suspension of Article 28 of the Constitution since it is in violation of the international pacts on human rights."

On March 20, 1979, I send another telegram to the President of the Republic: "For purposes of exhausting remedies under domestic law, and in the exercise of the constitutional rights of petition, I respectfully request you to reply to my attentive petition of February 8 on suspension of application of Article 28 of the Constitution because it is in violation o International of American treaties on human rights."

To date, however, the President of Colombia has not replied to my request of February 8, 1979, and therefore I believe that the remedies of Colombia¢s judicial system have been exhausted, a conclusion that can be reached through interpretation of a paragraph of Article 18 (administrative silence) of Decree 2733 of 1959 which regulates the right of petition and issued standards on administrative procedures:

> "Paragraph. Governmental procedures shall be considered to be exhausted when several of the remedies mentioned in the foregoing articles have been interposed and they are understood to be denied after the term of one (1) month has passed without any final ruling on them."

It is obvious that more than sixty days have passed without the Government of Colombia having replied to my petition as is ordered under the terms of Article 1 of Decree 2733 mentioned above: "It is a basic duty of all public officials or agencies connected with

branches of public authority or with the official or semiofficial, national, departmental or municipal establishments or institutes, to make effective the exercise of the right contained in Article 45 of the Constitution by promptly and opportunely ruling on petitions which, in the terms described, are made to them and which have a direct bearing on the activities for which they are responsible."

I. BACKGROUND

1. On January 2, 1979, the Government of Colombia initiated application of paragraphs 2 and 3 of article 28 of the National Constitution:

> "Art. 28, No person may, even in time of war, be punished ex post facto, and no punishment shall be inflicted if it is not under a law, order or decree in which the act has been previously prohibited and the punishment for its commission established.
>
> "Even in time of peace, if there are serious reasons to fear a disturbance of the public order, this provision shall not prevent the arrest and detention by order of the Government, upon previous advice of the ministers, of persons suspected with good reason of attempting to disturb the public order.
>
> "If ten days have elapsed since the time of the arrest and the detained person has not been set free, the Government shall proceed to order his liberty or shall place him at the disposal of competent judges with the alleged evidence in order that they may reach a decision in accordance with the law.

2. By means of application of Article 28 of the Constitution, the Government of Colombia has proceeded to detain many persons who are suspected of "disturbing the public order." [9]/

II. LAW

It is obvious that Colombia has agreed, through the American Convention on Human Rights, "to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those tights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth or any other social condition." (Article 1). Likewise, it agreed to adopt, "in accordance with either constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedom" (Article 2).

If as yet the Government of Colombia has not adopted, as the current international instruments on human rights establish, "such legislative or other measures as may be necessary to give effect to those rights or freedoms" contained in the American

Convention on Human Rights, it should at least abstain from applying paragraphs 2 and 3 of Article 28 of the National Constitution since their application is manifestly violative of the Pact of San José.

Certainly the Government of Colombia cannot, without violating the principle of good faith in compliance with its international obligations, apply paragraph 2 and 3 of this article on arrest and detention of persons "suspected with good reason of attempting to disturb the public order" because by so doing it violates articles 7 and 8 of the American Convention on Human Rights.

Article 7 of the Convention provides, on one hand, the right of all persons of personal liberty and security (No.1) and, on the other, that "No one shall be deprived of this physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State party concerned or by a law established pursuant thereto" (paragraph 2). The causes of deprivation of physical freedom are given in Title V (capture, detention and liberty of accused persons) in the criminal procedure code which are consistent with Article 23 of the National Constitution: "No one may be molested in his person or family, nor imprisoned or arrested or detained, or his domicile residence searched, except by virtue of warrant issued by competent authority, with all legal formalities and for cause previously defined by law.

The application of paragraphs 2 and 3 of Article 28 of the Constitutions violates the guarantees, "Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him" (Article 7.4 of the Convention). The ten-day term is inconsistent with the clear conditions, promptly, and exempts the government of Colombia (in this specific case, the military authorities who raided the domiciles and held the persons) from the obligation of notifying every person held of the criminal charges made against him.

The application of paragraphs 2 and 3 of Article 28 of the Colombian Constitution also violates the guarantees, "any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings" (Articles 7.5 of the Convention). The power of the Government of Colombia to hold for ten days "persons suspected with good reason of attempting to disturb the public order" violates, in consequence, the guarantee of every criminally accused person to be taken ipso facto (promptly) to his natural judge, or to be set free within the normal terms established by the Colombian Code of Criminal Procedure.

It has been widely denounced that military officials detain persons for "interrogation" for a term of ten days under the detention procedure provided in Article 28 of the Constitution, and that this is done not taking into account the retroactive application of such a provision as has been denounced by the defense attorneys of persons being held on suspicion "of attempting to disturb the public order."

In addition, paragraphs 2 and 3 of Article 28 of the Constitution violate the universally recognized guarantee of habeas corpus against arbitrary detention or jailing. This is recognized officially not only in Colombia¢s Code of Criminal procedure (Article 417 to 424) but also in Article 9.4 of the International Pact on Civil and Political Rights of the

United Nations and Article 7.6 of the American Convention on Human Rights.

Article 7.6 of the Pact of San José reads:

"Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. If states Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies."

In consequence, paragraphs 2 and 3 of Article 28 of the Constitution, in the same form as the application of Article 425 of the Colombian Code of Criminal Procedure ("The provisions of this chapter shall not be applicable to the cases discussed in the second paragraph of Article 28 of the national Constitution unless the term of detention set in paragraph 3 of that article has lapsed"), constitute a serious restriction on the remedy of habeas corpus and therefore their current application by the Government of Colombia constitutes violation (ultra-vires) of the American Convention on Human rights.

Finally, the application of paragraphs 2 and 3 of Article 28 of the Constitution violates the judicial guarantees of right to a fair trial established in Article 8 of the Convention, in particular the guarantees included in paragraph 1 of that article:

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

Unquestionably, the military or governmental nature of the military criminal justice system that is being applied against civilians or residents in violation of Articles 26, 55, 58 and 61 of the constitution of Colombia violates the requirement of competent, independent and impartial court provided in the Pact of San José and disregards the universally recognized legal principle of nemo udex in sua causa. Article 170 of the Constitution of Colombia provides a court-martial or military tribunal to try "crimes committed by military personnel in active service and in connection with active service, " but not to try the crimes of either a common or political nature which ordinary citizens may commit. The institution of competent authority (the trial judge), especially in criminal matters, is officially recognized in Article 23 of the Colombian Constitution.

Furthermore, most of the new guarantees provided in the Pact of San José (Article 8) are being violated by the military "investigations" and the applications of the Security Statute

as they are being carried out by the government of Colombia. [10]/

2. In communication No. 0674 of April 23, 1980, the government of Colombia replied to the Commission¢s requests for information about this case. The pertinent parts of its statement are as follows:

1. With respect to the petition to suspend application of the aforementioned article, the considerations given below are pertinent:

a) The President of the Republic may not restrict the powers that the National Constitution confers to the President or to the Government without violating the Constitution itself.

The power that Article 28 of the National Constitution confers must be exercised when circumstances so require.

b) Paragraphs 2 and 3 of Article 28 of the Constitution are not contrary to the American Convention on Human rights. Persons who are deprived of their physical liberty under the terms of the provisions contained in paragraph 2 are so deprived because, according to that provision, they are "suspected with good reason of attempting to disturb the public order," when there are serious reasons to fear a disturbance of the public order." In other words, the deprivation of liberty takes place on grounds and conditions set previously in the Constitution, that is, in accordance with Article 7.2 of the American Convention.

Paragraph 3 of Article 28 establishes a short period of ten days to define the status of the persons held. Although in the opinion of the Government of Colombia this paragraph is compatible with the requirements of the Convention, a very narrow interpretation of the term, "promptly," as used in Article 7.5, would mean that the ten-day term is excessive, it should be kept in mind in any event that, under the present circumstances in Colombia, the application of the measures authorized by Article 28 of the National Constitution is strictly consistent with the provisions of Article 27.1 of the American Convention on Human rights which reads:

"1. In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required y the exigencies of the situation,

provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion or social original.

At the end of this written statement, the claimant says that the application of paragraph 2 and 3 of Article 28 violates the guarantees established in Article 8 of the Convention. A simple reading of these two paragraphs is enough to see the inaccuracy of this statement. The reference that the claimant makes to military justice is out of order, considering that the application of Article 28 is a power of the government, which exercises that power under constitutionally established conditions. A quite different point which does not derive from Article 28 is that there are trials under the military criminal justice system in which civilians are tried in accordance with legal provisions that confer on that system trials of certain crimes during the state of siege. It is appropriate to state that there is no valid reason to consider that the involvement of the military criminal justice system violates the requirement of competent, independent and impartial court made in the Convention. It also cannot be considered that the conferral of trials involving certain crimes is unconstitutional. This conferral of power is duly founded in Article 61 of the Constitution and was so recognized by the Supreme Court of Justice in its ruling of October 30, 1978 on the constitutionality of Legislative Decree 1923 of 1978 (Security Statute).

c. The Government of Colombia has used the power granted to it in Article 28 only as strictly necessary. It has been especially watchful in this area and for this reason it requested the Honorable State Council, as the consultant body of the Government, review the application of Article 28 of the Constitution (Article 141). In fact, that high body issued a favorable judgment on September 13, 1978.

If one makes a careful study of the dissenting votes, one will observe that all the judges agreed that the government could and can hold persons, as established in Article 28, even without consulting the State Council, and in the exercise of the powers of Article 121 of the Court.

However, President Turbay Ayala preferred the narrower opinion so that here would be no doubt of full compliance with the Constitution (attached were the Government¢s request for opinion of the Honorable State Council and its favorable opinion).

2. The Claimant declares solemnly “That the remedies of domestic law have been exhausted.” This statement is not true. If the petition of the claimant were not resolved in the term of one month, it is understood to be denied and Government remedies exhausted, as stated in the paragraph of Article 18 of Decree 2733 of 1959. As amended by Article 80 of

the contentious-administrative governmental remedies are exhausted, the claimant can have recourses to the contentious administrative judicial system, which he has not done to this time. On the topic of administrative silence and its legal consequences, the State council gave its opinion in a finding dated April 19, 1969:

> The phenomenon of administrative silence which is understood to exhaust governmental remedies and which allows the interested party to have recourse to contentious-administrative jurisdiction, cannot be limited to the case of interposition of remedies. It would be completely illogical for lawmaker to have established this procedure for remedies, which are accessories, and not with respect to the request brought before the administration, which is the main point. The lawmakers wanted the administration to not stand mute against petitions made by citizens and, on the basis of this definitive criterion, that is how the individual rules should be interpreted, especially article 45 of the National Constitution and Decree 273 of 1955 which deal specifically with the constitutional right of petition. It should be noted that the remedy of personal review is not obligatory, as is provided for in Article 15 of the same decree, meaning that if a petition is not answered by the administration, it is not necessary to interpose any remedy of personal review and therefore it becomes evident that there is then a typical administrative silence which empowers the interested party to carry his case to the contentious-administrative courts."

The refusal either expresses or presumed, to grant a petition constitutes an act of government. In this connection, it is appropriate to mention the Article 62 of the contentious-administrative code whose text is as follows:

> "Article 62. Decrees, resolutions and other acts of government, ministers and other officials, employees or administrative persons can be brought before the State Council or before the administrative courts, depending on the rules of competence set forth in the two preceding chapters, on the grounds of unconstitutionality or unlawfulness.
>
> "When an act of a particular nature has been carried out by an official, employee or administrative person in the national system, and it violates an executive rule, there shall be recourse to the contentious-administrative judicial system."

In consequence of the foregoing, the recourses of internal jurisdiction have not been exhausted in the case that this charge refers to. [11]/

D. Persons held under Article 28

1. As already stated, before Article 28 can be applied, the Government must comply with a number of requirements set forth in the Constitution. According to a document turned over to the Commission, in the opinion of the Colombian Government, on the basis of its applicable law, all prior requirements must be fully met for the processing of detention of persons held for reasons of public order. These requirements are as follows:

(1) The warrant of arrest and detention of persons must be given by the National Government (may be either oral or in writing).

(2) There must be a prior opinion from the State Council, in accordance with Article 141 of the Constitution even though this is a mandatory requirement, it does not necessarily have to be followed or respected by the Government since the responsibility for public order is the Government¢s and not the State Council¢s. Obviously, the State Council¢s opinion is of great importance since it can lend its judgement to the decision on the situation of public order prevailing at any given time. The state Council, according to commentators, does not have to issued a finding on each case of detention but must issue its general understanding of the overall situation of public order and the other circumstances discussed in Article 28.

(3) The prior opinion of the ministers is required; to arrive at his opinion, the situation of public order must be analyzed by the Council of Ministers and they must give their opinion on the detention of persons.

(4) Serious grounds must exist to fear a disturbance of the public order. The grounds and their seriousness are weighed by the National Government since the Government is responsible for public order.

(5) There must be good reasons to suspect that such persons are attempting to disturb the public order; also, the Government must weight the evidence on such persons.

(6) Article 28 demands that the maximum detention period be ten days; persons detained can be set free, by judgement of the Government, but the maximum time shall be ten days from the time of their apprehension, after which either they are se free or the Government must put them at the disposal of competent judges with the evidence or background information gathered so that the judge may decide the case under the terms of the law

(7) It is a preventive police measure allowed by the Constitution of the Government if it is kept in mind that the President of the Republic, under the terms of Article 120 of the Constitution, is responsible for preserving public order throughout the entire country and re-establishing it where it is disturbed.

(8) This rule applies in both time of peace, in case of domestic disturbance or external war.

(9) In the apprehension and detention discussed in Article 28, habeas corpus is not in order unless the detention term has lapsed, as provided for in Article 25 of the Criminal Procedure Code.

The National Government has complied strictly with the provisions of Article 28 of the National Constitution since the warrant for arrest and detention of a person has been given by the Government. There was the prior and favorable finding of the State Council, given September 13, 1978. In the different situations, there has always been a prior favorable opinion from the Council of Ministers. Serious grounds have been established for believing that the public order is threatened grounds that were serious when that the state of siege was decreed in 1976. Serious reasons that the persons apprehended and detained were attempting to disturb the public order were established. And finally, the apprehension and detention of those persons lasted the maximum of ten (10) days after which several citizens and foreigners were set free and others were placed at the disposition of competent judges and these persons have defined legal situations at law.

2. One of the requirements mentioned was the opinion of the State Council. According to the terms of Article 141 of the constitution, that body is responsible for "acting as supreme advisory board for the Government in matters relating to administration. It shall necessarily be heard in all the matters relating to administration. It shall necessarily be heard in all the cases specified by the Constitution and the law. In the cases dealt with in Article 28, 121, 122 and 212, the Government must hear the matter prior to the State Council. The opinions of the Council are not binding upon the Government except as provided for in Article 212 of the Constitution."

In Colombia¢s present situation, the Government requested the opinion of the State Council in a communication dated September 13, 1978. This request in addition to others, made the following points:

Very respectively and attentively, and in furtherance of the mandate conferred on us by the President of the Republic and by the Council of Ministers, in special session held last night, we request the opinion of the body, as the consultive organ of the Government, to seek application of Article 28 of the National Constitution.

The brutal, monstrous and absurd assassination of former Minister Rafael Pardo Buelvas, yesterday at his home the responsibility for which is claimed by the 14th of September Command of Worker self-defense which accused him of murders; the death in Pereira of Mr. Hugo Velez Marulanda; the brutal homicide of police agents in Paujil (Caqueta) in the area of Cimitarra, in the Central Magdalena area; the demand for economic contributions at Uraba; and the explosion last night of two bombs of considerable explosive power at Villavicencio and in Santa Marta at the newspaper El Informador, are evidence of the existence and execution of a terrorist plan throughout the entire country.

On the same date, September 13, 1978, the Secretary General of the State Council wrote to the President of the Republic and transmitted to him the requested opinion. The text is as follows:

In a communication dated today, the Government, through the Ministers of Justice, Dr. Hugo Escobar Sierra, of National Defense, General Luis Carlos Camacho Leyva and the Secretary General of the Office of the President, Dr. Alvaro Perez Vives, requested the council to issue its opinion as referred to in Article 141, paragraph 1, clause 2, to seek application of Article 28 of the National Constitution.

The Ministers and the Secretary General explained to the full Council the serious circumstances and events that led the Government to make this request.

The Council, after the ministers and the Secretary General withdrew, made a detailed examination of the reasons alleged by the aforementioned officials, considered the situation and analyzed the circumstances of state of siege in the country, in view of the effect of Article 121 of the national Constitution, the legal implications of this status along with the measures that can be taken under the terms of Article 28 of the Constitution.

The Council considered that pursuant to the Constitution, Article 28 could be used in both times of peace as well as d8ring domestic disturbance and external war.

Furthermore, it believes that the events explained y the government are

sufficient reasons to fear greater disturbance of the public order and these circumstances empower it to take the public order and measures provided for in the aforementioned article 28 of the Constitution.

As on an earlier occasion, the Council repeats that these powers should be exercised by the Government, following the limitations and requirements set forth by that rule for each specific case, namely: Order of the Government, opinion of the ministers, serious reason to suspect that the persons are attempting to disturb the public order and that the maximum duration of the detention, on these grounds, does not exceed ten days, all of which are citizen¢s guarantees established in the Constitution. [12]/

3. As has been expressed, for application of article 28 of the Constitution, the Council of Ministers must first issue its opinion. In January 1981, the Colombian Government handed over to the Commission a statistical summary of the application of Article 28 during the period covered by January 1, 1979 to April 15, 1980. It expressed to the Commission that this was the first time that the Government had turned over such information since it is considered it is confidential in nature. Law 63 of October 17, 1923, makes the meetings of the Council of Ministers, when it acts as a consultative body, “strictly confidential” in nature.

The statistical summary mentioned above shows the following figures:

1) That the Council of Ministers was presented with request for the arrest and detention of 3,043 persons.

2. That of the aforementioned number, 1,548 persons were arrested, 1,467 were not arrested and 28 names were repeated on the list, for the total of 3,043 given above.

3. Of the total 1,548 arrested, the following categorization can be made:

a) 685 persons were set free before the end of the ten-day period:

b) 280 persons were placed at the disposal of judges;

c) Detention warrants were issued for 444 persons;

d) Detention warrants were revoked for 47 persons;

e) Nine persons were sentenced by court-martial;

f) 83 persons were sentenced for bearing arms unlawfully.

4. In reference to application of Article 28 of the Constitution, the Government of Colombia also reported, in addition to other matters, the following to the Commission:

> The criminal law prosecutes an individual who has committed a specific punishable act and competent authority orders his arrest. Subversion however, is an action that involves the crimes of rebellion, sedition and riot, which frequently entail. Several persons in their execution, and especially when the arrests follow military actions or combats using regular forces, many members of subversive groups are arrested.
>
> When the government has ordered the arrest or detention of a person or persons, it has always done so on the basis of serious cause to suspect that they are attempting to disturb the public order. No proof is required, simply the suspicion. There has always been the prior opinion of the ministers, meeting in council. And it is good to note, that in Legislative Act No. 1 of 1968, the legislators set the term of ten (10) days for detentions decreed by the government in time of peace on the grounds of public order. This rule thus modified has been viewed by the most demanding persons as a true step forward to guaranteeing the personal liberty of individuals since previously the detention was for an unlimited length of time.
>
> It should be noted that under the Colombian System of criminal Justice, citizens could be arrested in other ways. Examples are orders issued by competent judicial authority, entailing compliance with the requirements of the criminal procedural statute, or their apprehension in the act of commission of the crime, under the terms of Article 24 of the national Constitution. For this reason it is necessary to make this distinction. Besides this, neither the Colombian government nor the judicial authorities are aware of any case in which the capture, arrest or detention has exceeded the legally established terms. Another point that should be made is that preventive detention should not be confused with the other cases mentioned above. When a person is detained by decision of a judge, there is no time period for setting him free unless the judge himself revokes the detention or the accused person pays the penalty or the crime of which he is accused. [13]/

E. Habeas Corpus

1. In the charges made in case No. 4056, discussed in Part C of this chapter, reference is made to the alleged violation of the effective implementation of habeas corpus by stating that the application of Article 28 “violates the universally recognized guarantee of

habeas corpus... [14]/

2. Furthermore, claims received by the Commission regarding persons who are detained and on trial mentioned the lack of effectiveness and exercise of habeas corpus. The following cases are illustrative:

a) Charge relating to Antonio José Puentes and his wife, Carmen Amparo Porro de Puentes, April 24, 1980:

They presented a writ of habeas corpus to the Ibaque Municipal Court in February 1979, but received no reply;

b) Charge relating to Edgard Alirio Avirama and Marco Anibal Avirama Avirama, April 1980:

The attorney for the victims, Dr. Miguel Antonio Vazquez Llano, submitted a writ of habeas corpus to First Municipal Criminal Court of Popayan of February 13, 1979. From this came information that Edgard and Marco were under arrest because of their ties with the M-19 movement;

c) Claim relating to Clementina Torres Alvarez and her son, Raul Mauricio Artunduaga Torres, April 25, 1980:

A writ of habeas corpus was submitted to Judge 102 of the Military Criminal Court and Judge 100 of the Military Criminal Court. [15]/

These charges were answered by the Colombian Government in letter No. 00144 of January 19, 1981 to the Commissioner. In the part concerning the writ of habeas corpus, the letter reads as follows:

> Clementina Torres Alvarez: "With respect to the writ of habeas corpus, since it was not proposed for her in the form and in the manner ordered by law, it was not processed. To this end, this remedy is not submitted to officials of the military criminal justice system but to the municipal criminal court of the locality."

