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SECOND REPORT ON THE SITUATION OF HUMAN RIGHTS IN COLOMBIA

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RESOLUTION APPROVING THE SECOND SPECIAL REPORT ON THE SITUATION OF HUMAN RIGHTS IN COLOMBIA

WHEREAS:

At its 78th session, held in Washington, D.C., September 24 through October 5, 1990, the Inter-American Commission on Human Rights considered the invitation that the Government of Colombia had extended in response to a request from the Commission to conduct an on-site visit to observe and investigate the human rights situation in that country;

At that session, the Commission designated a Special Committee to make a preparatory visit, which visit occurred in the first week of December 1990; by mutual agreement with the Colombian Government, that preparatory visit was followed by a second on-site visit in May 1992;

The reports that the Special Committees produced as a result of those visits were presented to the full membership of the Commission at its 83rd session; after examining the reports, the Commission approved the Second Special Report on the Situation of Human Rights in Colombia at its meeting of March 12, 1993, which was then sent to the Government on April 30, 1993, so that it might make whatever comments it deemed pertinent;

By a note dated August 3, 1993, the Government of Colombia sent the Commission its observations and comments on the report;

During the 84th session, held in October 1993, the Commission examined the Colombian Government's observations and comments on the Special Report on the Situation of Human Rights in Colombia, in order to decide whether to publish the report, and

The formalities required under Chapter V, Article 62 of the Commission's Regulations concerning preparation, processing and publication of special reports have been discharged,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

RESOLVES:

1. To approve the Second Special Report on the Situation of Human Rights in Colombia, OEA/Ser.L/V/II.84, doc. 39, October 14, 1993.
2. To publish the above-entitled report.
3. To report this decision to the Government of Colombia.

CHAPTER I

THE ON-SITE VISITS OF THE IACHR TO COLOMBIA 1990-1992

A. VISIT BY THE SPECIAL PREPARATORY COMMISSION, DECEMBER 1990

Subsequent to the on-site visit made in 1980, the Commission never again had an opportunity to return to Colombia. As an international body it must have either an invitation or permission, and it had neither until 1991. Nevertheless, it has been vigilant in its observation of and concern for the human rights problem in Colombia.

On April 13, 1989, during the Commission's 75th session, the Government of Colombia, under the administration of President Barco, invited the Commission to visit Colombian territory to observe the general human rights situation in the country. On April 25, 1989, the Commission, through its Executive Secretariat, sent the Government of Colombia its reply proposing October of that year as the date for the on-site visit.

Later, on July 10, 1989, the Colombian Government informed the Commission that while its invitation was still open, it would prefer that the Commission consider a visit sometime in the first quarter of 1990, citing as its reasons, *inter alia*, the peace negotiations with the M-19 movement and the start of the sessions of the National Congress that would debate the constitutional amendment.

This communication was brought to the Commission's attention during its 76th session. There, the Commission members agreed to change the date of the visit and to suggest March 1990 as a suitable date for the on-site visit.

In answer to that suggestion, on December 15, 1989, the Colombian Government told the Commission that general elections for the deliberative bodies were scheduled for March 1990 and the presidential elections for May. Given that fact, the Government felt that it might be best to consider some other date.

This message was conveyed to the Commission during its 77th session in May 1990. It decided to discuss this topic again at its next session in September of that year. Given the very serious human rights situation in Colombia and the fact that though the invitation was still open the Government, citing a variety of reasons, had not yet specified a date, the Commission decided as follows:

To propose to the Colombian Government that the on-site visit be conducted in March 1991 and that at the end of that visit a special report be prepared.

Should the Government disagree with the suggested date or fail to set an alternative date immediately, the Secretariat would, using the information it had at hand, prepare a report to be examined at the 79th session of the Commission; once that report was approved, it would be added to the Annual Report to be submitted to the General Assembly of the Organization.