Antonio José Fuentes: "The records for this case show that a writ of habeas corpus

was submitted in February, 1979, but freedom was not granted because this procedure had not been carried out in accordance with terms of law"

Carmen Amparo Fuentes Parra: "habeas corpus was not appropriate in this case since she was granted liberty under the terms of the law of criminal procedure."

The Government¢s reply does not address the case of Messrs. Edgard Alirio Avirama and Marco Aníbal Avirama with specific reference to habeas corpus. However, in the matters concerning the claim of Fabian Sanchez Gómez, transmitted by the Commission as part of the same case No. 7348, the response from the government states:

The arrests were in accordance with orders from competent authority but since there were no grounds for linking him procedurally, he was set free in accordance with the provisions in effect for habeas corpus.

3. Through the Ministry of Justice, the Government turned over to the Commission on January 16, 1981, an analysis of habeas corpus in Colombia, described in the following terms:

This extremely important writ for the protection of personal liberty and individual rights is officially recognized as a reflection of the fundamental freedoms established in Title III of the National Constitution and set out in Articles 417 to 425 of the current Code of Criminal Procedure.

The basis for this is the right of all persons to know the reasons for which they have been deprived of their liberty. Habeas corpus is appropriate as a remedy when the person has been deprived of his liberty for more than 48 hours and believes that the law is being violated.

The petition can be submitted directly by the person who believes his rights have been violated, or can be presented by another person on his behalf, or the Public Ministry can present the writ. In the latter case, in our constitutional legal structure (Legislative Act No. 1 of 1979) the Office of the Procurator General of the Nation is responsible for defending the legality of accused persons and the respect for human rights.

The writ of habeas corpus is studied immediately and the judge to whom it is presented hears it.

If the petition is in order, the judge requests the respective authorities to inform him within 24 hours in writing about the date of the arrest and the reasons for it. He may also personally question the aggrieved person.

If the reports or any other means of information prove that the person has been arrested or detained without legal formalities, the judge shall call for this being set free immediately and shall initiate the corresponding criminal investigation of the authorities who carried out the arbitrary arrest. The new criminal code (which went into effect on January 29, 1981) provides complete regulations on arbitrary detention as a crime (Articles 272 to 275). Specifically, Article 275 punishes the judge who ignores habeas corpus with arrest from six months to two (2) years and loss of employment.

From a practical standpoint, there is no room for doubt that habeas corpus has operated and continues operating satisfactorily in Colombia. In the country¢s courts, one can clearly see how writs of habeas corpus have been processed with all the legal formalities and the fullest respect for the essential human right of liberty.

The new Code of Criminal Procedure that will be issued on January 29, 1981 likewise guarantees habeas corpus as an action guaranteeing individual liberty against unlawful placement in prison or under arrest and unlawful deprivation of liberty.

The guarantee of habeas corpus is even broader and more complete in our future criminal procedure statute. In that statute it is in order for both felonies and misdemeanors and also for police actions involving abuse. It also makes the habeas corpus process more flexible.

[Table of Contents | Previous | Next]

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[1] Article 7 of the American Convention on Human Rights reads as follows: "1. Every person has the right to personal liberty and security. 2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto. 3. No one shall be subject to arbitrary arrest or imprisonment. 4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him. T. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial. 6. Anyone who is provided of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies. 7. No one shall be detained for debt. This principle shall not limit the orders of a competent judicial authority issued for nonfulfillment of duties of support.

[2] Article 23 of the Political Constitution. Article 24 of that Constitution reads as follows: "An offender who is caught flagrante delicto may be arrested and taken before a judge by any person. If the agents of authority pursue him and he takes refuge in his own dwelling, they may enter for the purpose of apprehending him; and if he seeks to escape in the dwelling of another person, the consent of the owner or tenant thereof shall first be obtained." As regards arbitrary detention, the criminal code provides: "Article 272. Illegal deprivation of liberty. An official who, in the abuse of his authority, deprives another of his freedom, shall be liable to imprisonment of one (1) to five (5) years and shall be discharged from employment. Article 273. Unlawful prolongation of deprivation of liberty. An official who unlawfully prolongs the deprivation of liberty of a person shall be liable for a term of six (6) months to two (2) years and loss of employment. Article 274. Special arbitrary detention. An official who without complying with all legal requirements deceives a person to deprive him of liberty or to keep him under security measures is liable to confinement for six (6) months to two (2) years and loss of employment."

[3] The full test of Article 28 is given in Chapter I.B.3 of this report.

[4] The text of this articles the conditions and formalities to which its application is subject are given in chapter I.E.I.2 of this report.

[5] Cases 7348 and 7378 are referring to the M-19 and the FARC, respectively.

[6] Case 7348 referring to the M-19 and case 7375 referring to the FARC. Government communications sent to the Commission dated August 22 and October 15, 1980

[7]. Memorandum dated April 22, 1980, delivered to the Commission by the attorneys defending those persons associated with court-martials being conducted at the Baraya Batallion and the related investigation of them, for trial as presumed member of the Fuerzas Armadas Revolucionarias Colombianas (FARC).

[8] The original claim is dated April 24, 1980. The Commission transmitted the pertinent parts of this claim to the government in a note dated November 3, 1980, as part of multiple case 7348 relating to the M-19. Later, the Commission treated this as a separate case, No. 7819, for processing purposes, which it mentioned, to the Colombian government in a letter dated April 30, 1981. For more on this case see also Chapter V. E.3 of this report on the oral court-martial of the M-19.

[9] Nos. 3,4,5 and 6 of this section on background deal with aspects that are exactly similar to the first part of this charge.

[10] This case dealing with the charge presented by Dr. Pedro Pablo Camargo was originally No. 4056. On April 18, 1979, the Commission transmitted to the government the pertinent parts mentioned above. On July 11 of the same year, the Commission sent additional information provided by the claimant, who later sent to the Commission other documents providing supporting information. On April 34, 1980, the government replied to the Commission and the pertinent parts were transmitted to the claimant for his observations to the Commission in connection with the government¢s reply. These observations wee then sent by the Commission to the government on July 25, 1980. On August 29, 1980, the Colombian government replied to the Commission and the pertinent parts were remitted to the claimant on September 10. On September 29, the claimant sent new observations to the Commission and these in turn were transmitted to the government on October 7, 1980. The government then replied to the Commission on November 21.

[11] The government replied to the Commission in communication No. 0674 of April 23, 1980, sent through the Colombian diplomatic mission to the OAS on May 7, 1980. On August 29, 1980, in communication No. 001755, the Colombian government wrote to the Commission repeating the ideas and considerations it gave earlier on this case and on November 21 of the same year, in communication No. 698, it repeated its opinions once again on this case.

[12] The opinion of the Council of State was approved by a majority of 12 votes of its members. Other counselors dissented or issued clarifications of their votes. Those dissenting were the counselors Jaime Betancur Cuartas, Jaime Paredes Tamayo, Jorge Valencia Arango, Humberto Mora Osejo and Miguel Lleras Pizarro. The counselor Jorge Davila Hernández made a clarification of his vote. In cases of dissent and clarification, the considerations on which those members of the Council of state based their opinion are explained.

[13] In the speech that the President of the Republic delivered to the members of Association of Democratic Attorneys in a meeting on February 7, 1979, he made the following point about the application of Article 28: “There are two ways to interpret Article 28 of the national Constitution. One is when the public order is disturbed and the country is under a state of siege in which authority might be appropriate without any further limitations than those established under international law in this area. The other is the restrictive rule of Article 28 of the Constitution, which even during times of peace can be applied, with a limit of ten days on the detention. We discounted the fact that we were in a state of siege and that we should proceed without any further limitation than that of international law for its application, just as it could be applied only during times of peace with the limitations of the ten-days period. As a result, we put ourselves in a position by which we have shown that we do not want to abuse any of the measures that the lawmakers established to guarantee state security and to defend it against all threat as that surround it in modern times, not only in the case of Colombia but in most democratic countries.

[14] The Colombian Penal Code establishes, in Article 275, the following: “Rejection of habeas corpus. Any judge who does not process or decide within the legal terms a petition of habeas corpus or prevents its processing in any way shall be liable to arrest for six (6) months to two (2) years and loss of employment.”

[15] The parts of these cases given above are for the charges contained in case No. 7348 relating to the M-19 which was transmitt4d to the government in a communication on November 3, 1980. The persons to whom the charges referred were being detained.

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

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REPORT ON THE SITUATION OF HUMAN RIGHTS IN THE REPUBLIC OF COLOMBIA

CHAPTER IV

RIGHT TO PERSONAL SECURITY AND HUMANE TREATMENT [1]/

A. General Considerations

1. In this chapter the Commission looks at two aspects relating to the observance of human rights in Colombia. One is the prison system and the other relates to unlawful treatment and torture.

Colombia¢s basic legal structure recognized the guarantee of the right to personal security and humane treatment. Article 23 of the Constitution, mentioned in an earlier chapter, states, “No one may be molested in his person or family, imprisoned or arrested or detained.. except by virtue of a warrant issued by competent authority, with all legal formalities and for cause previously defined by law.”

2. The penal code that went into effect on January 29, 1981, contains specific rules on this right. Some of these rules were not included in the proceeding procedural law. In this sense, for “crimes against personal security,” regulated in the third chapter of Title X of that code, it provides, “any person who subjects another to physical or mental torture shall be liable to imprisonment of one (1) to three (3) years, provided that the act does not constitute a crime punishable by longer sentences.” [2]/

According to the same criminal code, the existing major punishments are imprisonment, confinement and fine. Imprisonment and confinement consisted of “deprivation of personal liberty, to be carried out in the places and in the manner provided for by law.”

3. In addition, Colombia¢s present criminal legislation covers personal injury in matters pertaining to crimes against personal integrity and regulates the punishment of those who inflict injury to the body of another person or to their health. [3]/

4. Likewise, the Code of Military Criminal Justice regulates crimes against personal security. It specifies personal injury as well as the punishments that are given to military personnel who, in their service or as a result of it or of the functions inherent in their position and without the intention of causing death, inflict upon another person bodily injury or injury to health or mental disturbance. [4]/

5. During the on-site investigation, the Commission was interested in determining objectively the situation regarding the prison system and unlawful punishment and torture. To that end, it visited several prisons and detention centers in different parts of the country.

It spoke with the prisoners and accepted claims referring to the right of personal security and humane treatment.

6. In an interview held on April 21, 1980, the President of the Republic told the Commission that the situation of prison establishments in Colombia could not be considered comfortable. It is one of over-crowding, especially in the provincial facilities. This situation is attributable to both the population increase and to budget limitations. He added that as a result of the Constitutional Reform of 1979, a substantial investment would be included in the national budget for improving prison facilities. In addition, President Turbay Ayala told the Commission that he could not rule out the possibility that lower authorities had violated human rights, a situation, which the government flatly refused to allow. He also said that claims of human rights abuses had been investigated fully by the office of the Procurator-General of the nation in order to determine who was responsible for such deeds.

B. Prison System

1. Colombia¢s prison system is regulated by Decree No. 1817 of 1964.

The Minister of Justice of Colombia stated to the Commission that on the basis of Article 62 of the Constitutional Reform of 1979, a large part of public funds will be invested in the construction of new prison establishments and in modernizing existing facilities. [5]/ He also stated that the Colombian prison population will decrease in upcoming months when Law No. 22 of September 17, 1980, goes into effect. This law issued regulations designed to secure prompt and effective administration of justice. Other laws in this area have been passed for the development of the foregoing law, known as the judicial Emergency Law. The Minister of justice explained that Colombia¢s courts have approximately three million cases on their dockets. Of these, 60% are criminal proceedings. Implementation of law No. 22 law will create 884 new magistrate and assistant and associate judge positions. These persons will be in charge of issuing warrants and sentences under the responsibility of the heads of the judicial branch. The officer stated that the law provides that the accused person shall regain his freedom if a hearing decreed by an order to proceed is not carried out within a year. The fact is that many people have been detained without their legal situation having been defined and the new procedures will help to alleviate overcrowded conditions in jails.

Furthermore, the Minister of Justice stated that current imprisonment rules dating from 1964 would be amended or replaced by new rules. The draft of this law should be submitted to the Congress of the Republic for approval in committee composed of four magistrates who will develop a new national police code and new rules on the prison system.

2. Decree No. 1817 of 1964, which reforms the prison code of 1935 and makes additions to it, and which constitutes the current legal structure for this area, regulates the establishment, organization, management, administration, budget and supervision of the penitentiaries, national agricultural colonies, jails in the seats of judicial districts and jails in cities where there is a Superior court, under the control of the Ministry of Justice. It provides that the prison service is to be divided into the following centers: a) rural and urban penitentiaries; b) district jails; c) municipal jails; d) military jails; e) agricultural, industrial and combination colonies; f) women¢s jails; g) criminal tuberculosis sanitariums; h) asylums for the criminally insane; I) psychiatric wards; and j) institutions for protection of recently released prisoners.

The decree also established that all detained or sentenced persons would be provided lodging, food and bed, payable by the state or the municipalities, when appropriate. They will also be given education and work opportunities consistent with their human dignity and sentenced persons will also be entitled to clothing and footwear. The dormitories or cells should have conditions necessary for cleanliness, hygiene, air, light and space, according to the prescriptions set forth or determined by the respective medical personnel. All sentenced or detained persons must have at least four cubic meters of air space in their dormitories. All

the prison establishments must have outside yards or additional land, with proper security, where the detained or sentenced persons can enjoy movement and exercise necessary to their health or repose. Finally, daily food is obligatory for all detained or sentenced persons. In accordance with the decree regulating the prison system, for as long as the adaptations and reforms of the detention facilities are being carried out and the sentences being fulfilled, the rules in effect for the prisoners are determined in accordance with the crimes discussed in the criminal code. [6]/

3. According to a document issued by the General Prisons Office, which was turned over to the Commission in January 1981, by the Ministry of justice, Colombia¢s prison system is based on the following concepts:

EDUCATION: Includes all matters relating to instruction, literacy training, and spiritual and psychological counseling.

DISCIPLINE: The foundation of the organization of the community in which the prisoners must abide by certain rules for internal order.

Furthermore, the government is concerned with the overall health of prisoners since it believes that health is the foundation of rehabilitation. Good health predisposes the prisoner to work, study and accept the rules and regulations as one phase of rehabilitation treatment.

The progressive system is used, ending with preparations for liberty and preparatory privileges which is the immediate preparation for freedom.

There is a home for former prisoners, which helps those gaining their freedom to obtain work, clothing and fare to return to their place of origin, if necessary. They may remain at this former prisoner¢s home for up to 15 days with good lodging and food.

The same document points out that, Colombia¢s jails have 33,957 prisoners counting both sentences and detained persons. The National Prisons Office controls 188 detention and sentence establishments in the country, distributed as follows: ten jails for women; seven penitentiaries; 22 circuit court jails; one jail for military personnel located in Tolemaida; one jail for police officers located in Twelfth Police Station; one agricultural penal colony located in Acacias and one prison in Gorgona. Long sentences are served at the penitentiaries. Shorter sentences are served in the jails. Those accused of the crime or rebellion are kept in penitentiaries and judicial district jails.

As concerns the budget financing proposal for Colombia¢s penitentiary system, the aforementioned document provides the following data:

PROPOSED BUDGET FINANCING FOR THE PENITENTIARY SYSTEM OF COLOMBIA

Construction, equipment and repair of jails	80,260,000
Equipment for farms and jail workshops	7,940,000
Training of administrative personnel of jail Establishments	1,000,000
Training of guard and security personnel	3,000,000
Social Counseling for prisoners	4,000,000
Penitentiary investigation	500,000
Administration of Women¢s jail at Medellín	100,000
OPERATING EXPENSES	
Administration and Penitentiary system	85,461,000
Personnel services	193,375,000

GENERAL EXPENSES	
Prisoner food expenses	437,863,000 [7]/

C. Jails and other Detention Centers

1. During its on-site investigation the Commission visited several jails and military centers in Colombia. It conducted personal inspections of these facilities in order to develop an objective idea of the conditions in Colombia¢s prison system.

The centers that make up Colombia¢s prison systems are for holding persons sentenced for common crimes but they are also used for person¢s accused of subversive activities by the government.

2. The Commission¢s visits to these centers included looks at the cellblocks for different types of prisoners, and, in general terms, a view of the structure and operation of the centers. During these visits, the Commission exchanged ideas with the authorities of the centers and also spoke with some prisoners. During the visits the members explained the Commission¢s objective in Colombia.

As a result of its visits to these centers, the Commission also took special initiatives regarding the health of several prisoners held at different jails in the country. It sent letters to the Colombian government requesting the necessary medical care for each case in communications dated April 2 and May 2 of 1980. On July 28, 1980, the commission received note No. 01446 from the Colombian government, through the Ministry of foreign Affairs. This note states, “According to information form Col. Adolfo Leon Gómez Isaza, the Director General of Prisons, medical care was given opportunely to the Director General of Prisons, medical care was given opportunely to the personas referred to in the communications of April 29 and May 2, 1980.”

3. The Commission¢s evaluation of the detention establishments it visited follows:

a) La Picota Central Penitentiary in Bogotá

This is a jail for men located in the city of Bogotá. The facility, of old construction and traditional style, is isolated and well protected. The penitentiary houses prisoners who were important leaders of the M-19. This jail has a considerable criminal population. It is a large facility and the prisoners there are rather well taken care of, despite the limitations noted. It is surrounded by high walls and its inside yard is usable for recreation.

The Commission toured the entire establishment. It interviewed authorities of the prison that provided it with full facilities for this purpose. Interviews with several prisoners revealed no complaints about the conditions of the establishment, the food or the treatment they received. In general, however, prisoners who were not common criminals made reference to being mistreated and tortured while being investigated by not at the detention center itself.

La Picota jail has a rather large chapel, which in recent months has been used for the oral courts-martial-martial of persons accused of being members of the M-19, a nursing center which provides medical care and a punishment yard used for individual treatment of prisoners given special disciplinary punishment.

The cells are small in size but each prisoner has his own unit containing a bed, desk and seat. Prisoners are allowed to have books, magazines, radios, and other personal articles in their own cells. They do not wear prisoner uniforms but whatever clothing they desire. It can be said that the guard’s regular visits from their families and their defense attorneys.

b) Model Prison in Bogotá

This is a penitentiary center located in the city of Bogotá. The Commission was received by its director who, in offering his cooperation, stated that the center is a district jail with a very high criminal population which exceeds its capacity. The jail houses both common criminals and others detained on the order of the Military Institutes Brigade. He also said that the rear part of this facility had been dynamited, resulting in the escape of several prisoners, and that it is a detention center for men.

The Commission was told that the prison was originally designed to hold approximately 2, 000 prisoners. At this time, however, it housed more than 4,000. The criminal population is fluctuating.

With respect to those accused of subversive activities, the center director stated that they are divided essentially into two groups.

The Commission went through the establishment and inspected its five yards. It met with a certain number of prisoners in each of these yards. Several prisoners complained of the poor conditions in the prison, poor food and insufficient medical care. Most of the prisoners under the military criminal justice system are accused of belonging to the FARC and are being tried at his time by the appropriate oral court-martial. Most of the prisoners interviewed told the Commission that they had been mistreated and tortured during their investigations and interrogations but not at the penal center itself. Some of them showed the marks of the mistreatment they received.

Furthermore, the Commission noted the existence of an area of special cellblock for minors, age 16 to 18, in which there were no individual cells. There is a large room, which serves as a common dormitory, and next to it are sanitary services and showers. This center also has a cafeteria run by a social worker and a nutritionist. It has individual rooms where the minors attend classes. The facility has six teachers for primary education.

The prisoners do not wear any type of uniform. The cells are small and the prisoners are allowed to have personal objects in them. They are allowed regular visits from family members and defense attorneys.

c) The Buen Pastor Jail in Bogotá

This detention center for women is located in Bogotá. The Commission was attended by the Assistant Minister of Justice who offered his full cooperation and facilities for the fulfillment of the Commission's objective. Also present were the director, the assistant director, the legal consul and two social corkers of this prison. The director stated that the jail was exclusively for women and that at that time id had 417 women prisoners and 20 women sentenced for subversion. The director also noted that the prisoners received uniform treatment, no matter if their crimes were common crimes or crimes against the security of the state.

The visitors system is regulated by a set of rules, but visits of defense attorney are regulated by specific instructions of judge. The reason for this measure, it was explained, is that on several occasions' attorneys who were not the actual attorneys appointed by the prisoners have sought entry.

The rules also allow for conjugal visits and special treatment of pregnant prisoners. The latter are allowed to leave the jail to have their children, although, according to several prisoners, this has not always been carried out. Several prisoners have had their children in jail. Close to the jail is a small school for the prisoner's children.

The Commission was also told that the prisoners are classified according to a procedure, which consists, first of all, of gathering biographical data about them after which they are divided by type of crime committed. After this, they are assigned to the corresponding cellblock.

The Buen Pastor jail consists of large installations in a relatively new structure. It has large yards and long corridors, with cellblocks on the sides. In addition, there is a special cellblock for psychiatric treatment. The cellblocks interconnect with a center block and the cells, although individual in design, hold two persons each.

Only a few prisoners were being held for subversion at the time of the Commission's visit. They stated that they had been subjected to mistreatment and torture during their interrogations but not at their present place of detention.

d) Bellavista jail in Medellín

This is a jail for men located in the city of Medellín, in a part of the city somewhat removed from the downtown area. This is a rather large installation and two additions scheduled for completion in 1981 are now being built.

The penitentiary center is overcrowded. It has more than 5,000 prisoners although its capacity is much smaller. At the jail entrance is a blackboard showing the number of prisoners in the different cellblocks. Prisoners sentenced for common crimes and those accused of crimes of subversion are mixed due to the overcrowding at the jail. According to the rules, prisoners should be separated by type of crime committed.

The penitentiary has workshops for carpentry, metal-working, furniture-making, shoe repair, metal-casting, mechanics and electricity. It also has a chapel, a medial center and a large number of cells, all of which were seen by the Commission. During the tour, jail authorities gave explanations of the facilities to the Commission.

The Commission was told that the number of prisoners entering the jail fluctuates daily and that the number of prisoners who have not committed common crimes is approximately 300.

The Commission was welcomed by the director of the jail, and his legal advisors. All of these individuals are civilians. These authorities gave their full cooperation to the Commission during the visit. The Commission met privately with a certain number of prisoners in the jail chapel. They were folds that despite the overcrowding, the prisoner's conditions were rather acceptable. None of the prisoners complained of mistreatment in the penal center itself or of poor food or extremely rigid discipline. They said that the jail¢s authorities behaved correctly. However, most of the prisoners being held for subversive activity stated that they had been tortured during their investigations and interrogations.

e) Villanueva jail in Cali

This jail for men is located in the city of Cali. The Commission visited it and met with several of the prisoners, after having spoken first with jail authorities. The director, who has taken studies in penal matters and criminology and has experience in this field, gave full explanations and the criminology and has experience in this field, gave full explanations and the Commission could see that he knew each of the prisoners well. It also saw that there was a climate of mutual trust. The prisoners praised the conduct of the director of this penal center.

As stated before, the Commission met with several prisoners. Those who were being held as suspects in subversive activities told the Commission that, in general, during the interrogation following their arrest, they were mistreated and tortured, but not at the jail. They stated that they were satisfied with the system followed by the jail's authorities.

The Villanueva jail consists of rather old installations which, despite their size, are obviously overcrowded. A special program for those sentenced for common crimes allow them to work outside of the jail and they are able to help their families. They return to the detention center at night.

f) Model jails in Bucaramanga

This jail center is located in the city of Bucaramanga, within the limits of the city itself. The Commission was received by the director, who gave explanations about the center and answered all question addressed to him,

The director stated that the jail had more prisoners than it was designed for, that most of the prisoners were common criminals and that the others were there for subversive activities.

The construction of the jail is old and not very large. The Commission saw a relatively small yard where the prisoners stay during the morning hours until the afternoon, engaging in conversation, study or other activities without interruption.

The Commission met with a large number of prisoner's accused of crimes of subversion in the prison chapel. They stated that since their arrival at the jail, they had been treated satisfactory. They also stated that in the prior stage of interrogation, they had been mistreated and tortured, but not at the jail itself. The cells are small and the ones that the Commission saw open to the aforementioned yard. Most of the prisoners that the Commission saw were in the yard while others were in their cells, which were left open.

g) The Buen Pastor jail in Bucaramanga

This is a correctional facility for women located in the city of Bucaramanga. Its installations are rather large and of old construction, with bedrooms that are used as cells. It was visited by the Commission whose members spoke to the nuns who are in charge of the jail, as well as a large number of prisoners, all whom were there for subversive activities.

The Commission inspected a large room where the prisoner's children are kept. Their mothers are with them during the day.

The prisoners interviewed by the Commission stated that during their investigations and interrogations following their arrest, they were mistreated and tortured by that was not the case at the jail itself. They added that, generally speaking, they received satisfactory treatment there. However, they stated that at certain times, they are not allowed to do certain things such as listen to the radio or read newspapers.

The prisoners are taken care of, by nuns belonging to the Sisters of the Presentation Order. This Order is responsible for the detention center. They help the prisoners in different activities, among them, washing and ironing of clothing class room, a sewing room to make clothing for small children and a classroom for primary education.

Most of the prisoners are there for having committed common crimes, primarily theft and murder. The Commission inspected two cells for those being held incommunicado where, it was said, prisoners are kept before going to interrogation. The purpose of this is to keep them from mixing with others held for prior processing. The Commission also saw a punishment cell which was extremely small. It had an iron door, no window and was extremely dark.

The commission saw that this jail had very good sanitary conditions and was kept clean. It has large yards and gardens, which are the recreation areas for the prisoners.

There is an atmosphere for trust and respect between the prisoners and the nuns.

h) Military centers

During its on-site investigation and after it, the Commission visited several military centers, all located in Bogotá. Some of these centers were used for provisional detention. A summary appraisal of these centers follows:

i) Artillery School

This center is located in the capital city of Colombia, approximately two miles from the La Picota prison. The artillery School is a provisional detention center for women. When it was visited by the Commission, 16 women prisoners were being held there accused of crimes against state security. They are waiting to be tried by the oral court-marital in Bogotá. Several of the prisoners were brought there from other jails in Colombia. This detention place consists of a large room, which is used as a dormitory, allowing no privacy, Next to this room is a bathroom with two sanitary services a shower. Visits from family members and attorney are allowed every eight days, on a schedule of 9:00 a.m. to 12 noon. Officials of the commission met privately in the cafeteria with several prisoners who stated that after their arrest they ere hit and then tortured.

ii) Cavalry school

This is a military center located on the outskirts of Bogotá where prisoners accused of subversive activity is kept temporarily for purposes of interrogation during the investigation stage. The installations are rather large, with small green areas located in different parts. It has an area of administrative offices, prisoner records and control area, and numerous cells located next to each other in cellblocks on a single floor which open to the yards. The cells are individual and the prisoners are kept in them with the doors closed. They are kept under permanent guard. The facility also has a water trough area, multifamily buildings for facility officers a shed and a garden.

iii) Military Institute Brigade

This is a modern building with strictly military-type installations. It has offices for executive and administrative functions and no detention facilities. It is across a street from the Cavalry School.

iv) Baraya Batallion

This is a large, well-protected military center with spacious buildings and large yards. In 1978 it was a provisional detention center. This place was the location of the oral court-martial of person's accused of belonging to the FARC.

D. Mistreatment and Torture

1. In late 1978 and during the first few months of 1979, the Commission received several claims relating to mistreatment and different types of torture by Colombian public agents.

The Commission stated processing these charges by remitting to the government the pertinent parts of them, in accordance with its regulations. The purpose of this was to establish objectively the veracity of the charges.

2. During its on-site investigation, the Commission received testimony relating to the charges contained in the individual written claims, which ere given to it at that time, and

in its interviews with prisoners being held in different jails of the country, with their defense attorneys and with human rights organizations which turned over several documents on this matter to the Commission. In general, the charges state that the physical mistreatment and the torture were carried out at temporary detention places or centers during the interrogation stage of the investigations.

3. The charges received and analyzed by the Commission mention the following detention places or centers where the mistreatment and torture were carried out:

1) Nueva Granada Batallion of Barrancabermeja;
2) Pichincha Batallion in Cali;
3) Inocencio Chinca School of Popayán;
4) Fifth Brigade of Bucaramanga;
5) Cavalry School in Bogotá
6) La Remonta;
7) Military Institutes Brigade;
8) Rook Batallion of Ibaqué;
9) Bolívar Batallion in Tunja, Boyacá;
10) Sogamoso Batallion;
11) Sacramonte Caves;
12) Cisneros Batallion of Armenia;
13) Codazzi Batallion of Palmira;
14) Tarqui Batallion, Sogamoso, Boyacá;
15) La Raya camp in Antioquia;
16) Polvorines camp in Rio Meléndez;
17) Villanueva Jail;
18) San Mateo Batallion;
19) Military Police Batallion No. 4, Fourth Brigade in Medellín;
20) Santa Elena;
21) Administrative Security Department (DAS);
22) San Isidro Penitentiary in Popayán;
23) Batallion No. 1 of the Military Police of Bogotá;
24) National Penitentiary at Palmira;
25) Military Post of Yacopí;
26) La Palma Police Station in Bucaramanga;
27) Cimitarra Military Station;
28) Bucaramanga Military Station;
29) La Victoria Military Station in Boyacá;
30) Boyacá Batallion;
31) Military Police Batallion H-1 of Puente Aranda in Bogotá. [8]/

4. The charges mention the following among the different forms and methods of torture: Long waits in the sun during the day and sleeping outside at night; drowning and submerging in water; application of the “submarine”; being blindfolded up to 12, 17 and 20 days; being blindfolded and tied for 47 days in Cimitarra; subjection to blows on different parts of the body with sticks and being kicked; being prevented from sleeping up to eight days and lack of rest; death threats to the prisoner, his family and friends, hanging by the hands; no water or food up to four, seven and eight days; pretending to shoot them in the head; being handcuffed; torture of other persons close to the cell so that their screams could be heard; being held incommunicado; application of electrical energy and shocks to different parts of the body; exercises until exhausted; being kept nude and standing; provocation of suffocation; “being washed”, walking on the knees; psychological torture; ducking in a lake while tied; cigarette burns; taking prisoners during raids and using them as shields while being handcuffed and blindfolded; pretending to shoot at persons hanging from trees; placement of weapons in the mouth; braking of nerves as a consequence of hangings; being kept nude and ducked in a river; refusal of medial care for pregnancy; breaking of ribs; being tied, blindfolded, permanently at times, hit with a stick, being kicked; wounded in the back

by a firearm, at the detention place; threats of bringing family members to torture them in their presence; witnessing torture of other persons; convincing them that other accused persons had pointed the finger at them as participants in the same events; beings pricked with needless indifferent parts of the body; continuous interrogation and confessions forcing them to say that they had participated in an attack.

[Table of Contents | Previous | Next]

[1] Article 5 of the American Convention on Human Rights reads as follows: "1. Every person has the right to have his physical, mental, and moral integrity respected. 2. No one shall be subjected to torture or to cruel, inhuman, or degradation punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person. 3. Punishment shall not be extended to any person other than the criminal. 4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons. 5. Minors whole subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may e treated in accordance with their status as minors. 6. Punishments consisting of deprivation of liberty shall have as essential aims the reform and social readaptation of the prisoners.

[2] Article 279. Under the previous criminal code, before acts of torture could be punished, it was necessary that the acts be included as part of other crimes such as the abuse of authority or the crime of personal injury.

[3] Article 41, 45 and 331 to 342.

[4] Articles 193 and 202 to 211 of the Military Criminal Justice code.

[5] Article 62 of the constitutional reform contained in legislative Act. No. 1 of 1979, reads as follows: "From January 1, 1981 on, the national Government shall invest no less than 10% of the general expenses budget in the judicial branch and in the Public Ministry."

[6] Articles 1,2,3,5,14,15,16,17 and 25. Decree No. 1817 of 1964 has the following tittles: First title on provisions common to all detention establishments, sentences and security measures; second title on penitentiary personnel; third title on training, preparation of personnel, professional career and disciplinary system, fourth title on internal rules; fifth title on detained persons; sixth tittle on system for sentenced persons; seventh title on agricultural an d penal colonies; eight title on social assistance in jail; and ninth title on organization and regular personnel of the division of prisons and its dependent offices. Jails in Colombia are under the supervision and control of the National Prisons Office, part of the Ministry of Justice. On the basis of Decree 1917 of 1964, several decrees, resolutions and regulatory laws have been passed in this area. Among them are decree No. 1522 of 1966, the organic statute of the national Penitentiary School; Resolution No. 0003 of January 3, 1967, on rules regarding escapes; Resolution No. 0010 of January 31, 1967, on special funds for expenses of education and provisions for the consumption of the confined population and establishment of purchasing boards; Law 40 of 1968 on reduction of sentence; Law 32 of 1971 on reduction of sentence for work and study; Resolution No. 0038 of July 10, 1972, on grants of special permits to prisoners; Resolution No. 245 of July 10, 1973, on administration of personnel and supervision of the General Prison Office; Decree No. 25537 of December 11, 1973, on the operation of reorganization of the penitentiary career.

[7] Note No. 0063 to the Secretary General of the Ministry of Justice from the Technical Assistant of the National Prisons Office, dated January 15, 1981. The amounts included in the budget proposal for Colombia¢ s prison systems are in Colombian pesos, equivalent to approximately fifty pesos per dollar.

[8] Charges' relating to cases Nos. 7348 for the M-19 and 7375 involving the FARC.

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Organization of American States

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REPORT ON THE SITUATION OF HUMAN RIGHTS IN THE REPUBLIC OF COLOMBIA

CHAPTER V

RIGHT TO A FAIR TRIAL AND DUE PROCESS [1]/

A. General Considerations

1. The national Constitution of Colombia recognizes the legal guarantee of right to a fair trial and to due process. Article 26 of the Constitution reads: "No one may be tried except in conformity with laws enacted prior to the commission which he is charged, by courts having competent jurisdiction, and in accordance with all formalities proper to each case. In criminal matters, a permissive law or law favorable to the defendant, even if enacted after the commission of the alleged offense, shall be applied in preference to a restrictive or unfavorable law." [2]/

Furthermore, Title XV of the Colombian Constitution deals with the administration of justice and its structure and operation. The 1979 constitutional reform made substantial changes in this area.

Also, Article 170 of the Constitution of Colombia establishes military jurisdiction in the following terms: "Courts-martial or military tribunals shall take cognizance, in accordance with the provisions of the Military Penal Code, of all offenses committed by military personnel in active service, and in relation to that service."

2. Before, during and after the on-site investigation, the Commission received claims referring to irregularities in the functioning of the justice system and due process in Colombia. These claims have been processed in accordance with the Commission's Rule of

Procedure.

B. The Ordinary Justice System

1. The ordinary justice system is the responsibility of the judicial branch of Government. According to the Constitution, justice is a public service that is the responsibility of the nation. Title XV of the Constitution regulates the structure and operation of the administration of justice, as is discussed in Chapter I of this report.

The 1979 Constitutional reform made significant changes in Colombia's judicial system. Among these were the establishments of the Office of the Attorney General and the Superior Council of Judicature. The latter has, in addition to other powers, the functions of administering the judicial service, seeing to it that justice is administered and enforced promptly, and ruling on conflicts of competence that arise between different jurisdictions.

In the area of the judicial branch of Government, this reform also gives the government the power to establish judicial offices in accordance with corresponding legislative measures and to establish the territorial area of the judicial districts and circuits. Article 62 of the 1979 reform states: "As from January 1, 1981, the national Government shall invest no less than ten percent of the general expenses budget in the judicial branch and the Public Ministry." Furthermore, for the purpose of carrying out the constitutional reform, a draft organic law for the Office of the Attorney General of the Republic was prepared. This proposal was submitted to the congress of the Republic for approval. The law gives the Office of Attorney General very important functions in connection with the administration of justice. In addition to other powers, the office is responsible for prosecution of crimes and accusation of suspects before the respective authorities, exercise of overall direction of the judicial police, supervision of the execution of legal measures handed down by criminal judges during the processing of the case, without prejudice to the constitutional powers of the office of the Procurator General of the Nation, conducting criminal suits before the Supreme Court of Justice involving public officials being tried by that body, exercise of criminal action in cases taken up by the Supreme Court of Justice on the grounds of responsibility for violation of the constitution or laws, or for improper conduct of office against high state officials, and in the crimes taken up in the first instance by the Supreme Court of Justice, and the investigation and accusation of persons must be done by delegates of the Attorney General, following the rules of the penal procedure code. In addition, it is also empowered in cases involving responsibility for criminal violations committed by senators and representatives in the case of Article 75 of the National constitution, for investigating these facts and making accusations to the Supreme Court of Justice. [3]/

The Constitutional reform of 1979 was supplemented by the passage of a new penal

code and a new code of criminal procedure.

2. An analysis of the structure and operation of the ordinary penal justice system in Colombia is given in a document from the Ministry of Justice, dated January 16, 1981, which was provided to the Commission. This document reads as follows:

> The present penal procedure code of criminal procedure recognizes a combined system, with a clear emphasis on the inquisitorial criminal procedure system. The new statute on penal procedure that will be issued on January 29 adopts the accusatorial system, as provided for in Legislative Act. No. 1 of 1979 which established the basic structure of the institution of the Attorney General of the Nation.
>
> In the current system, judges conduct the investigation, rule on the case presented and if they find that it has merit, hear the case and issue the corresponding verdict. Under the new system, the investigation will be the responsibility of the Attorney General of the nation by himself or trough his agents who will also be responsible for determining whether to indict the alleged criminal or not and bring him before the judicial organ which will be responsible for trying him.
>
> It is important to note that in both the current and the future systems under our fully democratic constitutional structure, there is a separation of branches of Government. The judicial branch is independent of the executive in the choice of its members and in the taking of its decisions, which can be seen easily in a simple reading of our constitutional charter.

For greater guarantees to the members of society, judicial officials also have disciplinary control exercised by two institutions, which are also independent of the executive branch. These are the Superior Council of Judicature and the Office of the Procurator General of the Nation.

In the two systems, the officials responsible for administering criminal justice, in descending order, are:

1. Penal appeals section of the Supreme Court Justice.
2. Penal sections of the Superior Courts of Judicial Districts.
3. Superior Customs Court.

4. Superior judges.

5. Circuit Judges.

6. Criminal Instruction Judges.

7. Municipal Judges.

8. Justice of Minors.

In special cases the administration of justice is exercised by the senate (impeachment of highest state officials) or by military courts.

Colombia also has, in both the old and the new system, the democratic institution of trial by jury in criminal cases.

For certain crimes of great importance, the democratic spirit in Colombia penal law is such that essentially political crimes such as rebellion and sedition are judged by a jury in both the old code and the new.

A simple study of our constitutional standards such as Article 26 as well s those articles of the present and future codes of criminal procedure leads to the conclusion that Colombia's juridical structure guarantees fully the right to a fair trial. The accused, from the very moment that he is apprehended or captured, must be assisted by legal counsel.

Both systems state how the investigation official must look for the facts and circumstances that establish and point to the responsibility of the accused as well as those that exempt the person and extinguish or attenuate that responsibility.

It is important to note how the new system that will adopt the upcoming code, by leaving the investigation and the indictment to the Attorney General or his agent, eschews any prejudgment on the part of the judge. This constitutes a greater guarantee of impartiality for the accused person.

Another point that should be recalled here is how the Attorney General of the Nation is an integral part of the Public Ministry and is totally independent of decisions of the executive branch. [4]/

3. The National Convention of Magistrates and Judges was held in Bogotá in

November 1980, with representative's form 21 departments of the country. This convention examined the situation of judicial power and the participants discussed and adopted motions on the state of insecurity and lack of protection for public servants in the justice system. The national Association of Public Officials and Employees of the Judicial Branch remitted to the Commission several of the motions discussed at the convention as well as the conclusions adopted. [5]/

C. The Military criminal justice system

1. Military penal jurisdiction is based, as already stated, on Article 170 of the Colombian National Constitution which reads, "Court martial or military tribunal shall take cognizance, in accordance with the provision of the Military Penal Code, of all offenses committed by military personnel in active service, and in relation to that service."

Furthermore, Article 58 of the Constitution states, "Justice is administered by the Supreme Court, by the higher district tribunals, and by such other tribunals and lower courts as may be established by law."

The oral court-martial operates on the basis of these constitutional provisions. The oral court-martial were established in the military criminal justice code, as were those that have been given responsibility for trying civilians for the commission of certain crimes when the public order is declared disturbed and a state of siege is declared for all or part of the national territory so that they may exercise those functions on an extraordinary basis. [6]/

2. The Supreme Court of Justice has stated its opinion on the constitutional nature of the military courts and the legality of their trying civilians for crimes committed, on an exceptional basis. In a finding dated August 13, 1979, the Supreme Court of Justice held that the military criminal justice system "expands its competence to try common crimes by authorization of the constitution itself," adding, "Article 61 of the constitution allows, during a state of siege, the extension of military justice to the trying of common crimes when they have some connection with the disturbance of public order or with the causes that have led to the unusual situation."