When the Commission met again for its 78th session, September 24 through October 5, 1990, it considered the standing but not yet finalized invitation from the Colombian Government to make an on-site visit to the country and suggested that the Government's permission be requested to send a special preliminary and exploratory mission composed of one member of the Commission, accompanied by staff of the Executive Secretariat, to establish direct contact with some government and justice officials and nongovernmental human rights institutions in Colombia.

Duly informed of that decision, the Government of Colombia said that it would be pleased to receive the IACHR's preliminary special mission, scheduled for the first week in December 1990. In effect, the Commission's special preparatory visit took place from December 3 through 7, 1990. It consisted of the Chairman of the Commission, Dr. Leo Valladares Lanza, Deputy Executive Secretary David Padilla, and the Secretariat attorney in charge of Colombian matters, Manuel Velasco Clark. The latter had traveled to Colombia some days in advance to make the necessary arrangements for the visit.

a. Aspects taken into account during the Special Preparatory Commission's visit

With the problems of obtaining an invitation from the Colombian Government behind it, the Special Preparatory Commission knew that the success of its efforts could depend on the recommendations it made to the new Colombian Government regarding fulfillment of its international commitments, in order to secure specific measures to protect human rights. It also intended to learn what measures government officials were considering to improve the existing situation and what the NGOs thought of this issue, of the present situation and of the cases before the Commission.

At the time of this preliminary visit, Colombia was enmeshed in a complex crisis, much of it caused by the many violent elements and causes of violence within Colombia. Impunity was also a problem, and was the result of an ineffectual judicial system. While the major cause of the impunity problem were the threats and intimidation that these violent elements targeted at the members of the judiciary, there were other causes as well: the judiciary did not have sufficient resources and lacked properly trained personnel; there were no guarantees for magistrates and their families; no sweeping, in-depth reform was undertaken to make investigations rapid, effective, and impartial and to punish the guilty. Another potential source of human rights violations and a reason why crime went unpunished were the military courts, which State security agents used to keep those who participated in criminal acts from being prosecuted by the regular courts. Finally, the Special Preparatory Committee wanted to apprise itself fully of the special laws that took effect in a state of emergency. This system of laws, which had become much broader, appeared to be causing and in many cases even legitimizing many abuses.

Apart from examining the situation of human rights in Colombia and conveying to the Government its serious concern over the existing situation, the Special Preparatory Commission also planned to request information and practical findings on certain cases that were being processed with the Commission and to fill in gaps in the information that the Executive Secretariat of the Commission in Washington had in its possession.

The Special Preparatory Commission was also conscious of the special situation in Colombia at the time: the latter was in the process of amending its constitution and installing a constitutional assembly in which various sectors of society participated. This was an opportunity for the Committee to give the Government of President Gaviria some substantive suggestions, as he had repeatedly stated his commitment to the human rights cause.

b. Activities of the Special Preparatory Commission of the IACHR in December 1990

During its visit to Colombia, the IACHR's special delegation had a heavy program that included interviews, audiences and working meetings with Colombia's leading public officials, representatives of nongovernmental human rights organizations, representatives of petitioners in individual cases and plaintiffs in cases with the IACHR, representatives of various sectors of Colombian society, journalists, those sectors of the church involved with programs to protect and defend human rights and representatives of the International Committee of the Red Cross (ICRC).

The Special Preparatory Commission met with the following officials:

Minister of Foreign Affairs Dr. Luis Fernando Jaramillo, who was accompanied by his advisers Guillermo Fernández de Soto and Clemencia Forero Ucrós, and the Foreign Ministry's Deputy Secretary for International Organizations, Dr. Luis Guillermo Grillo; Minister of Justice Dr. Jaime Giraldo Angel; the Presidential Security Adviser Dr. Rafael Pardo Rueda and the Presidential Adviser for the Defense, Protection and Promotion of Human Rights Dr. Jorge Orlando Melo; in the absence of Dr. Jesús Bejarano, Presidential Adviser for Peace, the Special Preparatory Commission met with Dr. Carlos Eduardo Jaramillo, who was temporarily in charge of that office. The Special Preparatory Commission also met with the Director General for Criminal Investigations, Dr. Carlos Eduardo Mejía, who was accompanied by his principal colleagues: Dr. Víctor Enrique Navarro J., National Deputy Director of National Police; Dr. María Mercedes de Burgos, Assistant with the National Human Rights Unit, and Dr. Luz María Grueso V., Chief of the National Human Rights Unit. It also met with the Attorney General of the Nation, Dr. Alfonso Gómez Méndez; the Attorney Delegate for the Defense of Human Rights, Dr. Jaime Córdoba T.; the Attorney Delegate for the National Police, Dr. Tahí Hernández de Barrios; the Attorney Delegate for the Military Forces, Dr. Plinio Moreno, and with the Chief of the Special Investigations Unit, Dr. Pablo González.