In that ruling, on which the court based its opinion on Decree 1923 of September 26, 1978 which promulgates the Security Statute, the Court recalled its ruing of August 13, 1970 on this same matter in which this highest court of the land set forth its doctrine in the following terms:

c) Article 170 of the constitution establishes courts-martial and military

courts for the military penal system as an integral part of the branch of public power which has responsibility for administering justice; Article 58, for its part, includes in the judicial branch all other tribunal and courts that he law may establish; including among the latter are oral courts-martial created by Decree 250 of 1958 and law 141 of 1961. Finally, article 61 of the Constitution allows, during a state of siege, the extension of military criminal jurisdiction to try common crimes that have some connection with the disturbance of order or with the causes that have led to the unusual situation.

Since the Military tribunals are also an establishment of the Constitution, as are ordinary judges, the simple transfer of competence from the judges to the tribunals for the trial of certain common crimes during the state of siege, using the procedures of military justice, does not imply the establishment of ad hoc tribunals or the subjection of persons accused to newly developed procedural stands since they are enshrined in the pre-existing law.

"Military justice expands its competence to judge common crimes by authorization of the Constitution itself. [7]/

3. In an analysis of the Ministry of Justice of Colombia relating to the military criminal justice system, which was turned over to the Commission, the following is stated:

The Military Criminal Justice Code is enshrined in Decree 250 of June 11, 1958 and it takes up: 1) crimes and punishments in general; 2) military crimes and punishments; 3) jurisdiction, competence and organization of the military penal justice system; 4) procedures that should de in effect for the investigation of crimes and for the expedition of military penal sanctions.

a) By the Supreme Court of Justice

b) By the Superior Military Tribunal

c) By the judges of First instance

d) By the presiding officers of the oral court-martial

e) By the officials of the military criminal instruction courts.

Judge advocates are the legal advisors of the judges of first instance.

In the cases, as in ordinary cases, the Public Ministry acts as the representative of society's interest.

First and second Instance Court exists, as do ordinary and extraordinary appeals.

Under the terms of Article 121 of the national Constitution, the Government may, in cases of war, armed conflict, disturbance of the public order or domestic strife, declare a state of siege an in the exercise of the powers that this unusual Government situation confers on it, rule that certain crimes committed by civilians and therefore subject to the competence of the ordinary justice system be judged by the military penal judicial system for as long as the state of siege last.

This is a special system of governing in out juridical structure but it is important to note that the trials conducted by the military penal justice system though oral courts-martial are conducted with all constitutional guarantees and the fullest respect for the right to a fair trial. In these court-martials, evidence is advanced and refuted freely, and the verdicts are independent. Without the slight4st error, one can say that the findings of trial juries are equivalent or similar to those of the officers of oral court-martial.

According to that same Article 121 of the National Constitution, decrees issued by the Government on the basis of the powers of the state of siege are revised by the Supreme Court of Justice (a body totally independent of the executive) for purposes of determining their constitutionality. This system protects human rights and individual liberties.

The present trials of civilians, who may have committed certain crimes, by the military criminal justice system, exist because of decrees issued of the basis of the state of siege, decrees that were declared expressly constitutional by the Supreme Court of Justice.

4. The Commission has received several documents criticizing the operation of the military criminal judicial system, especially the fact that this justice is military in nature and that it judges civilians under unusual circumstances of disturbance of the public order and implementation of the state of siege. These documents state that the armed forces are exercising a growing influence in the administration of justice through the existence of the oral courts-marital. During the on-site investigation, in response to the Commission's concern with this matter, the president of the congress of the Republic stated that trial in these types of courts is done for the sake of the quickness that characterizes them and that in Colombia the true power rest in reason and truth and in the existence of a state of law and

a pluralistic democratic system.

5. A document given to the Commission by the Colombian government makes the following points:

> …Military rules are taken precisely from the common or ordinary code; for example, in both provisions, including the new penal procedure code, the Supreme Court of Justice has the same functions such as trial of high state officials as well as those relating to appeal and review cases; the Superior Military Tribunal is composed of fifteen (15) magistrates of whom twelve (12) are civilian attorneys and three (3) military attorneys, who, to hold those positions, must meet the constitutional and legal requirements of the regular justice system to be the magistrates of judicial district courts; the judicial district court has ten (10) prosecutors, all of whom are civil attorneys who must meet the same legal formalities required of those who hold this position in the ordinary justice system. The functions of this court are the same as those established in the normal rules for judicial officers of this rank.
>
> We should note that the Government's assignment to the military penal justice system, of the trials of crimes against state security has been declared constitutional by the Supreme Court of Justice. Furthermore, it should be made clear that the courts-martial or the military courts are constitutional in origin, are not ad hoc institutions, but institutions that have been legally recognized since 1910 in Article 170 of the Colombian constitution.
>
> It is not too much to note, also, that the findings handed down by the Superior Military Tribunal are also subject to the extraordinary remedies of appeal and review by the penal section of the Supreme Court of Justice.

D. Oral court martial

1. In the present state of affairs in Colombia, that is, a situation in which a state of siege is in effect since the public order was declared disturbed by Decree No. 2131 of October 7, 1976, oral courts-martial are functioning in accordance with a military criminal justice code.

2. The power to convoke oral courts-martial is the responsibility of the judges of first instance mentioned for the procedure of courts-martial, with the same jurisdiction and competence, and such convocation can be given whether or not a prior investigation exists. These courts-martial are composed of a presiding officer, three officers, a prosecutor, a legal advisor and a secretary. With the exception of those cases called for in the code, the second

instance for all cases heard under military justice is the Superior Military Tribunal. The extraordinary remedies are appeals and review. The second instance verdicts handed down by the Superior Military Tribunal in cases involving crimes whose punishment entails the deprivation of liberty of five years or more may be appealed within fifteen days following the date of notification or the moment of notification. This remedy may be used, processed and ruled on for the reasons and according to the standards of the penal procedure code. In criminal matters tried by the military criminal justice system, the case may be reviewed for the reasons and in accordance with the rules of that same code. [8]/

3. In recent months, civilians accused of belonging to different subversive movements have been tried by oral courts-martial for crimes included under Legislative decree No. 1923 of September 6, 1978, the decree that promulgates the Security Statute. Article 9 of this statute states: "The military penal justice system, through the procedure of oral courts-martial and the competence conferred to it by current legal provisions, shall try the crimes refereed to in Articles 1, 2, 3, 5, 5, and 6, in addition to those committed against the life and personal security of the members of the armed forces and against civilians in the service of the armed forces and against members of the Administrative Department of Security (DAS), whether or not in the performance of duties, and against public officials by reason of their public office or the exercise of their functions." [9]/

4. The Office of the Procurator General of the Nation, in its condition of Public Ministry, has accredited delegates to be present at the oral courts-martial. The Commission received from that office documents containing several communications in which the designated attorneys reports on completion of their mission in connection with the oral courts-martial of the alleged members of the M-19 and the FARC.

5. The Commission has proven that despite the exceptional status of trials of civilians by military courts, some of these take an excessively long time. One of these was the case of the oral courts-martial held at La Picota penitentiary in Bogotá. Others are conducted rapidly, as was the oral court-martial in the area of Ipiales, which ended in May 1981.

By Decree No. 2482 of October 9, 1979, the Government of Colombia amended Article 574 of the Military Criminal Justice Code. This decree established that when there is a prior investigation, only the opinion of the judge advocate, which is discussed in Article 567 of that code, and other procedural pieces that the attorneys may request, should be read. That amendment also states that when a prior investigation exist, the oral court-martial shall heard the reports of the examination officer without allowing the accused person or the defending attorneys to be present. When this decree was adopted, several attorneys submitted petitions of unconstitutionality of the infringed on the right to due process legally recognized in Article 26 of the national Constitution by eliminating the reading of evidence. In its finding of December 3, 1979, the Supreme court of Justice declared the decree unconstitutional.

On March 12, 1980, the President of the Republic appointed a committee to recommend "to the executive, legal procedures that can be adopted to shorten the duration of cases being tried in oral courts-martial." As a result the Colombian Government issued Decree No. 536 of March 14, 1980. This decree, declassed constitutional by the Supreme Court of Justice, reads as follows in Article 1: "When there is a prior investigation, the proceedings in oral courts-martial shall be as follows: After the court is installed and the provisions of Article 573 complied with, the finding of the judge advocate provisions of Article 573 complied with, the finding of the judge advocate which is discussed in article 567 of the Military Criminal Justice Code shall be read, along with such other documents as the prosecutor, the attorneys, the accused persons or the court officers may request." This way, the reading of documents becomes optional in nature by those involved in the trial. [10]/

6. In the agreement reached between the government of Colombia and the Commission through an exchange of notes dated April 23 and 24 1980, it is stated that the Commission or its authorized representatives may exercise freely, under the terms of law, throughout the whole of the national territory all its functions and the following activities, in addition to others:

a) Have complete freedom to speak with attorneys representing persons being tried in the cases before the oral courts-martial and all those subject to military justice.

b) Be present at, under the conditions of the law, the oral courts-martial and assur4e itself of the procedural guarantees and their legal conduct, and also have the power to submit to competent authorities any observations that it may consider appropriate to avoid any violation of the rights of those being tried.

Under the terms of this agreement, the Commission, through its members and the attorneys of its office of Executive Secretary, has been observing the public stage of the oral courts-martial in Colombia at different times since the month of April 1980. This procedure has complied with the agreement reached in this area with the Colombian Government.

The Commission has opened four multiple or joint cases relating to the oral courts-martial: No. 7348 on the Movimiento 19 de Abril (M-19) which has 107 claims; No 7375 on the Fuerzas Armadas Revolucionarias Colombianas (FARC), 35 claims; No. 7605 on the Ejército de Liberación Nacional (ELN), six claims; and No 7818 on the Oral Court-Martial held in the city of Ipiales, also relating to theM-19. The Commission has processed these cases in accordance with its rules.

7. The Government of Colombia has furnished the Commission with statistical data on the cases being tried under military justice system. These data are:

In 1980, the military criminal justice system conducted three hundred thirty-four (334) oral courts-martial for different crimes, some of which such as rebellion were political, while others were common crimes such as extortion, kidnapping, blackmail, homicide of public officials, robberies of firms and persons, and so on. These cases show not only the speed but also the effectiveness of the military criminal justice system in providing the procedural guarantees and requirements of first and second instance courts and guarantees and requirements of first and second instance courts and for cases before the Supreme Court of Justice, as provided by law.

For the specific situation of cases involving political crimes, to demonstrate the speed of this judicial form, the following cases of courts-martial between 1980 and 1981 can be mentioned. The duration of these trials was twenty (20) days to (2) months.

Court-martial of twenty-one members of the Auto Defensa Obrera Subversiva Movement (ADO) held in Bogotá.

Court-martial of 31 members of the M-19 subversive movement held in Melgar (Toledaima).

Court-martial of nine members of the Pedro Leon Arboleda Subversive movement (PLA) held in Bogotá.

Court-martial of 13 members of Court-martial of 25 members of the Pedro Leon Arboleda Subversive movement (PLA) held in) held in Pasto.

Court-martial of 25 members of the Pedro Leon Arboleda Subversive movement (PLA) held in Medellín.

Court-martial of 35 members of the M-19 Subversive movement held in Bucaramanga.

Court-martial of 14 members of the Fuerzas Armadas Revolucionarias de Colombia subversive movement (FARC) held in Villavicencio.

Court-martial of six members of the so-called Brigada Negra, part of the Ejército de Liberación Nacional Subversive movement (ELN) held in Medellín.

Court-martial of 66 members of the M-19 subversive movement held in Ipiales started in mid-April of this year, which lasted no longer than ten (10) days.

E. Oral Court Martial: M-19

1. Through officials of its office of Executive Secretary, the Commission was present for the sentencing at the Oral Court-Martial, which tried and sentenced three persons accused of belonging to the M-19 subversive movement. [11]/ This court-martial was held in Cali in June 1980.

2. The oral court-martial of alleged members of the M-19, including high officers of this movement, held in the city of Bogotá, was in the preliminary or investigation state until February, 1981. This part of the trial is private. According to the terms of Article 497 of the Military persons who may participate are the investigation official, the trial judge and his secretaries, the individual agent of the Public Ministry, the accused, his attorney, and the civil party, if any."

Under the terms of the agreement reached with the Government of Colombia in April, 1980, from March 1981 on the Commission was able to be present regularly through its members and staff officials, at this case held at the facilities of La Picota Penitentiary in Bogotá.

During the on-site investigation, as one of its initiatives, the Commission requested the Government to provide information on this oral court-martial. The Commission has received 202 special forms, one for each of the accused. These forms contain the name of the accused person, the address, date of arrest, date of unsworn statement, the data of the arrest warrant, the date of trial, the current status of the detained person, including the name of the jail where he is located, and the charges against him, as well as the legal provisions invoked by the state.

In addition, the Commission met with and took claims from alleged members of the M-19 being held at the La Picota central Penitentiary in Bogotá. It has also talked with and taken information from their defense attorneys. As a result of these charges, it opened multiple case No. 7348, which is being processed in accordance with the pertinent rules of the Commission.

3. In January, 1981, an official of the Executive Secretariat of the Commission met with the presiding officer and the prosecutor of this oral court-martial. The staff member gathered information about the following points:

a) The oral court-martial was convoked for November 16, 1979, and was installed on November 21. Its distinguishing feature is the oral argument procedure used on the basis of Article 586 of the Military Criminal Justice Code. This article provides, "All proceedings in the oral courts-martial are oral and the only written documents are the minutes, the indictments and the sentence unless it is absolutely necessary to add some other document. However, summaries of the oral arguments of the parties may be added.

b. The appointment of the defense attorney and their statement lasted from November 22 to December 14, 1979 to August 5, 1980. Evidence was taken from August 11 to October 27, 1980. The races for preparation of indictments began October 27, 1980. And ended January 13, 1981. The readings if indictments took place on January 13, 1981. From January 13 to February 12, 1981, the briefs were transferred to the prosecutor and to the defending attorneys. The estimated starting date of the public stage is some time during the month of February 1981.

c. In all, 166 accused persons were present when the court-martial began. Ten additional persons who were listed as absent prisoners were arrested and included later, bringing the total number of persons detained to 176;

d. Of the 176 detained, as mentioned above, two persons were referred to the common justice system. These were Mr. Victor Vivanco and Mrs. Alba Nelda Gonzales Sousa, both Uruguayans. The presiding officer of the court-martial explained that the transfer from the military justice to the common justice system was done in view of the fact that their conduct consisted of falsehood and not rebellion. This conclusion was reached as a result of the legal study of this case. It was added that, under the terms of the Colombian juridical structure, this falsehood falls under the competence of a Superior Court Judge of the common system and this case was transferred to Superior court Judge 28 of Bogotá;

e. Of the 176 persons mentioned, 34 were set free during the preliminary proceedings due to insufficient evidence. Of the remaining detainees, indictments were prepared against 115 and 26 were set free insufficient evidence to bring them to trial. In this connection, the presiding officer of the

court-martial stated that there was enough proof to detain them, as had been done, but not enough to try them or to prepare an indictment against them. For a guilty verdict, full proof and the corpus delecti of a crime were required;

f. Furthermore, of the 176 persons, Mr. Sergio Betarte Benitez was separated from the M-19 case since Benitez, an Uruguayan, was not involved in the rebellion but only in a kidnapping as a separate crime. Therefore, this accused was referred to the Military Institutes Brigade because the act or the crime of which he was accused was committed in Bogotá. This was the kidnapping of Mr. Miguel de German Ribon on March 25, 1978. It was added that this crime falls under the competence of the Military Criminal Justice System in accordance with decree 2260 of 1976, which assigned to the military justice system of public order and state of siege. It was also stated that this determination was made on the basis of Article 311 of the Military Criminal Justice Code in accordance with Article 577 of that same code. [12]/

g. With respect to the absent prisoners, the trial started with 53 in this category of whom 25 were put on trial. Of the total, 29 were not tried since their legal status was resolved.

h. The defense attorneys involved in this case totaled 45, all of them civilians who were responsible for defending the accused attorneys, 15 in all, who were military personnel. Most of them were attorneys and law students, as was already explained.

i. The prosecutor of this oral court-martial stated that he has been performing his duties for 15 months, since November 21, 1979, in accordance with Article 375 of the Military Criminal Justice Code which reads as follows: "The public Ministry represents the interests of society. Those who are its staff members must seek the punishment of persons responsible for crimes and the defense of innocent parties; they should request that all necessary proof be taken and intervene in the formalities and actions of the case."

j. The prosecutor also stated that contrary to the common justice system, where several prosecutors can be appointed, according to a decision of the Procurator general of the nation, under the military penal system, there is only one military prosecutor for each court-martial, as state in Article 568 of the Military Criminal Justice Code. [13]/

4. Furthermore, as a result of the conversation between the presiding officer and the prosecutor of the oral court-martial of the M-19, the following information on this

case was turned over to the Commission:

1. Start

The court-martial was convoked by means of resolution No. 15 of November 16, 1979, by the command of the Military Institutes Brigade. It was installed on November 21, 1979 at 9:00 a.m.

2. Activities and special characteristics

The court-martial proceeded as provided in Decree Law 0250 of 1958—the Military Criminal Justice Code—Fourth Book, Title VI, Chapter II, procedure of oral court-martial, whose distinguishing feature is the oral nature of the proceedings.

3. Important dates

a.	Installation	November 21, 1979
b.	Appointment of defense attorneys And taking office	November 22,1979 to December 14, 1979
c.	Reading of case files	December 17, 1979 to August 5, 1980
d.	Submission of evidence To	August 11, 1980 October 27, 1980
e.	Recess to prepare indictments To	October 27, 1980 January 10, 1981
f.	Reading to prepare indictments	January 13, 1981
g.	Transfer of brief to prosecutor and Defenders to	January 15, 1981 February 13, 1981
	Possible start of public stage	February 16, 1981.

Important points

1.	Accused persons present for start of trial	166
2.	Accused persons missing but arrested during the Preliminary proceedings	10
3.	Accused persons present sent to common justice	2
4.	Accused persons present not tried and set free during Summary proceedings	34
5.	Accused persons present and tied	115
6.	Accused persons present not tried and set free	126
7.	Accused persons absent at the start of court-martial	53
8.	Accused persons absent and called to justice	25
9.	Accused persons absent not tried and legal status Resolved	

28

10. Civilians defense attorneys involved in case 45

11. Court-appointed defenders 15

Infractions of law being tried

a. Robbery of arms, deposit, General Command of Military Forces Dec. 31, 1978 and Jan. 1, 1979

B. Kidnapping and death of Dr. Nicolas Escobar Soto May. 29, 1978 and Jan. 3, 1979

c. Kidnapping of Dr. Miguel de German Ribon Mar, 25, 1978

d. kidnapping of Nicaraguan Ambassador William Barquero Montiel , May, 10, 1978

e. Death of Police agent Victor Manuel Blanco Hernández, Caldas de Bucaramanga neighborhood Police station Feb.18, 1978

f. Kidnapping of physicians Carlos Garcia Orjuela And Miguel Antonio Cuervo Escobar, at the Sandana Hospital Nov. 22, 1978

g. Kidnapping of Mr. Alberto Uribe Gomez, Manager Of the newspaper El Caleno and the seizure of Its offices. Apr. 16, 1979

h. Kidnapping of employees of Radio Duitama and Vendedores de Duitama, and seizure of the Broadcasting stations. Sept. 13, 1979

i. Seizure of vehicles of Bon Ami coffee and Lechesan Dairy Products Company, Bucaramanga. Aug. 31, 1977 and Feb. 18, 1978

j. Robbery of six mimeograph machines and other Equipment owned by the OFCO Ltd. Co. of Bogotá Nov. 8, 1978

k. Seizure of Uniroyal Croydon S.A. offices Aug. 16, 1978

k. Seizure and robbery of arms from the Armecol Ltda. Armory. Apr. 17, 1978

5. The claims received and processed by the Commission in connection with case 7348 on the M-19 make mention of certain aspects pertaining to the right to a fair trial and due process. The bodies of these claims mention the following points:

1. Violation of Article 28 of the Constitution by being forced to give unsworn statement without defense attorney.
2. Inability to present any type of defense because the detained person was held incommunicado;
3. Given unsworn testimony before a military court-appointed attorneys;
4. Failure to comply with Article 28 of the Constitution by not taking testimony from witnesses;
5. Loss of procedural evidence and judicial rulings;

6. Total prevention from presenting any type of defense during the examination state;

7. Taking unsworn statement without attorney and adding words not spoken by the detained person;

8. Failure to meet time periods to resolve the legal status of the person detained;

9. Forcing persons to confess to acts of which they are accused without these acts being criminal in nature;

10. Interrogation without an attorney who was not allowed to be present;

11. Refusal of the court to request the Council of Ministers to say whether the arrest warrant existed;

12. Complete halt of the summary proceedings, with serious prejudice not only to the parties or persons involved, who endured the rigors of delayed justice, but to proper administration of justice and the society which has always viewed military justice as a rapid and expeditious means of investigation and punishment of crimes. Commissioning for examination a judge from a locality other than the place in with there being a military criminal instruction court in this place. Lack of authorization for transfer of the judge and the detained persons to the place in which the acts attributed to the accused persons were committed. Preventing access of defense attorneys to the process. Unlawful and arbitrary interference by military authorities, which violated the right to a fair trial, and which the penal law itself does not allow. Preventing the attorneys involved from having access to the court by order of military authority. The instruction judge called for the taking of evidence but this was not carried out, for which reason there was no proof of the charges made. Lack of proof of the acts investigated and of the full proof required condemning, under Article 44 of the Military penal Statute, since no proof existed, not even to detain. These points are made in the claims relating to Rodrigo Castillo, Nelson Figueroa Moncaleano and Ancizar Morales. These points are included in the communication sent on march 28, 1979, to the commanding officer and the senior judge advocate of the Eight Brigade and in the communication sent May 8, 1980 to the presiding officer of the oral court-martial, both by the defense attorney, Camilo Correa Cardona, relating to the process for alleged violation of Decree 1923 to 1978:

13. Maintaining the accused persons for periods of more than ten days without being placed under the order of competent judge;

14. Interrogation before a secretary without the presence of a judge or defense attorneys;

15. Presentation of habeas corpus without any response;

16. Appointment by the judge of the lieutenant who directed the raid as

defending attorney, at the time of the detention.