The Special Preparatory Commission met with the President of the Supreme Court, Dr. Jorge Carreño Luengas; the Vice President of the Court was also present. A number of members of the Council of State took part in the Special Preparatory Commission's meeting with the Council's Chairman, Dr. Reinaldo Arciniegas.

The Special Preparatory Commission also had a hearing with Defense Minister General Oscar Botero Restrepo. Participating in that meeting were Major General José Roberto Ibáñez S., Secretary General of the Ministry; Rear Admiral Benjamín Gamarra, Chief of Personnel of the Military Forces, and Col. Jorge Suárez from the Department of Personnel.

The Special Preparatory Commission spent its afternoons interviewing and holding working meetings with various nongovernmental human rights organizations in Colombia, among them the following: the Instituto de Estudios Políticos y Relaciones Internacionales of the National University of Colombia; the Centro de Investigación de Educación Popular (CINEP); the Asociación de Familiares de Detenidos-Desaparecidos (ASFADDES); the Comité Permanente por la Defensa de los Derechos Humanos (CPPDH); the Comité de Solidaridad con los Presos Políticos (CSPP), and the Asociación de Familiares de Desaparecidos del Palacio de Justicia; the Colectivo de Abogados "José Alvear Restrepo"; the Comisión Intercongregacional de Justicia y Paz; the Liga por los Derechos y la Liberación de los Pueblos, Colombian Section; CEDAVIDA Social Foundation; the National Steering Committee for Human Rights and Victims of the Dirty War (CONADEHGS); Asociación Nacional de Usuarios Campesinos (ANUC); Grupo Prensa Alternativa. It also held hearings with a number of petitioners in individual cases filed with the Commission; the Asociación Nacional de Funcionarios y Empleados de la Rama Jurisdiccional (ASONAL JUDICIAL); the Central Unitaria de Trabajadores (CUT); the Organización Nacional Indígena de Colombia (ONIC); the Federación Colombiana de Educadores (FECODE); the Federación Nacional Unitaria Agropecuaria (FENSUAGRO); the Comité del Episcopado Colombiano por la Vida, por la Justicia y por la Paz; Andean Commission of Jurists, Colombian Branch; the Human Rights Committee of García Rovira Province (Santander); a group of journalists representative of the radio, television and the printed media in Colombia; Sindicato de Educadores de Santander (SES); Grupo de Derechos Humanos, operating in the settlement and border areas, which presented testimony on violence in jungle areas; the Unión Patriótica; the Partido Comunista; the Frente Popular; the Fundación para la Promoción de la Cultura y la Educación Popular de Bucaramanga (FUNPROCEP); the Carlos Valencia Garcia Judges Group and the Comité Regional para la Defensa de los Derechos Humanos de Barrancabermeja (CREDHOS); Grupo de Abogados Defensores de Derechos Humanos y Presos Políticos; Comité por la Defensa de los Derechos Humanos de Antioquia; a human rights delegation from Putumayo and another from Valle and Cauca. The IACHR's Special Preparatory Commission also had a meeting with representatives from the International Committee of the Red Cross (ICRC) Regional Office in Colombia, attended by Mr. Philippe Gaillard, the outgoing representative of that agency, and Mr. Claude-Alain Zappella, the Committee's new representative in Colombia.