6. The Government of Colombia has been responding to the request for information from the Commission regarding these claims. In this sense, some of its answers regarding the right of a fear trial and due process are as follows:

a) Nelson Figueroa Moncaleano, Ancizar Morales and Rodrigo Castillo

These persons were placed at the disposal of military criminal instruction judge 22 on February 15, 1979. Their unsworn statements wee taken of February 29, 21 and 22 respectively. The first was counseled by Dr. CAMILO CORREA CARDONA and the other two by the court-appointed attorney, Second Lieutenant ULISES CANO PEREZ. Their legal status was resolved by declaring that they were to be under preventive detention of February 24, accused of the crime of rebellion. The terms of Article 431,434 and 437 of the penal procedure code were followed.

Initially, during the interrogation carried out immediately after their arrest, under the terms of Article 289 of the penal procedure, they confessed their involvement of he judicial police. They confirmed this to the judge and their defense attorney on the first occasion. They retracted these statements in later expansion of their statements.

The File on NELSON FIGUEROA MONCALEANO notes that he had been tortured physically or psychologically but, since there were no signs of violence on him, the judge did not find any merit in starting an investigation into this matter. As for ANCIZAR MORALES, he noted in his statement that he was neither beaten nor threatened at any time. As for RODRIGO CASTILLO, he too noted in his unsworn testimony that he had not been hit or mistreated seriously but that he had only received injuries.

Even though the investigation was conducted by a judge who is located in the city of Manizales, the procedures followed in the investigation were normal. Rather than trying to delay the case, the Eighth Brigade wanted to complete the investigation quickly, considering that the city of Armenia had only Military Criminal Instruction Judge 33 who was in charge of several cases.

The charges state that one decision, a resolution of the General command of the Military Forces, settled several cases. Basically this was a matter of settling on a single judge since several judges were involved in this case because it related to a single unlawful act carried out throughout national territory with many perpetrators. The purpose was to comply with the principle of non-bis in idem (one act cannot have two legal consequences), and because Article 315 of the Military Penal Code disposed of the matter that way. At his point the commanding officer of the Military Institutes Brigade was appointed to hear the entire case. In consequence, this is not an attempt to have one decision settled different cases because there was only one case against the three accused persons in question. The purpose was simply to prevent the accused persons from appearing at the case in Bogotá and also at the case in Armenia.

It is also alleged that here is not full proof against the accused persons. This matter should be defined during the upcoming stage of the trial. The presiding officer of the court-martial will, after the evidence stage, determine whether or not there is merit to

judge them. For cases having merit, the background information will be analyzed later and if there is not full proof, a guilty verdict cannot be handed Edwin under the terms of Article 444 of the Military Penal Code.

It should be noted that this reply took into account the information provided by the presiding officer of the oral court-martial. This information noted only certain aspects but was not full enough to go into great details because the preliminary proceedings are private. Later the Honorable Inter-American Commission on Human Rights will be able to gather more information during the upcoming public stage of the oral court-martial.

Now, it should be mentioned that the principal argument for some of the defense attorneys is to deny what was said during the interrogations and the first unsworn statement. They state that the confession was obtained by violence, without stopping to think that mandate of our penal procedure, a confession does not constitute not full proof. There is only a presumption of truth regarding the confession, according to the provisions of Article 475 of the Military penal statute, "for as long as no evidence is presented to the contrary, provided that the body of the crime is fully proven."

b) José Absalón Molina Zapata

This accused appeared voluntarily on May 23, at the Nueva Granada batallion in Barrancabermeja (Santander). His unsworn statement was taken June 7, 1979, by Military Criminal Instruction Judge 100. He was assisted by Second Lieutenant Jorge L. Mejía R., a court-appointed attorney, under the terms of Article 431 of the penal procedure code. He made no note of any type about threats or mistreatment. The judge, the accused, and the attorney sign the record and authenticated by the secretary, without any changes or words added since there is no space to fill, even between the lines.

The examining judge issued an arrest warrant on June 15, 1979, since there was sufficient merit in accordance with Article 349 of the penal procedure code.

c) Carlos Augusto Erazo Murcia

This person gave unsworn testimony to Judge No. 6 to the Military Penal Court on February 2, 1979. His court-appointed attorney was lieutenant-attorney Martha Padilla de Diez. He was placed under preventive detention of February 7, accused of rebellion.

As for the mistreatment, this charge was found to have no merit since there were no signs of personal injury.

The fact that he was interrogated without an attorney is legally possible since this is a formality carried out by the judicial police freely and spontaneously as part of the powers that those agents have, under Article 289.c.8 of the Penal Procedure Code. Even though the interrogation has probative value, under Article 306 of the code, it is not taken into account by military examining judges unless other evidence supports it. As for the unsworn testimony according to the record he was assisted by an officer attorney, and if he had denied the charges that would have been so entered into the record.

d) Martin Beliesteros Robies

This person charged with rebellion, was captured on June 28, 1979, by the troops of the Fifth Brigade. His unsworn testimony was taken on July 13, 1979, by the Military Criminal Instruction Court 100. He was assisted in that formality by Second Lieutenant Marco Lino Romero Mosquera and is currently being counseled by Dr. Jorge Eliecer Franco Pineda.

In his unsworn statement, he makes no charges of having been tortured. The office that carried out the investigation ruled on July 23, 1979 that this person should be kept under preventive detention since there was sufficient merit to do so, under the terms of Article 439 of the Penal Procedure Code.

e) Carlos Enrique Molina Zapata

Charged with rebellion. He was captured on June 5, 1979, by troops of the Fifth Brigade and his unsworn testimony was taken on June 7 of the same year by Military Criminal Instruction Court 100. He was assisted in that formality by Captain Hernan Contreras and is currently being counseled by Dr. Rafael María Barrios Mendivil. His statement makes no charges of having been mistreated. The office that conducted the investigation ruled on July 15, 1979, that he should be held under preventive detention since there is sufficient merit for this.

f) Jorge Eliecer Díaz Russi

Accused of rebellion. He was captured on January 29, 1979, by troops of the Fifth Brigade and his statement was taken on February 5, 1979, when he was assisted by Dr. Roberto Trejos Aquiles. At this time he is being counseled by Dr. Eduardo Carreño Wilches. In his own sworn statement, he makes no charges of mistreatment and the record includes no such charge. Military Criminal Instruction ruling dated February 7, 1979, since there was sufficient merit for this under the terms of Article 439 of the Penal Procedure Code. The record is signed by the accused and his attorneys contradict his statements.

g) Mario Rincon Morales

Accused of rebellion. He was captured on February 13, 1979, by troops of the Eight Brigade. His testimony was taken on March 1, 1979, when he was assisted by Lieutenant José Horacio Mendoza Samudio. The examining court decreed that he be held under preventive detention in a ruling issued march 5, 1979, since there was sufficient evidence, under the terms of Article 439 of the Penal Procedure Code.

Starting October 21, 1980, he was given provisional liberty by the presiding officer of the oral court-martial. There is no record in his file of his having been mistreated.

h) Marlen Esther Linares Landinez

Accused of rebellion. She was captured on February 23, 1979, and her unsworn testimony was taken on February 27 of the same year by Military Criminal Instruction

Court 106. She was assisted by Lieutenant Julia Isabel Gantiva Arias. After the unsworn testimony formality was accomplished, the examining court ordered that she be set free immediately and unconditionally.

i) Eduardo Loffsher Torres

Accused of rebellion. He was captured on February 27, 1979, and his unsworn testimony was taken on March 20, 1979, by Military Criminal Instruction Court 47. He was assisted by Dr. Gloria Lucy Zamora de Patiño, and is currently being counseled by Dr. Jenaro Alfonso Sanchez Moncaleano. In his unsworn testimony, he states that he was the victim of arbitrary treatment. The Delegate procurator General for the Military Forces conducted an investigation into this matter following charges made by a committee of the Council of Bogotá. Under the terms of a writ issued July 17, 1979, these formalities were closed considering that there were not any grounds to undertake a disciplinary investigation. The examining court decreed that this person be held under preventive detention in a ruling issued March 15, 1979, since there was sufficient merit for this, under the terms of Article 439 of the Penal procedure Code.

Mrs. ESPERANZA INES ESPITIA ESTRADA, his wife, is free at this time since there are no grounds for holding her.

j) Alfonso Castro Pedraza

Accused of rebellion. He was captured January 3, 1979 and his sworn testimony taken January 11, 1979 by Military Criminal Instruction Court 1. At his time he was assisted by Dr. Alvaro Echeverry Uruburu. The same attorney is still counseling him. In his unsworn testimony, he states that he was mistreated. The file contains a search and seizure order signed y Military Criminal Instruction Judge 106 and the preliminary proceedings contain no record of his ribs being broken.

The office of the Delegate Procurator General for the Armed Forces made an investigation of the charges formulated by a committee of the Council of Bogotá. Under a writ issued July 17, 1979, it was decided to close these formalities in view of the fact that there was insufficient to begin a disciplinary investigation. The examining court decreed that this persons should be held under preventive detention in a ruling issued January 20, 1979, since there was suficient merit for it, under the terms of Article 439 of the Penal Procedure Code. [14]/

7. While attending the public stage of the court-martial of the M-19 being held at the La Picota Penitentiary in Bogotá, the Commission gathered the following information:

a) From February 19, to March 16, 1981, the court-martial was suspended on two occasions due to disorders and interruptions caused by the persons on trial, as explained by the presiding officer of the military court, Colonel Rafael Marín Prieto;

b) The Public stage continued until the end of June, 1981, with the statements of the court-martial prosecutor, Colonel Augusto Pradilla;

c) The defense attorneys stated that there is an accumulation of competence's, in conflict with Article 441 of the Military Criminal Justice Code, and that during the first few days of the public stage, they had challenged the prosecutor. In their opinion, the prosecutor showed ill will toward the accused persons. The presiding officer of the court-martial rejected the challenge;

d) They further stated that they had challenged the representative of the office of the Delegate Procurator General for the Military Forces because they believed that he had participated in several interrogations. They added that this matter was resolved since that representative did not return to the case and the Procurator's office soon accredited a new delegate;

e) On March 23, 1981, the defense attorney, Dr. Aquiles Romero Trejos, asked the presiding officer of the court-martial to release records naming the alleged members of the M-19 killed in combat with military forces during that month in certain parts of the country. He also asked that the bodies be exhumed since he thought that some of them might be among those listed in the court-martial. This way, time could be saved and the family members of the dead persons could be informed;

f) Several detained persons and their defense attorneys requested the Commission to inquire whether Mr. José Buritica, who was convoked to this court-martial as an absent prisoner, could be transferred to La Picota for this purpose. The presumption was that he was being detained in Pereira. The Commission made these inquiries to the Colombian government;

g) On March 25, 1981, the presiding officer of the court-martial requested the respective authorities to place at his disposal those persons detained in military operations in the southern part of the country. He also asked that he be informed as to whether any of those listed in this military court were among the dead. Later on, several of the persons detained in the aforementioned military operations were transferred to the La Picota penitentiary in Bogotá to appear before this court-martial. Among them were important M-19 leaders such as Carlos Toledo Plata and Rosemberg Pabon Pabon;

h) Both the court-martial authorities and the defense attorneys gave the Commission's delegates the cooperation they needed to carry out their work.

F. Oral Court Martial: FARC

1. At different times the Commission observed the public stage of the Oral Court-Martial of the FARC which was held in Bogotá at the Baraya Batallion. This court-martial was concluded in March, 1981. Commission attorneys were present proceeding during the months of April, May, June, July and August of 1980 and January of 1981.

During some of these observation periods, the attorneys were present during presentation of evidence and arguments by the prosecutor and the counter-arguments by the defense attorneys. They were also present when an objection was raised to the

presiding officer of the oral court-martial. During the discussions both the prosecuting attorney and the defense attorneys spoke at length and freely to explain their points of view. On different occasions the accused offered their comments. With respect to several of the accused, the central question in their individual cases seemed to hang on confessions they made or the accusations made by others. In situations such as these, the defense attorneys insisted that several of these statements were invalid since they had been obtained by unlawful physical mistreatment and psychological pressures. It was also observed that a delegate from the Office of the Procurator General of the Nation attended the trial regularly.

2. During the on-site investigation, the Commission received complaints from detained persons accused of belonging to the FARC and opened a multiple case, No. 7375, and processed it in accordance with its rules. Furthermore, the Commission spoke with authorities form different areas about this oral court-martial, with the presiding officer, the prosecutor, the court officers and the defense attorneys for the purpose of gathering all possible information for the performance of its work.

At the request of the Commission, the Colombian Government turned over special data sheets on 51 persons, with the name of the accused person, address, date of capture, date of interrogation, date of arrest warrant, date of trial, current status of the person, as well as the name of the jail where he is being held and the charges against him, and the legal provisions invoked by the State.

Furthermore, the defense attorneys informed the Commission, in January, 1981, that besides the oral court-martial being held in Bogotá, several other court-martial had been held or were bout to be held to try the FARC, Two of these were in Medellín, one with 36 tried persons, who ere found guilty, and the other with approximately 16 accused persons. Two courts-martial had been held in Tunja, with a total of 16 persons on trial. There was one court-martial in Cali, with four persons on trial, one in Bucaramanga that was still to be convoked, for 12 persons, and another in which one person had been found guilty. There was one court-martial in Villavicencio with five accused persons, one court-martial in La Dorada, that was still to be called, for some 17 accused persons and another court-martial to be held soon in Armenia, with approximately 14 persons on trial.

3. In January 1981, a Commission attorney had a long interview with the presiding officer and the prosecutor of the oral court-martial being held in Bogotá. The following points were made during this meeting:

a) The accused are being held at the Model Prison close to the Baraya Batallion where the trial is being conducted;

b) Both the press and the family members of those detained had access to the public stage of this court martial;

c) In total, 50 indictments were prepared against the accused persons, of whom 40 were present and ten absent. Of the 40 present, ten were set free because they had already served their sentences and one was released for reasons of ill health. The defense attorneys numbered 20, all of them civilians;

d) Among the incidents in the trial were two challenges made to the presiding officer of the military court which came from the defense attorneys. The first of these was rejected while the second was accepted;

e) It was explained that there are two types of appeals, one of which is suspensive and the other returnable;

f) The statements of the defense attorneys lasted eight months and eight days.

g) At one point, in late July and early August 1980, an incident occurred which led to the suspension of the public stage of the court-martial and the start of private hearings, which lasted a month. The presiding officer of the court explained that that decision was taken for reasons of public order since there was news of subversive activities in several parts of the country and talk of greeting the persons on trial by bringing pressure to bear against those trials. He added that the suspension was done under terms of Article 552 of the meetings of the court-martial shall be public unless the presiding officer, for reasons of morality or public order, shall decide otherwise."

h) The prosecutor of this oral court-martial stated that in late April 1980, several press organs released information to the effect that he had recognized the existence of tortures. He maintained that he never said such a thing but had merely repeated what an accused person had said and had stated that there had been talk of torture, which should be investigated and that the investigations had been conducted. He also stated that the charges made by the prosecution are based on legal evidence, "man carrying out his duty before the judge," and that as prosecutor, he did his best before the judge so that the charges would have full validity. He also stated that in his position as agent of the Public Ministry, he requested a verdict of guilty for forty of the persons on trial and acquittal for ten.

i) The presiding officer of the oral court-martial stated that the FARC has been in existence with that name since 1959 but has been acting as an armed movement in rural areas since 1949. Over the past twenty years there have been both common justice and military justice trials involved the FARC. He also stated that since 1978, only two oral courts-martial have been held one in Medellín and the other in Bogotá, of which he is the presiding officer. [15]/

4. As a result of this conversation, the Commission received a document dealing with the proceedings of the oral court-martial of the FARC, containing the following information:

1. The oral court-martial was convoked under the terms of resolution No. 196 of November 2, 1979, by the commanding officer of the Military Institutes Brigade.

2. The court was installed on November 5, 1979 at the facilities of ANTONIO BARAYA Engineers Batallion No. 1, and was presided over by Colonel RUDDY CASTELLANOS PERILLA. The senior officers were LUIS LEONEL

BERNAL JARAMILLO, LUIS EDUARDO RAMIRES GALLEGO and JOSE ORLANDO SALAZAR GIL. The prosecutor was Colonel FAROUK YANINE DIAZ, the legal advisor, Dr. ALEJANDRO H. GUTIERREZ PRIETO and the secretary, Sargent JAIR TRUJILLO.

3. After all the evidence had been presented, the prosecutor was allowed to take the floor for a single opportunity to speak. This started on April 15, 1980 and ended on April 30, 1980. In other words, his statement was long enough to deal with the entire case, as can be seen in the minutes that were kept.

4. On April 30, once the prosecutor had concluded his remarks, Dr. HUMBERTO CRIALES DE LA ROSA had the opportunity to speak but as soon as he was given the floor by the presetting officer, Dr. ALVARO ECHEVERRY URUBURU asked whether several aspects relating to the statements of the defense attorneys could be clarified. After this, the defense attorney Dr. Criales de la Rosa was allowed to speak. He requested that on May 5, of that same year, his clients MANUEL CASTILLO RUISECO, MAXIMO EDUARDO CRUZ PUENTES and JOAQUIN SANCHEZ LINARES be allowed to speak, and was done in that order.

5. On December 3, 1979, the presiding officer of the court-martial Colonel RUDDY CASTELLANOS PERILLA and the legal advisor, Dr. ALEJANDRO H. GUTIERREZ PRIETO, were challenged. Initially, this challenge was resolved against the petitioners on that same day. The challenge had been referred to the immediate superior officer, the commanding office of the Military Institutes Brigade, for decision. The challenge was taken up in a meeting on December 6, 1979 and the grounds on which the challenge was made were refuted. As a result, Colonel CASTELLON PERILLA continued as presiding officer and Dr. GUTIERREZ PRIETO as legal advisor.

6. On May 8, 1980, while defense attorney HUMBERTO CRIALES DE LA ROSA was speaking, he made a new challenge to the presiding officer of the court-martial, Colonel RUDDY CASTELLANOS PERILLA, and this was also referred to the commanding officer of the Brigade. In a ruling of May 30, 1980 the commanding officer stated that Colonel RUDDY CASTELLANOS PERILLA would be removed as presiding officer and replaced by Colonel OTONIEL ESCOBAR CIFUENTES, under terms of resolution 061 of that date. The new presiding officer assumed his office in due order.

7. On August 25, 1980 (minutes, folio 913), Dr. HUMBERTO CRIALES DE LA ROSA, while making an inquiry, used it to challenge the presiding officer of the court-martial, Colonel OTONIEL ESCOBAR CIFUENTES, because a new schedule had been set for the sessions. The presiding officer decided that there were no grounds for impediment and therefore, according to legal procedure, the incident was referred to the commanding officer. On September 9, the commanding officer of the Military Institutes Brigade declared that the objections were unfounded and that Colonel ESCOBAR CIFUENTES would continue as presiding officer.

8. In the session of July 11, 1980, Drs. HUMBERTO CRIALES DE LA ROSA, DIDIER MARTINEZ MOLINA, ARNULIO CRUZ, HERNAN SUAREZ SANZ, CARLOS J. DUICA, HERMELINDA CASTELLANOS JUTINICO, JOSE MIGUEL ARIAS LONDONO, HERNANDO REYES SANTOS, HERIBERTO CARDOSO PALMA, JOSE DEL CARMEN GUTIERREZ and CARLOS MORENO NOVOA asked for nullities of a constitutional, legal and supranational nature by invoking a number of provisions. In the exercise of his powers, the presiding officer of the court-martial rejected all of them, advancing special considerations of a juridical type for each of them on July 15.

9. As for the appeals that were made of many decisions by the presiding officer, it was maintained that these were not in order during the public stage of the oral court-martial, which began with the installation of the court, in this case November t, 1979. In the end the de facto remedies that were granted were referred to the Honorable superior Military Tribunal. A member of this court handed down a judicial ruling backing the opinion of the presiding officer, that is, that during court-martial hearing remedies against decisions are not in order since this juridical act is a single, indivisible but complex act, in the words of the Honorable Supreme Court of Justice.

10. On August 5, 1980, when Dr. HERNANDO REYES SANTOS was speaking for the defense, he proposed that Article 417 of the Military Code relating to the cessation of the entire process are applied. According to him, the legal measure that benefited FABIO AUGUSTO ARANGUREN, JOSE ALVARO RODRIGUEZ LINARES AND EDUARDO DELGADILLO BRAVO, handed down by Superior Judge 30 of the common justice system, also had a favorable effect on his clients and all the others who appeared before the court-martial. This petition was supported by attorneys VICENTE CALVO CASTILLO, HERMELINDA CASTELLANOS JUTINICO and HECTOR AGUIRRE CASTILLO. Dr. CARALOS DUICA also referred to this petition and requested that it be transferred to the agent of the Public Ministry so that the presiding officer could decide on termination of the trial. On August 11, the presiding office stated that the request to halt the judicial action was out of order and ruled that the court-martial should proceed.

[Table of Contents | Previous | Next]

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[1] The American Convention on Human Rights, specifically Article 8 on the right to a fair trial, reads as follows: "1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature. 2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees: a) the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court; b) prior notification in detail to the accused of the charges against him; c) adequate time and means for the preparation of his defense; d) the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel; e) the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law; f) the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses of experts or other persons

who may throw light on the facts; g) the right not to be compelled to be a witness against himself or to plead guilty; and h) the right to appeal the judgment to a higher court. W. A confession of guilt y the accused shall be valid only if it is made without coercion of any kind. 4. An accused person acquitted by a non-appealable judgment shall not be subjected to a new trial for the same cause. 5. Criminal proceedings shall be public, except insofar as necessary to protect the interests of justice." Also, Article 9 of the Convention on freedom from ex post facto laws reads as follows: "No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom."

[2] Article 27 of the constitution sets forth the following: "The preceding provision shall not prevent the infliction of punishment, without previous trial, in those cases and within the limits established by the law, by: 1) Officials exercising authority or jurisdiction, who shall have the power to punish by fine or imprisonment any person in contempt of their authority while discharging their official duties; 2) Military chiefs, who may inflict instant punishment in order to subdue insubordination or military mutiny, or to maintain discipline in the presence of the enemy; 3) Masters of vessels, who have the same power, when not in port, to repress crimes committed on board their ships."

[3] Articles 1 to 5, inclusive, of the Proposed Organic Law of the Office of the Attorney General of the Nation. On September 17, 1980, law No. 22 was passed, "By which provisions are issued to normalize the prompt and effective administration of justice."

[4] The newspaper El Tiempo of Bogotá, in its edition of January 10, 1981, published statements made the previous day in Medellín by the Chairman of the Council of the State, Dr. Jaime Betancur Cuartas. In these statements of the judicial branch of Government, Betancur Cuartas said, "A State of law does not exist in Colombia; in fact, to the contrary, a constitutional dictatorship has been consolidated." "A dictatorship exists because the powers are concentrated in the executive and the legislate branches." This high state official, according to press information, also stated, "That it is essential that 10% of the national budget be given to the judicial branch." He added, "Without money, it will not be possible to put the reforms of the justice system into practice." According to the same newspaper, "He insisted that the state must serve the needs of justice and provide to this area of Government power all the material elements is needs to carry out fully the functions entrusted to it in the National Constitution."

[5] Several of the conclusions adopted by the convention are the following: A) RELATING TO REFORMS OF THE CONSTITUTION AND THE CODES: 1) We request greater publicity and information about the draft code of criminal procedure and the office of the Attorney General of the nation. 2) We demand an opportunity to participate in the drafting of these proposals. 3) We request that public forums on these topics be held throughout the entire country. 4) We demand that decisions on detention and liberty of persons, which are eminently judicial, be kept in the judicial branch. 5) We demand a single statute for the judicial career service for he judicial branch, the Office of the Procurator general for the nation and the Office of the Attorney General, as quickly as possible. 6) We request elimination of the veto powers included in the scheme for the Office of the Attorney general of the nation against officials who have been sanctioned. We accept the veto only for cases of unethical behavior and mismanagement. 7) We demand automatic incorporation of criminal instruction judges into the Office of the Attorney General of the nation, and of their employees. 8) We suggest that it would be most advisable to schedule the date of entry into force of the code of criminal procedure with that of the Office of the Attorney General. 9) We charge that the decree and the Judicial Emergency law were not the correct remedy since the congestion of cases occurs in the indictment stage and not in the proceedings; in addition, the regulations decree is unconstitutional. The shortcomings that appear cannot, the, be attributed to the judicial branch. 10) We demand that present officials be kept in their positions after the term of office has expired and until the entry into force of the judicial career service in which these officials should be automatically included. Competitive examinations should be carried out for future vacancies. 11) The list that the Superior Council of Judicature prepares should be circulated to fill vacant positions in all courts; there should not be a single list for each court. 129 The present prosecutors should be automatically included under the Office of the Procurator General of the Nation. B) RELATED TO THE SECURITY OF JUDGES: 13) The executive should first of all deal with the characteristics of a society that has a distinct class structure whose members have little formal schooling and labor skills, who are deprived of sound means of recreation, who fear the public law enforcement agencies and who, in a desire to secure a comfortable life, have been educated under an individualistic and competitive system in which the survival of the strongest and the most aggressive is an expression of the prevailing entrepreneurial philosophy that seeks enrichment at any price. 14) The Government must also understand that the word "security" does not mean undertaking an arms race or increasing repression; rather, it is an essential component to recognize and protect that which has been taken away from Colombians with ever increasing boldness and which can be summarized in a warm but unknown term, human rights; 15) Immediate causes for the security of judges are; a) personal insecurity in the community due to failures in enforcing Article 16 of the Constitution; b) uncontrolled growth of the underground economy; c) systematic violation of human rights; d) economic insecurity; e) indifference by the executive and the legislative branches vis a vis the judicial branch; f) irresponsible campaign of certain communications media to discredit the judicial branch, without foundation; 16) We reject the discriminatory treatment of the executive and legislative branches toward the judicial branch, despite all the denunciations; 17) We reject the shifting of drug traffic investigations to the military criminal justice system and we call for the return of constitutional competence to the regular justice system; 18) We demand objectivity and moderation in the communications media concerning the events relating to acts that can deprecate the judicial branch, without foundation; 19) We do not accept the arming or the establishment of a special group to protect judges; 20) We demand concentration of judicial offices to facilitate their supervision and to provide special protection for procedural formalities, and for officials who request it; 21) We request the suspension of jail visits until the future code of criminal procedure goes into effect; 22) We request life insurance equivalent to three years of salary for relatives of a judge killed in the performance of his duties and by virtue of them. We also request disability insurance in the form of a lifetime pension equivalent to 100% (one hundred percent) of the highest salary earned in the last year; 23) We demand a purging of the security forces and inviolability of judicial offices; 24) We demand absolute respect for human rights; C) RELATAED TO ORDINARY JUSTICE AND MILITARY CRIMINAL JUSTICE: 25) We demand a reinstatement of the extremely high mission of ordinary justice of administering and guaranteeing individual liberty and security; 26) We reject as unadvisable and unconstitutional the assignment of competence to the military criminal justice system for judgment of civilians; D) RELATED TO AMNESTY: 27) We declare that the judicial branch is the only Government power which, because it still has clean hands, can decide on what type of conduct constitutes political crimes and other crimes relating to rebellion, sedition and riot, on the basis of our knowledge, our honesty and out impartiality. We reaffirm that the judicial branch is a honesty and out impartiality. We reaffirm that the judicial branch is a guarantee of peace in the country; 28) We demand respect for human dignity for due process, for the right of defense and we reject any procedure that threatens these principles; E) RELATED TO

INDEPENDENCE; 29) We reaffirm the full autonomy of the judicial branch vis a is the executive and legislative branches, with a rejection of any procedure that would undermine or weaken that autonomy."

[6] Some of the legal precedents under which the military criminal justice system has been given competence to carry certain crimes, including crimes against the existence and the security of the state and against the constitutional system, are the following: a) Decree No. 1290 of May 21, 1965, during the government of President Guillermo Leon Valencia; Decree No. 593 of April 21, 1970, during the Government of President Carlos Lleras Restrepo; c) Decree No. 254 of February 27, 1971, during the Government of President Misael Pastrana Borrero; and d) Decree Nos. 1142 o June 23, 1975, 250 of June 26, 1975 and 2260 of October 24, 1976, during the Government of President Alfonso Lopez Michelsen.

[7] In its ruling of August 13, 1979, the court also said the following about military tribunals: "The decree in question does not create ad hoc bodies nor does it change the origin or composition of existing bodies. Simply put, in empowers certain authorities to exercise simultaneously the powers that they ordinarily have along with those that are assigned to them temporarily, under the terms of the constitutional authorization given in Article 61."

[8] Articles 566, 567, 568, 591, 597 and 598 of the Military Criminal Justice Code.

[9] Articles 1 to 6 of the Security Stature refer, in addition to others, to the following crimes: deprivation of liberty, kidnapping of persons, death of persons, rebellion to overthrow the government, invasion or attack of settlements, fields, farms, highways or public through fares causing alteration of social activities, provocation of fires in which loss of life occurs, provocation of damages to property by the use of bombs, detonating devices, explosives and under such circumstances, the loss of life, forcing money or documents capable of producing juridical effects by means of threats or violence or by simulating public authority or false order of public authority and for the purpose of obtaining for themselves or for a third person unlawful advantage.

[10] The preamble of decree No. 536 of March 14, 1980, reads as follows: "Whereas, Decree No. 2131 of 1976 declared the public order disturbed and a state of siege in effect for the whole of national territory; Legislative Decrees Nos. 2260 of October 24, 1976 and 1923 of September 6, 1978, assign to the military criminal justice system, for the purpose of achieving more expeditious administration of justice, the trial of several criminal infractions regarding conduct highly disturbing of the public order; these rules provided that the crimes that the military criminal justice system and others assigned to it would try, for the duration of the state of siege, will others assigned to it would try, for the duration of the state of siege, will be investigated and ruled on under the procedure of the oral courts-martial, except those crimes listed in Article 590 of the Military Criminal Justice Code; new events of extreme gravity and of public knowledge have occurred which have led to greater disturbance of the public order; in the opinion of the government, it is necessary to make the procedure itself of the oral court-martial more agile, thereby guaranteeing the right to a fear trial prescribed in Article 26 of the Constitution, since rapid and effective functioning of those courts is closely linked to the elimination of the primary and overriding causes of the disturbance of the public order; in proceedings in oral courts-martial which have prior investigations, the total charges result in voluminous briefs, as has been occurring, and the requirement established in Article 574 of the Military Criminal Justice Code, as it is currently recognized, prevents the prompt administration of Justice due to the great amount of time that is necessary to comply with it; in accordance with the nature of the procedure of the oral court-martial, when a prior investigation exists, the accused person has the opportunity to be present during the proceedings and o intervene in them from the point at which he gives unsworn testimony and to participate in the taking of evidence, either directly or through his attorney."

[11] See Chapter II.C.1.c) of this chapter.

[12] Article 311 of the Military criminal Justice Code reads as follows: "If the same person commits at the same time common crimes and crimes subject to military criminal jurisdiction, with out there being any relationship between them, the military authority shall try the latter and the common case shall remit a copy of actions taken to the other authority to continue the trial." Article 577 of the same code rules as follows: "If, at the conclusion of the investigation stage, facts that constitute crimes within the competence of the oral courts-martial appear demonstrated to the satisfaction of the presiding officer of the court-martial but these crimes are not the same as those indicated in the resolution of convocation but are connected with them, the individual indictments shall be drafted. If the new crimes do not appear to have been connected with them, orders shall be issued to make official copies of the pertinent matters so that they bay be provided to whoever it may concern:"

[13] The presiding officer of the oral court-martial in question is Colonel Rafael Martin Pietro, and the prosecutor, Colonel Augusto Pradilla Giraldo, both attorneys.

[14] These replies from the government are included in communications sent to the Commission that is, Communication No. 01675 of August 22, 1980, and Communication No. 00144 of January 19, 1981, in connection with case 7348.

[15] The presiding officer of the oral court-martial in Bogotá dealing with the FARC case is Colonel Otoniel Escobar Cifuentes and the prosecutor, Colonel Farouk Yanine Díaz.

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Organization of American States

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REPORT ON THE SITUATION OF HUMAN RIGHTS IN THE REPUBLIC OF COLOMBIA

CHAPTER VI

OTHER RIGHTS [1]/

A. General Considerations

1. The Commission considers it appropriate to refer in this chapter to other rights recognized in the American Convention on Human Rights, which are also regulated in Colombia's internal legal structure. These rights are included in the Constitution and are further developed in different laws that make up that regulatory legal structure.

2. As a result, the Commission considered it appropriate to examine the situation in Colombia of the freedom of conscience and religion, freedom of thought and expression, the right of assembly, the freedom of association and the right to participate in government.

B. Freedom of Conscience and Religion

1. As stated in Chapter 1 of this report, the Colombian Constitution regulates all matters relating to religion and relations between the church and the state. The Colombian state guarantees the freedom of conscience by stating: "No one shall be molested by reason of his religious opinions or compelled to profess beliefs or observe practices contrary to his conscience." If further states: "The freedom of all sects that are not contrary to Christian morality or to the laws is guaranteed. Acts contrary to Christian morality or subversive of public order that may e committed on the occasion or under the pretext of worship are subject to the general law." [2]/

The Constitution allows acts to be signed between the church and the state to regulate their mutual relations. The Vásquez-Palmas Concordat, which went into effect on July 2, 1975, to replace the Concordat of 1887, regulates, in addition to other matters, those pertaining to Catholic education, Catholic matrimony, the property of the church and ecclesiastical privileges.

2. Furthermore, Colombia's legal system regulates punishments of those who

violate the freedom of religion and worship. The penal Code provides that "Whoever through violence forces another to perform a religious act or prevents him from participating in a ceremony of the same type, shall be liable to confinement of three (3) to eighteen (18) months." It also states, "Whoever disturbs or prevents the celebration of a religious ceremony or function of any sect permitted in the nation shall be liable to confinement of six(6) month to two (2) years," [3]/

3. During the on site investigation, the Commission met with public authorities and high religious figures in Colombia. In these meetings they examined the situation of freedom of conscience and religion in that country.

The Commission has not received any formal denunciations pointing to violations of this right in Colombia. To the contrary, different types of information suggest that freedom of conscience and religion in the different walks of national life is fully observed in Colombia.

C. Freedom of Thought and Expression

1. The Colombian Constitution legally recognizes freedom of thought and expression in Article 32: "The press is free in time of peace, but liable, under the law, for attacks on personal honor, the social order, or the public tranquility." It's second paragraph states: "No newspaper publishing enterprise may, without permission of the Government, receive a subsidy from other governments or from foreign companies."

Besides this, law No. 51 of December 18, 1973 regulates freedom of thought and expression, which regulates the exercise of journalism and issues other provisions. According to this law, journalism in any of its forms is recognized as a professional activity regulated and protected by the state. The rules regarding journalism have, in addition to others, the following objectives: guaranteeing the freedom of information, expression and work association; defending the profession and establishing systems that give journalists security and progress in the performance of their work. Under the terms of this law, professional journalist are those persons who, after meeting the requirements set in that law, work on a permanent basis in the intellectual endeavors associated with the writing and designing of news or graphics information in any social communications media. The professional journalist is not required to reveal his sources of information or the origin of his news, without prejudice to the liabilities that he may acquire for his information. Public officials and especially police authorities are responsible for guaranteeing free access of journalists and their admission to places of information in order to carry out their informative work fully, except as provided in reserved cases covered by the laws. Any violation of this provision is considered grounds for misconduct punishable by discharge. [4]/

2. The Security Statute promulgated by means of Legislative Decree no. 1923 of September 6, 1978 contains several provisions relating to freedom of the press and expression when the public order is disturbed.

This law states: "For as long as the disturbance of the public order persists, radio broadcasting stations and television channels may not transmit information, statements, new releases or commentaries relating to the public order, the halt of activities because of

illegal work stoppages or strikes or news that incites to crime or makes apology for it," It adds that the Ministry of Communications, "by means of resolution with statement of reason, against which only the remedy of personal review is in order, shall set the penalties for the information that this article refers to, in accordance with pertinent rules of law 74 of 1966 and Decree 2085 of 1975." [5]/

During the Commission's stay in Colombia, it saw that the freedom of thought and expression were carried out normally and with full guarantees. Mass communications organs of different types, the press, the radio and television, published their news and information as well as editorials without restrictions on any type. The Commission also saw that several news organs were publishing information and editorials openly critical of the Government and that this did not lead to restrictions on the further practice of this right.

4. The Commission exchanged ideas with a number of media representatives and did not hear any complaints or substantial denunciations relating to this area.

The Commission met with the Minister of Communications who explained a number of matters relating to freedom of thought and expression. A few of these were how radio and television broadcasts operate and what regulations apply to them. He stated that because of technical questions, all television radio, there is no type of prior censure at all. The Minister of Communications also mentioned certain sanctions levied against stations that have violated these rules. One example he gave was Resolution 3741 of 1979, which suspended Noticiero Todelar de Colombia for two days for violation of Articles 25 and 51 of the Statute. This station had aired an interview with guerrillas who said they belong to the M-19 movement. Another was Resolution 0771 of march, 5 1980, which fined Cadena Caracol 5,000 Colombian pesos for having stated, shortly before certain holidays, that the Government had suspended talks with the M-19 in connection with the seizure of the Dominican Embassy. This, in the opinion of the Minister, besides not being true, had an adverse effect on the negotiations that were under way. The Minister of Communications also mentioned regulations on movies and the existence of a movie classification committee. He also stated that the opposition political parties had full access to the press and to radio and television programs.

5. Another matter associated with the freedom of thought and expression that deserves to be mentioned here refers to statements of defense attorneys involved in the oral courts-martial. The Commission, which has been attending the public stage of these oral courts-martial has heard the statements and ideas of the defense attorneys, who have been able to express with full liberty their points of view in the defense of their clients. They have also expressed their opinions on different subjects as well as their political and ideological viewpoints.

D. Right of Assembly and Freedom of Association

1. The right of assembly and the freedom of association are legally recognized in Colombia's Constitution, as discussed in Chapter I of this report.

The Constitution states: "Any number of people may meet or assemble peacefully. The authorities may disperse any assembly that degenerates into disorder or riot, or that

obstructs the public thoroughfares." The Constitution ads: "Permanent political assemblies of the people are prohibited." [6]/

2. As concerns the freedom of association, Article 44 of the Constitution states: "it is permitted to form companies, associations, and foundations that are not contrary to morals or to lawful order. Associations and foundations may obtain recognition as juridical persons. In order that they may be under the protection of the laws, religious associations must present to the civil authority authorization issued by the respective ecclesiastical superior."

3. The rights of assembly and association, as they relate to work and trade union associations, are guaranteed in the Colombian Labor Code. [7]/

The substantive Labor Code states: "The Colombian State guarantees the right of association and strike under the terms set forth by the national Constitution and the laws."[8]/

Furthermore, by regulating the right to organize, the code provides: "The State guarantees to employers, workers and to all persons exercising an independent activity the right to organize freely for the defense of their interests, by forming professional or trade union associations and to these, the right to join together or federate among themselves." "Trade unions should, in the exercise of this title, and they are subject to the inspection and supervision of the governments as concerns the public order and in particular, the cases that set forth herein." [9]/

4. During the on-site investigation, the Commission met with representatives of private enterprise and of employee and worker unions. It discussed at length different aspects of the rights of assembly and of association in Colombia.

Among the meetings that the Commission held during the on-site investigation were meetings with the Unión de Trabajadores de Colombia (UTC), the Confederación de Trabajadores de Colombia (CTC), the Confederación Sindical de trabajadores de Colombia (CSTC) and the Confederación general del Trabajo (CFT). The representatives of these labor groups, which are part of the National Trade Union Council, turned several documents over to the Commission and expressed their points of view to the members. Some of those present mentioned several social and economic problems such as the high cost of living, which has a particularly hard impact on workers, and low wages. They stated that in 1980, the government had called for a wage adjustment of only 26%. They also mentioned that there is a minimum wage for rural areas and another for the cities. Also, they said that the average family basket of goods for blue-collar families costs 10,000 Colombian pesos. They also referred to the state of siege that has been in effect for several decades.

According to these spokesmen the state of siege has resulted in repressive measures, especially in rural areas, that have had an impact on the local people when operations are conducted against guerrilla groups. They also explained the problems that crop up in attempting to exercise the freedom of association and to obtain legal personality status for a given union, owing to obstacles placed in their way by the Ministry of Labor. They added that following the enforcement of the Security Statute issued for the

purposes of the state of siege, the military has intervened in several labor disputes and that the police have dispersed groups of workers when they were on strike.

A preventative of the Confederación Sindical de Trabajadores de Colombia (CSTC) stated that a national civil work stoppage was being prepared to request the Government to put an end to the state of siege. A leader of the Confederación de Trabajadores de Colombia (CTC) stated that, in his opinion, the Colombian trade union movement is very concerned with the state of affairs in Colombia but that the government is the product of free elections and not a de-facto government. He also said that, to some extent, workers have benefited from the Government's policy. This, he said, does not ignore the fact that there have been some violations of human rights.

5. In addition, the commission held conversations with representatives of the private sector whom later turned over to it a document stating their points of view on the state of affairs in Colombia. These representatives also stated that the private sector has played a leading role in national development, in helping the working class, in generating employment, in housing and education for the working class. These representatives also stated their concern with the climate of violence generated by subversive activities, which have had a negative effect on social conditions in Colombia. They added that Colombia is a state of law, a country of laws, in which human conduct must abide by the rules of the Constitution and legal standards. They also stated that citizens are free to act as they please up to the point where their activities cause injury or prejudice to the state or to individuals or corporate bodies.

E. Right to Participate in Government

1. The Colombian Constitution guarantees citizens the right to participate in Government. In the area of elections, it states, "All male citizens shall elect by direct vote the municipal counselors, deputies to the departmental assemblies, representatives, senators and the President of the Republic," It also states, "Suffrage is exercised as a constitutional function. Any person who votes for or elects a candidate does not impose any obligation on the candidate or give any mandate to the official elected. " [10]/

Moreover, the Constitution prescribes in Article 178: "Officials of the judicial branch and the subordinate employees thereof, as well as those of the Public Ministry, may not be active members of political parties or participate in discussions of electoral nature, in the exercise of suffrage. Violation of this conjunction constitutes misconduct, which shall occasion loss of employment."

The Colombian Constitution also says that a person must be a citizen in order to elect and be elected and to hold public employment that includes authority or jurisdiction.

2. Law No. 28 of May 16, 1979, adopted the Electoral Code regulating all matters in this area. This legal structure provides, "Authority shall protect the exercise of the right of suffrage, grant full guarantees to citizens in the electoral process and shall act with impartiality so that no party or political group may derive advantages over another," It also says, "The two political parties that have obtained a majority in the latest elections shall be represented equally, and under equal conditions, in the electoral organization, without prejudice to the system of political impartiality and guarantees that are accorded

to all citizens." [11] /

3. Furthermore, the Colombian Penal Code states the crimes related to suffrage, and the penalties for them, and repeats the provisions contained in the Electoral Code. [12]/

The Penal Code provides as follows for violation of political rights: "Whoever in the cases specially stipulated as crimes prohibits or prevents the exercise of political rights by means of violence or deceitful maneuver shall be liable to confinement of six (6) to eighteen (18) months. If the person responsible for the act described in the preceding clause is a public employee, he shall also be liable to loss of employment." [13]/

4. The Commission was able to see that Colombia observes fully the right to participate in Government, in accordance with its legally established precepts. The system that functions in Colombia is one of preponderant participation of the two traditional party organizations, the Liberal party and the Conservative party, although it has other parties that are represented in the legislature such as the Communist Party. This does not mean that citizens who do not belong the two principal parties cannot exercise their political rights freely. Such persons may start political organizations and participate in public decisions and in elections at different levels within a system of political pluralism and democracy based on the rights and guarantees recognized in the National Constitution.

5. It should be noted here that persons who object to the two-party system as well as other political commentators have asserted that democracy in Colombia's political system is more formal than real. They offer as one of their arguments the high percentage of non-voters, which has reached 50% of those, entitled to vote.

In Contrast to this, those who support the prevailing two-party system indicate that the high percentage of non-voters includes those for whom voting is not a possibility for different reasons. This group would include dead persons whose names are still on voter registration lists, persons living outside the country or temporarily abroad and rural citizens who find it difficult to go to the municipal seats or the voting places or to leave their families alone while they go to vote.

Another cause, they say, for the high rate of non-voting is the apathy among many city people toward the political process and active involvement in it.

Furthermore, the percentage of non-voter varies according to the circumstances. The percentage is higher in elections for lower officials than for the president in national elections.

6. On the basis of the foregoing, the Commission has observed that these rights are in full effect but it believes that the practice of them could be improved. As a result of the conditions that have gone into effect under the state of siege and the implementation of the Security Statute, the right of assembly and the freedom of association have been somewhat limited, thereby endangering the full exercise of those rights.

[Table of Contents | Previous | Next]

[1] The American Convention on Human Rights reads as follows in Article 12 of freedom of conscience and religion: "1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private. 2. No one shall be subject to restrictions that might impair his freedom to maintain or change his religion or beliefs. 3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others. 4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convection's." Article 13 on freedom of thought and expression in that same Convention provides the following: "1. Everyone has the right to freedom of though and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or though any other medium of one's choice. 2. The exercise of the right provided for tin the foregoing paragraph shall not be subject to prior censorship but shall be subject to the subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: a) respect for the rights or reputations of other; or b) the protection of national security, public order, or public health or morals. 3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions. 4. Notwithstanding the provisions of paragraph 2 above, public entertainment's may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence. 5. Any propaganda for war or any advocacy of national, racial or religious hatred that constitute incitements to lawless violence or to any other similar illegal action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law." No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public order, or to protect public health or morals or the rights or freedoms of others." Article 16 on freedom of association reads as follows: Everyone has the right to associate freely for ideological, religious political, economic, labor, social, cultural, sports or other purposes. 2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals for the rights and freedoms of others. 3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police." And finally, Article 23 on the right to participate in government reads: "1. Every citizen shall enjoy the following rights and opportunities: a) to take part in the conduct of public affairs, directly or through freely chosen representatives; b) to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and c) to have access, under general conditions of equality, to the public service of his country. 2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in the criminal proceedings."

[2] Article 53 of the Constitution. This same article also states: "The government may conclude agreements with the Holy See, subject to later approval by the congress to regulate, on the bases of reciprocal deference and mutual respect, relations between the state and the Catholic Church." Article 43 of the Constitution reads as follows: "Priestly functions are incompatible with holding public office. Catholic priest may, nevertheless, be employed in the fields of public education or charity."

[3] Articles 294 and 295 of the new Penal Code. In addition, Article 296 provides for punishment of those who damage or injure persons or property used in the worship, by stating as follows: "Whoever damages the objects used in a worship or the symbols of any legally permitted religion or publicity offends such worship or its members by reason of their investiture shall be liable to confinement of three (3) months to one (1) year."

[4] Article 1,2,11 and 12 of Law No. 51. This law also sets the requirements that must be met for the permanent exercise of the profession of journalist, the establishment of the professional journalist's card, the powers of the Ministry of national Education to grant that card and other aspects related to it, matters relating to boards of directors of journalist's organizations of a guild or a trade union nature, and the establishment of February 9 of each year as Colombian Journalist's Day. Furthermore, Article 10 stipulates the following: "The social communications media of the public sector, governmental agencies and public corporations of a community nature, sector, governmental agencies and public corporations of a community nature, public establishments, industrial and commercial state enterprises and mixed economy corporations, regardless of heir denomination, which establish or have informational or news services, may employ only professional journalists in connection with strictly journalistic services."

[5] Article 13 of the Security Statute. Article 13 of the same statute reads as follows: "The ministry of Communications is hereby empowered, under the terms of Article 5 of Decree 3418 of 1954m to recover temporality, for the estate, full control of any and all the broadcasting frequencies or channels used by private persons whenever necessary to prevent the disturbance of the public order and to re-establish normality. Permits to provide broadcasting services withdrawn by the Colombian State shall be understood to be temporarily suspended."

[6] Articles 46 and 47 of the Constitution.

[7] In addition, the new Colombian Penal Code, Article 292, specifically, regulates the violation of the rights of assembly and association for labor purposes: "Whoever impedes or prevents a lawful meeting or the exercise of the rights that labor laws grant or who takes reprisals for reasons of legitimate strike, assembly or association shall be liable to confinement for one (1) to five (5) years and a fine of one to fifty-thousand pesos."

[8] Article 12 of the Substantive Labor Code. Article13 of this code reads: "The provisions of this code contain the minimum rights and guarantees recognized for workers. Any stipulation affecting or ignoring this minimum shall produce no effect."

[9] Article 352, Chapter I, Title I on Trade Unions, Second Part on the Right to Organize, of the Substantive Labor Code. The Code also regulates the protection of the right of association, workers unions and their classifications, organizations of worker unions, the number of affiliates, their juridical personality and the functions attributed to the Ministry of Labor in this area.

[10] Articles 171 and 179 of the Colombian Constitution. The Constitution also states in Article 180, "The law shall regulate all other matters concerning elections and vote counting, ensuring the independence of both functions; define

the crimes that may impair the honesty and freedom of the suffrage, and prescribe due penalties.

[11] Articles 5 and 6 of the Electoral Code. The Electoral Code regulates all matters in this area. Title XI regulates crimes against suffrage such as disturbance during votes, constraint of electors, trading votes, fraudulent votes, promotion of fraudulent votes, electoral falsehood, delays in turning over documents relating to a vote, culpable behavior, alteration of electoral results, multiple personal identification, withholding and improper possession of identification cards, refusal to register, refusal to sign vote counting minutes, violation of political rights, obstruction of party activities and disturbance of political assemblies.

[12] Articles 248 to 258 of the new Colombian Penal Code.

[13] Article 293 of the new Colombian Penal Code.

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REPORT ON THE SITUATION OF HUMAN RIGHTS IN THE REPUBLIC OF COLOMBIA

CHAPTER VII

MILITARY OPERATIONS IN RURAL AREAS

A. General Considerations

1. The purpose of this chapter is to discuss military operations in rural parts of Colombia and their impact on the local and Indian populations. In making this review, the Commission does not seek to make a thorough analysis of such a complex problem as the situation of the Indians. This problem, as it is in any other country in the Americas, has implications of different types, among them, anthropological, sociological, legal, economic, cultural and religious.

2. Colombian military authorities have informed the Commission that these operations have not resulted in the militarization of certain geographical areas. Military regimes have not been established in any of these areas and the civil authorities designated by the central government continue to carry out their normal functions.

In recent months, the Commission has received claims and information referring to military operations in certain rural parts of Colombia. According to that information, these operations have had adverse effects on the local farm population and on certain Indian communities.

Some of the information that is in the hands of the Commission speaks of "militarized" zones, resulting from military operations aimed at eradicating subversive movements and the armed and political activities of guerrilla groups, among them the FARC and the M-19, in those rural areas.

B. The Case of the El Pato region

1. On September 12, 1980, the Commission received the following claim:

Three thousand campesinos from the El Pato Region have come to Neiva, the capital city of Huila Department. This exodus started on August 27 following air bombardments and other military operations. Legislative bodies such as the Council of

Neiva have announced their unanimous opposition to new acts of repression against the civil population and have demanded the demilitarization of farming areas and implementation of full guarantees for the local people. Last August 31, 100 police agents occupied the lands of the Embera-Katia Indian community in the municipality of Bagadó, Chocó Department. As a result of this punitive action Luis Enrique Arce, an Indian and the Governor of Cabildo, Jairo, were killed.

The Indians have denounced the disappearance of five children and the destruction of huts, personal belongings, tools and the loss of a large sum of money that was to be used to pay the workers of the gold mines they own. [1]/

2. In a communication dated October 15, 1980, the Government replied to the Commission's request for information as follows:

1. It is not true that three thousand campesinos have left the El Pato region as a result of air bombardments or other types of military operations. This exodus of people has been caused by subversive elements belonging to the FARC who have attempted to stop the public force action that was being carried out in neighboring areas as a result of the serious incidents caused by that criminal organization last August 18 when three soldiers of the national army were killed.

2. Members of the National Congress and the Colombian press went to the El Pato region and saw that the area had not been subjected to bombardment by the air force. This type of military action was used only once to bring about the capture of a clandestine airport located in the Las Perlas area, outside the El Pato zone, This airport had been used by these anti-social elements as the delivery point of large sums of money as ransom for persons kidnapped. As the congressmen and journalists were able to see, no houses or properties that could have been affected by the air force action exist within ten kilometers of this airport.

3. The President of the Republic and several ministers had the opportunity to talk with a delegation of approximately 80 campesinos that said they were from El Pato. The purpose of this meeting was to examine the situation, which has arisen there. During this meeting the Government informed them that the persons actually responsible for the disturbances of that region were the members of the FARC. It then read out the names of 103 local people who had been killed by that subversive organization in violation of their human rights. One interesting point, it should be noted, is that there were only eight campesinos at that meeting who were actually from the El Pato region. The other 72 were recruited from areas around this capital city through a deceitful maneuver by several leaders of the Communist party.

4. The large majority of the campesinos involved in the August 27 exodus have now returned to El Pato, the area in which the national Government and the army, in particular, have been building an important highway and other works of interest for development of that region.

5. As for the situation that has arisen in the municipality of Bagadó, Department of Chocó, between the members of an Indian Community and the national police, it should be recalled that this intervention of the public force was carried out under

the terms of an injunction issued by competent civil authority. An investigation is being conducted into the incident between the authorities and the Indian community. [2]/

The Colombian Government has turned over to the Commission other documents on this case. These documents deal with different aspects of these military operations. One of these documents reads as follows:

1. BACKGROUND

Since 1954 the Guayabero and El Pato region has been used as the chief refuge and center for organization and training of the armed groups that operate in different parts of the country under the direction of the Communist Party of Colombia and, at this time, the self-named Fuerzas Armadas Revolucionarias de Colombia.

From the start this organization has been carrying out intense activity in an effort to convert and coerce the people living in the region. They have conditioned their stay there and their lives on gaining their support.

In addition to this, these groups and specifically, those in the area of influence of Guayabero and El Pato, have conducted several criminal activities in the past five years:

Attacks on neighboring villages	11
Known kidnappings	10
Ambush of army and police patrols	10
The following persons were killed in these Ambushes.	2 Officers
	7 Non-commissioned Officers
	9 Soldiers
	6 Police Agents

- On June 4, 1980, in the area surrounding the Uribe (Meta) police inspection station, anti-social elements of the FARC ambushed an armed patrol and killed five soldiers.

- On August 18, 1980, in the area of Puerto Crevaux, these same anti-social elements ambushed another army patrol and killed two soldiers at this time.

Following these events, the army with the corresponding and necessary support from the air force launched operations on August 19. To date, the army has located the following installations:

- The installations of the so-called “chiefs of staff,” located on right bank of the Guayabero River, with two lodgings for personnel, four huts for the kitchen, dining room and dispensary, an escape tunnel 20 meters by one meter, and infantry training field and wooden training rifles.

- Installations occupied by Luis Alberto Morantes Jaimes (also know as Jacobo Arenas), the political chief of the organization, located on the Right Bank of the Leiva River, with the following facilities: hut, kitchen, dispensary, camp for 40 men and training field. This area had fortified surroundings.

- Landing field on the left bank of the Leiva River with two huts for the kitchen and lodging for men. This 800-meter long field was built by the bandits whom they used for landings and take-off of DC-3 airplanes.

- Installations at Puerto Chiguiro, with shoe-repair, leather-working, sewing, and carpentry shops, a dental clinic, an armory, two huts, lodging for 80 men each, and a conference building for 150 men. The area sound this installation is also fortified.

- Installations at Guayabo Negro, with lodging for 20 men, kitchen, a sugar mill, shooting range and dispensary. This area is also fortified.

- Installations in the Moja Huevas gorge, with hut, dining room, sports fields, and housing for 100 men. This area is also fortified.

- Camp across from the so-called Sara Cruz house, on the Guayabero River, with hut, dining room, kitchen and lodging for 60 men. This area is also fortified.

2. EXODUS OF LOCAL PEOPLE

As a result of the presence of troops in the area where, for a considerable length of time, there has been no authority other than that of the seditious elements and since the local population is afraid of them and obedient to them, the so-called chiefs of staff of the self-named FARC gave the order to evacuate the area for the following purposes:

- To generate a social problem in the city of Neiva to pressure the Government into compliance with their demands.

- To use certain local persons to conduct a well designed propaganda campaign thorough the national media to have public opinion condemn the action of the troops.

- To remove small groups of local persons to the principal cities for the apparent purpose of looking for human solidarity but for the real purpose of promoting disorder among students and workers.

3. CIVIC ACTION OF THE MILITARY FORCES

In the operational area the military forces encircled the El Pato and Guayabero region to keep the anti-social elements from spreading their criminal activities beyond the control area, and to support the different works that the military command is carrying out

there. These projects include civil and military cooperation in the so-called rehabilitation plans.

These plans, developed after 1966 directly by the army command in coordination with governmental, semi-official and private agencies, were designed to build the basic infrastructural works needed to rehabilitate the region, to reintegrate it into the national economy and to eliminate the primary socioeconomic causes of the disturbances of public order. Many of these social problems were started by the FARC groups and were being exploited by them in their political conversion activities.

At the start of execution of these plans, the decisive participation of the military forces helped to achieve the following:

1) The reintegration of former inhabitants who had been removed from their land by the anti-social elements. More than 300 families returned to the El Pato region during this stage.

2) A loan program was conducted by the Caja Agraria for families who resettled in Alto Pato. Under this program, each family received a loan of $74,000.

3) A road section of the Platanillal – Balsillas road 24 kilometer long was built.

4) A mule path 40 kilometers long from Yucales - Balsillas San Jorge was built.

5) A dirt road 13 kilometers long between Holanda and Pueblitos was build.

6) Organizational assistance was given to a number of consumer cooperatives, with the help of the national Superintendence of Cooperatives and IDEMA:

7) The National Coffee Growers Federation helped to build a school in Upper Pato region in 1975. Later, another was built in Galicia (Middle Pato).

8) A health center was built at San Jorge (Upper Pato) for permanent health services in the person of a nurse from the National Health Service.

In a later stage of this work (starting in November 1976) the Balsillas. San Vicente road was started with a projected total of 111 kilometers. Of this amount, 36 are now designed and 25 are built, following an investment of $42,589,000.

At this time, the average cost of this work is $4,000,000 per kilometer. [3]

4. On October 10, 1980, the Permanent Committee for the defense of Human

Rights published a press bulletin about this case. In addition to other points, this document makes the following:

This is not the first time that the Colombian army has committed aggression in the El Pato region. During the violence unleashed in 1948 throughout the entire country, this was one of the hardest hit areas. During the second wave of violence in 1955, military forces bombarded and systematically machine-gunned the region of Villarica and Galilea, converting their fields into cemeteries and forcing the survivors to move to El Pato and Guayabero. In 1965, under the same pretext that is brandished about now, that is, "suppressing the independent republics," the Colombian army, advised by a United States military mission, committed the most ferocious genocide of campesinos of this region. Once again the area was machine-gunned and bombarded, resulting in the loss of hundreds of lives, property and other goods of the local people. Hundreds of settlers were detained and tortured. The others emigrated in a mass movement to the cities.

Later, in 1971, the Government guaranteed that the farmers could return freely to this area affected by violence and promised that the army would not intervene there militarily. It also promised these campesinos that hey would se socioeconomic development plants, school, health centers, loans, highways and other improvements. None of these plans has been carried out by the authorities.

Despite the promises to refrain from military operations in the region, In August 1980, troops of the Ninth Brigade invade, bombarded and machine-gunned these rural areas under the pretext of repelling a guerrilla attack and arguing that Colombia could not tolerate the presence of "independent republics."

These new military actions provoked a new massive flight of the civilian population. Two thousand persons, among them men, women, old people and children, marched hundred of kilometers to Neiva and other cities to save their lives. The economic losses were great since crops and cattle were abandoned.

The Congress of the Republic has appointed investigating committees to find a settlement for this problem. Most of the departmental assemblies and the municipal councils have requested that the El Pato area be demilitarized.

For its part, the government and the military affirm that the army will remain in the area for an indefinite time and they refuse to offer sufficient guarantees to the campesinos so that they can return to their land without risking their lives. Authorities have also refused to guarantee that they will not impose measures that are in effect in other militarized parts of the country, among them, the implementation of military passes for moving about, constant personal appearances at control points, restrictions on the trade of foods and medicines, massive detentions, raids and tortures at the military Camps.

Thus, the problem still has no solution in sight. The campesinos refuse to return until they have sufficient guarantees and will continue taking refuge at the stadium in Neiva. Hundreds of the families there suffer form the inclement weather and one child has already died from gastroenteritis.

C. Other Military Operations

1. In a communication dated February 5, 1981, the Commission received information on new military operations in rural parts of Colombia. This information included press releases on those operations. The pertinent parts of this information follow:

We are also sending to you press clippings informing the Colombian people about a new military operation that covers all the territory of the Intendency of Caquetá and also the departments of Meta, Huila, Tolima and Cauca. As high military leaders have said, this is a military operation much broader than any others conducted to this time in Colombia. This war action, like the others before the civilian population, especially against local campesinos as has been occurring to date, always under the pretext of their being the helpers of the rebel groups.

We have just learned that preparations are under way for another military operation against other municipalities and regions in Meta department. Specifically, there is a threat of a large-scale military occupation of the area of Medellín del Ariari and the municipalities of Lejanías and San Juan de Arama. It should be noted that these places have large civilian populations and it has been more than twenty years since there has been violence there. To the contrary, Colombians in general know that the inhabitants of these places are hard working, peaceful people. I t is clear that this unusual activity of the Colombian Armed Forces is closely linked to the discussion and possible approval by the national Congress of the official draft law on a presumed amnesty for the rebels. The behavior of the high military commanders is aimed at increasing public tension and making it practically impossible to apply the benefits of the amnesty, which would obviously be qualified and limited. [4]/

2. At the time, the Permanent Committee for the Defense of Human Rights in Colombia turned over to the Commission a report of military operations conducted in 1980. This report reads as follows:

February 10, 1980 – Puerto Boyacá: Five thousand (5,000) soldiers were sent to reinforce the militarization oft his municipality. Dos Quebradas, El marfil, Pinzón and Guanegro are the targets of strong restrictive measures. Their inhabitants are under strict controls for purchases of food, medicines and goods in general. Troops raid the homes of these people. Some people have been detained and tortured. Among these are Luis Enrique Henao and his son, Luis Enrique and Luis Carlos Galindo, their family members have denounced their disappearance.

February 17, 1980 - La Uribe (Meta): a large and representative group of inhabitants from la Uribe met with Minister Germán Zea Hernández and denounced the bombardment of their village. Military helicopters and airplanes took part in that operation in which the homes and streets of the village were indiscriminately bombed on several occasions. Later, land troops occupied the village and started to search homes, businesses and teaching establishments. Several of the repressive measures adopted by the troops are required passes, control of supplies, appearance of citizens before military base commanders and massive and indiscriminate detention of citizens. According to the members of this group, more than 50 persons have detained. These include farmers, businessmen, schoolteachers, and the physician of the Office of the Secretary of health and the Police Inspector.

April 1980 – Arauca: Hundred of soldiers belonging to the Seventh Brigade were sent to the Fortul region (Intendencia of Arauca) under the pretext of pursuing alleged members of the FARC. Troops of the Air Transport Battalion and the Guías del Casanare Battalion are participating in this military operation.

August 24, 1980 – El Pato: Military airplanes and helicopters bombarded the place know as Las Perlas in the lower Pato region between the department of Huila and the Intendency of Caquetá. The bombardment is part of the Pato operation planned by the Ninth Brigade headquartered in Neiva, the capital of Huila. As a result of the bombing, more than 1,500 families of local settlers left the area. These terrified campesinos abandoned their farms, livestock and crops and went to the cities of Neiva and San Vicente del Caguán. In Neiva, authorities sheltered the farmers and their families in a sports stadium. The unhealthy conditions, the confusion and the overcrowding resulted in the death of three small children.

September 1, 1980 – Chocó: A military operation approved and coordinated by the Ministry of Defense and the National Police command in Bogotá was carried out in the Upper Andágueda, a region located on the boundaries between the departments of Antioquia and Chocó. The Embera-Catín Indian tribe inhabits this jungle area. This tribe has been harassed for several years by military and police authorities who defend the interest of large Antioquia landowners interested in depriving the Indians of a rich gold mine located within the boundaries of their lands.

In all, 200 police agents armed with rifles and grenades took part in this repressive action. The press repots that news military and national police groups have gone to the area to strengthen the public forces involved in these operations. A committee of Indians reached Bogotá and claimed that during the repressive action, Jairo Rivera, Roberto Murillo and the Governor of the reservation, Enrique Daza, were killed. This committee also claimed that during the political aggression against the Indians, 4 children disappeared and 8 Indians were taken prisoner, several wounded among them.

September 10, 1980 – Urabá (Antioquía): The troops of Operational Command No. 11, headquartered at the La Maporita of Dabeiba Base, were reinforced by military units belonging to Voltígeros, Junín and Bomboná battalions, making a total of 10,000 men belonging to the infantry, the navy, the air force and the paratroopers. This was the start of a pincer operation under the pretext of putting and end to the rebels. As a result, the local campesinos fled to the city.

October 10, 1980 – Santander: The southern part of the department of Santander has been militarized and the municipalities of La Paz, Santa Elena, Vélez and Florián occupied. The reason for this, according to high military officers, is the murder of Nolasco Niño who was executed by civilians who have been seen many times accompanying army patrols. These persons also shot José Rodríguez, a teacher in the leg.

October 16, 1980 – Urabá: Several operational units of the Caucheras military garrison started a large-scale military operation in the Urabá region. Army soldiers and groups of individuals dressed in civilian clothing, who belong to the counter-insurgent force, occupied the districts of El Sungo, San Martín, La Pancha, San José, El Mariano, La

Balsa, Los Mandarines, El Gaz, El Salto, Arenas, Oviedo, Caravallo, Caravallito, and Pueblo Galleta which are in the municipalities of Apartadó en Turbo. They also took the districts of Leoncito and La Curva in the municipality of Mutatá where they held and tortured seven (7) civilians, among them, Alfredo Pérez, Conrado Pérez and Tocayo Durán.

A delegation of counselors from the region requested a meeting with the Minister of Government and legislators from Antioquia for the purpose of requesting guarantees and the withdrawal of the army so that they are not forced to emigrate to the cities. The members of the group state that the operation has been in preparation since early in the year when the military garrison was installed at Caucheras. [5]/

3. In January 1981, military authorities reported to the Commission on several parts of the military actions in rural areas and the operational fronts of the FARC in those areas. In conversations about this matter, the following points were covered:

a) The military operations were carried out in geographical areas where subversive groups have been active and where the FARC has been active for a long time;

b) The rural military action of the FARC includes the establishment of guerrilla fronts in the following areas:

i) The El Pato region in the department of Huila and in Caquetá;
ii) Department of Huila;
iii) Department of Caquetá
iv) Middle Magdalena Region;
v) Urabá region;
vi) Parts of the Cauca Valley;
vii) Meta department, specifically in the Guayabero region;
viii) Dismembering of the Fourth Front which operates north of Cimitarra;
ix) Department of Caldas;
x) Arauca region;
xi) Area along the border between the Departments of Boyacá and Cundinamarca.

c) It was also explained that there were eight fronts in 1979 and eleven fronts by early 1981. [6]/

[Table of Contents | Previous | Next]

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[1] This claim was transmitted by the Commission to the Colombian Government in a communication dated September 12, 1980. The communication requested information about this matter. The Commission proceeded to open this case as No. 7561.

[2] The pertinent parts of the Government's reply were transmitted to the claimant in accordance with the Commission's rules.

[3] In addition, the Colombian Government gave to the Commission a report on the deaths caused by subversive groups in Huila and Caqueta. This list has 75 persons and their deaths have been attributed to the FARC. Another list of 16 dead persons has been charged to the Ejército Popular de Liberación while another list of 15 has been charged to the M-19. The Government also turned over to the Commission the press bulletins issued by the Ministry of national Defense in connection with the military operations in the areas of Guayabero and El Pato.

Press bulletin No. 041 dated August 25, 1980, reads as follows: "In connection with the military

operations that army troops have been carrying out since last August 18, with the support of the air force, and under the jurisdiction of the Seventh and Ninth Brigades, the ministry of national Defense reports: 1. Following several actions carried out in the southern part of Meta department, the Seventh Brigade occupied and dismantled the command post of the FARC, and its training and supply areas located to the east of the place known as Puerto Crevaux. During these operations army troops took a clandestine airport located at the confluence of the Leiva and Guayabero Rivers, captured different war material, uniforms, tools for landing field maintenance, large quantities of medicine, implements to make uniforms, provisions and large amounts of communist party propaganda. The landing field is 800 meters long and 40 meters wide and trenches protect the ends of the runway. 3. While the Seventh Brigade was occupying a large zone of Meta department where the FARC had its command post, training and supply areas for a long time, the Ninth Brigade proceeded yesterday to occupy the general area of Las Perlas on the boundary between Meta department and the intendency of Caqueta. 4. During their retreat, the FARC burned their Camps and installations and abandoned equipment, arms, tools, livestock and crops, thereby losing the logistical support that they had organized over several years. There were also indications that in their flight, the FARC took their dead and wonder with them. 5. In these actions, First Corporal CARLOS AGUDELO MADRID lost his life in the performance of his duty and First Corporal FRANCISCO MONTOYA and soldiers ORLANDO HERNANDEZ HENAO, HENRY VARGAS MUÑOZ and JORGE YANTEN were wounded. The public is informed that the FARC took first all types of outrages, including low forms of humiliation and torture. 6. The command had refrained from conducting military operations in this part of the country in view of the situation of the local people who wee constantly advantage of to carry out their criminal intentions. The national Army and the Colombian Air Force will not stop their operations in the southern part of the Meta department until they succeed in reducing to insignificance the FARC elements operating in that zone."

[4] The pertinent parts of this information from the claimants were transmitted to the Colombian Government by the Commission in a communication dated February 10, 1981, as part of case No. 7561. The press information that was released in Bogotá newspapers referred to the Government's actions against the FARC and the M-19 in Caquetá. These publications include the message which the Commanding Officer of the Colombian Army, General Fernando Landazábal Reyes, issued to military personnel at the start of the offensive against the subversive groups. That statement reads as follows: "In making up this operational unit, a group of the most select officers and noncommissioned officers of the army were selected for command and staff positions. They will be under the command of Colonel Luis Eduardo Barragán Gutiérrez, a man with long experience in counter-insurgent warfare and skilled in all forms of army combat. These soldiers will carry out their missions. Operational Command No. Twelve will be in charge of troops selected form the Seventh, Ninth and Tenth Brigades belonging to the Vargas Infantry Batallion, the Serviez Air Transport Batallion, the Tenerife Artillery Batallion, the Magdalena Infantry Batallion, the Cazadores Infantry Batallion, the Juanambú Infantry Battalion and the Colombia Air Transport Battalion. I wish to emphasize the patriotism and dedication that the tactical units that make up operational command number twelve has shown at all times. In particular, I wish to emphasize the excellent work that they had carried out in the performance of their duties in the different jurisdictions where they have performance of their duties in the different jurisdictions where they have employed their will, enthusiasm and spirits to guarantee the tranquility, life, honor and property of all our compatriots. Placing Operational Command No. Twelve in charge of this is consistent with need to structure a properly commanded and out fitted organizations which, as a cohesive and disciplined unit convinced of the just cause of our democratic system, should make all efforts and sacrifices that the present times require to restore peace to these lands and tranquillity and trust among the people. I wish to take this opportunity to request that the people support and work with the troops. Remember that by being at their side, they are supporting liberty, the legitimate government, democracy, progress and peace. I wish to state that if, to the contrary, the people are indifferent or opposed to our cause, which is the cause of the whole country, they should be mindful, that they are unavoidable participating in this chaos and dissolution of the Republic. The Americas and the world offer examples, which I ask the people to consider. I wish to tell all these people, all men and women of Caquetá, Putumayo, El Pato, Coreguaje, El Guayabero, La Macarena, Yari and surrounding areas, that the flag carried by the soldiers is the flag of their traditions, their customs, their ideas, their liberty, their beloved Colombia. On the other hand, the banner of the subversive groups is nothing but he symbol of slavery, repression, and the despotism of the so-called dictatorship of the proletariat. Under this form of power, as we see in Poland, the proletariat is the slave and the Marxist Committee, the tyrant of the society, its people, their property and their destiny. I also wish to request civilian and ecclesiastical authorities to view these troops as a substantive part of our nation and to offer them their support, give them their counsel and guarantee them the completion of their duty, by all means available to them. I also ask them to pay whatever prices that loyalty and sacrifice may demand and to give the soldiers the constant support of the professional and patriotic enthusiasm in their hearts. I trust that with the help of God and the good will of the people of the region, every soon tranquility and order will be restores to this land of promise for the progress and happiness of the entire Colombian nation."

[5] Information from the AFP Press Agency, dated January 24, 1981, Bogotá, on the military operation in the Caquetá zone, reads: "Approximately 1,000 persons including alleged guerrillas and their helpers have been detained since Friday in remote parts of southern Colombia. This was part of a gigantic regular troop offensive against insurgents, reliable sources said here today. Included in this operation being conducted in the vast, partially jungle area of Caquetá, are approximately 3,000 men of a new counter-insurgent command, which was launched yesterday by the Army Commander, General Fernando Landazábal. Most of the arrests were in Florencia, the capital of Caquetá, where Operations Command No. two, which will be supported by other battalion, will be based. In this area located in the Colombian Amazon the pro-Soviet rebel group, the Fuerzas Armadas Revolucionarias de Colombia (FARC), has become a type of independent ¢Republic¢ as has occurred in other remote areas as will, according to military spokesmen. According to the same spokesmen, the FARC, the largest guerrilla group in the country, shot several campesinos in recent days as presumed traitors and kidnapped six land-owners and an important businessman, obviously for the purpose of demanding huge ransoms for their release. These sources also say this guerrilla counter-offensive is even larger than the one carried out mid-way through last year in the El Pato region, Huila Department, where thousands of settlers fled in fear of army bombardments directed at the FARC and the pro-Castro Ejército de Liberación Nacional (ELN)."

[6] The Government of Colombia turned over to the Commission a number of documents including requests from citizen groups, civic leaders, municipal authorities, and community action groups from different towns and departments of the country to re-establish army positions or police stations in those areas, or to expand their jurisdictions. The purpose of these actions was to protect the rural areas from violence and threats stemming from the action of the subversive groups.

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

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REPORT ON THE SITUATION OF HUMAN RIGHTS IN THE REPUBLIC OF COLOMBIA

CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

1. The Commission believes that the Republic of Colombia has adopted a number of laws that will assist in the observance of the rights recognized in the American Convention on Human rights, to which Colombia is a Party. The Constitutional Reform of 1979 conferred upon the Procurator General of the nation specific powers for the defense of human rights.

2. The Commission believes that the conditions deriving from the state of siege which has been in effect almost without interruption for several decades have become an endemic situation which has hampered, to a certain extent, the full enjoyment of civil freedoms and rights in that, among other things, it has permitted trials of civilians by military courts. The Commission also believes that in general the state of siege has not resulted in the suspension of constitutional guarantees and that, because of its peculiar features it has not posed a real obstacle to the operation of democratic institutions.

3. Under the aegis of the state of siege, and as a result of the measures adopted to maintain public order, the Government also issued the Security Statute, a legal instrument that brings together many provisions of earlier decrees. Although the Security Statute is exceptional in nature, it grants military and police authorities the power to impose penalties, it permits trials of civilians by military courts, restricts the right to a fair trial and other constitutional guarantees, and includes types of lengthy punishments that are inconsistent with the exceptional nature of the Stature.

4. The Commission observes that the conditioned Amnesty law promulgated by the Government did not produce the effects that were hoped for in terms of re-establishing peace and good social order among Colombians.

5. in connection with the right to life, judging by the examples given in Chapter II of this Report, the Commission is of the opinion that this right has been the object of violations, in some cases. The Commission realizes that investigations have been conducted to clarify facts and administrative and disciplinary measures have been taken in those cases. With respect to penal action to punish those responsible for these acts, these have been started by the trials have entailed lengthy legal procedures. Despite this, the government's efforts have not been totally successful in preventing or

suppressing these abuses.

6. With respect to the right to personal liberty, the Commission believes that, although the Government has attempted to meet and comply with the requirements in effect for application of Article 28 of the Constitution relating the arrest and detention of persons during times of peace when there are serious reasons to fear a disturbance of the public order, in practice there have been abuses of authority such as mass arrests, illegal detention procedures and in some cases illegal searches and seizures, and extension of the legal period for interrogation and investigation. In the opinion of the Commission, this is owing to the lack of regulations to determine the boundaries and the applications of Article 28.

7. In accordance with its reviews of the documents and information in its possession, which are given in this report, the commission believes that the right to personal security has also been violated. These violations have come during the interrogation stage of persons detained by reason of the measures promulgated to combat violence stemming from the action of subversive groups and have led to mistreatment and torture. The Commission also observes that, through the Office of the Procurator General of the nation, investigative procedures designed to verify claims made in connection with these violations have been initiated and conducted. However, virtually none of these cases has yet resulted in punishment of the alleged perpetrators. Many of the cases have been closed for lack of merit to continue the judicial investigation. It is obvious that the government's efforts to prevent and repress such abuses have not produced sufficiently effective results.

8. As regards the jail system, the Commission recognizes the efforts the Colombian Government has made, through the ministry of Justice, to modernize the legal rules governing this system. In addition, the Commission has seen that persons held at the detention centers are well treated but that the conditions there are deficient. Among others is the problem of overcrowding owing to the large criminal population.

9. As concerns the right to a fair trial and due process, the Commission believes that the ordinary system of justice is operating normally and in accordance with the laws governing it. The military justice system does not offer sufficient guarantees because its rules contain restrictions on the right to a fail trial and in practice, procedural irregularities that impede due process have occurred.

10. The Commission believes that, in general, Colombian observes the other rights guaranteed in its Constitution and recognized in the American Convention on human Rights. Freedom of conscience and religion are exercised without qualification. Freedom of thought and expression are carried out with all necessary guarantees to make the, effective. The right of assembly and the freedom of association are practiced with a few restrictions deriving from the state of siege in effect and the Security Statute. The right to participate in government is fully practiced and these rights are helping to fortify the democratic system of the Government within the state of law that exist in Colombia.

11. The commission believes that the military operations that the Government conducted to combat armed subversions in rural areas have led to harmful excess against the local people, and, to a lesser extent, the Indian communities. These excesses have been abuses of authority that have led to mass arrests and displacement of citizens in rural areas. On the other hand, the commission believes that the Government has adopted measures, now being executed, that will be helpful in different ways to the Indian

communities of Colombia and useful in solving their complex problems.

B. Recommendations

Based on the forgoing conclusions, the commission believes it appropriate to formulate the following recommendations to the government of Colombia:

1. Lift the state of siege soon as circumstances allow; and comply with the provisions of article 27 of the American Convention Human Rights.

2. In the future, apply article 121 of the constitution only in exceptionally serious cases.

3. Repeal the security statute as soon as circumstances permit. If the circumstances do not permit this, amend the statute to make it compatible with the new Penal Code and make its standards consistent with the guarantees on the American Convention on Human Rights.

4. As regards the right of life, adopt more effective measures to clarify fully questions relating to violations of this right and to punish those responsible for them, when called for.

5. As for the right to personal liberty, issue legal regulations for article 28 of the Constitution so that persons arrested or detained are guaranteed the right to fair trial, are informed of the charges against them as well as making known the time and place of their detention, and so that their legal status is defined in accordance with the legal terms for setting them free of placing them at the disposal of the competent authority, in accordance with article 7 and 8 of the American Convention on Human Rights.

6. As relates to the right to personal security:

a. The Office of the Procurator General of the nation, as an institution of the public ministry, should, on the basis conferred on him under the Constitutional Reform of 1979, expedite investigations into abuses of authority in the area of human rights for the purpose of punishing those responsible for mistreatment and torture.

b. Without prejudice to the matters discussed in the previous paragraph, the rules for the Office of Procurator General of the Nation should be amended so that he may have more effective instruments to investigate facts and to punish those responsible for them.

c. All interrogations of detained persons should be done in the presence of a defense attorney and the person conducting the interrogation should be identified.

d. Rules from competent authorities to the military units of the country to refrain from blindfolding detained persons who are being interrogated to determine the truth of the charges against them, should be enforced rigorously; and

e. All essential measures should be adopted to make necessary improvements to the detention centers; the new penitentiary code that is being drafted should be promulgated as soon as possible and this new code should provide the prisoners, inter alia guarantees of medical

care, education, spiritual counseling and recreational activities, and existing overcrowding should be revealed; the budgetary amounts appropriated for that purpose should be executed.

1. with respect to the right to fair trail and due process:

   a. The provisions of Article 62 of the Constitutional Reform of 1979 should be carried out for the investment of no less than 10% of the general expense budget for the judicial branch and The Public Ministry;

   b. The military system of criminal justice should be modified substantially so that it effectively guarantees the right to fair trial of accused persons; and

   c. The new Code of Military Procedure should be issued as soon as possible and this new code should either eliminate or, if this is not possible, limit military trials of civilians to crimes that truly affect state security.

2. As for military operations in rural areas and the protections of local people and Indian communities:

   a. While these measures are being executed, all necessary efforts should be made to protect all persons not connected with the event, especially the rural people and Indians living in the areas where the operations are carried out.

   b. Special mechanism should be put into practice in rural areas to process the claims of persons affected by such operations so that these persons are effectively protected; and

   c. Special priority should be given to the Indian Development Plan now in process of execution; the rules of convention 107 of 1957 of the International Labour Organization in connection with this matter should be observed; and legislative measures aimed at promoting better living conditions and developing the Indian Communities, in a way compatible with human dignity, should be approved forthwith.