c. The conclusion of the Special Preparatory Commission's visit

At the end of the on-site visit, the Chairman of the Inter-American Commission on Human Rights and of the Special Preparatory Commission, Dr. Leo Valladares, delivered to Colombia's Foreign Minister a message for President César Gaviria Trujillo, thanking the Colombian Government for the courtesies and amenities provided during the Special Preparatory Commission's visit from December 4 through 7. Without making any pronouncements concerning the complex and delicate human rights situation in Colombia, the Chairman recommended to the Government that the domestic legal measures be adopted to make its laws conform to the provisions of the American Convention.

B. THE COMMISSION'S ON-SITE VISIT OF MAY 1992

From the outset, the visit that the Commission's Special Preparatory Commission made to Colombia in the first week of December 1990 was regarded as a "preliminary" or exploratory visit. Given that fact, once that Special Commission's visit was at an end, it recommended to the full membership of the Commission that the latter continue to monitor the human rights situation in Colombia.

a. Setting a date

At its 81st session in Washington, February 3 through 14, 1992, the Inter-American Commission on Human Rights and the Colombian Government settled upon a suitable date for the IACHR's Special Commission's visit, which was May 4 through 8, 1992. In a note dated February 20, 1992, the Colombian Government formally agreed to the date. In keeping with its Regulations, the full membership of the Commission appointed Drs. Oscar Luján Fappiano, Michael Reisman and Leo Valladares Lanza as the members of that Special Commission.

The Commission also took up the Colombian Government's request that it reconsider reports Nos. 10,319, 10,454, 10,581 and 10,235, which it had approved at its 80th session. When the Commission reached its decision on those reports, it also decided to merge them into a single document numbered 10,235 and to publish that document in its annual report for 1991. After hearing the arguments made by the attorneys for the Colombian Government and by Colombian Ambassador Julio Londoño Paredes, the Commission decided to let stand the reports on cases 10,319, 10,454 and 10,581, to make additional recommendations to the government and to give it a deadline for complying with those recommendations. The Commission also decided that if its recommendations were carried out, the reports would not be published. The members of the Special Commission were then instructed to watch for whether those recommendations were being carried out and, upon their return, to inform the full membership of the Commission. With that it would have the government's version and a report from the Commission's own members and could use that information to reach a final decision during the 82nd session, scheduled for September 1992.

b. Activities of the IACHR during its on-site visit

On April 25, 1992, a staff member of the Executive Secretariat went to Colombia to make the final arrangements for the on-site visit. The Special Commission, which arrived on May 3, was headed by Dr. Oscar Luján Fappiano, First Vice Chairman of the Commission. Its other members were Dr. Michael Reisman, Second Vice Chairman of the Commission, and Dr. Leo Valladares Lanza, the former Chairman of the Commission who had headed the December 1990 visit. Accompanying the Special Commission were the Assistant Executive Secretary of the IACHR, Dr. David Padilla, Dr. Manuel Velasco Clark, the Executive Secretariat attorney in charge of Colombian affairs, and Dr. Osvaldo Kreimer. The Special Committee was also accompanied by Mrs. Gabriela Hageman and Nora Anderson. The visit began on Monday May 4, and ended on Friday May 8.

When it began its visit to Colombia, the Inter-American Commission on Human Rights published the following press release:

PRESS COMMUNIQUE

No. 6/92

At the Colombian Government's invitation, the Inter-American Commission on Human Rights is sending a Special Commission to make an on-site visit to the country from May 4 through 8. Participating in the visit will be Dr. Oscar Luján Fappiano, Vice Chairman of the IACHR, who will be presiding over the Special Commission, and Dr. Michael Reisman and Dr. Leo Valladares Lanza, Commission members. Accompanying the Special Commission will be staff from the Commission's Executive Secretariat: Dr. David Padilla, Assistant Executive Secretary, Dr. Manuel Velasco Clark, desk officer in charge of Colombian affairs, Dr. Osvaldo Kreimer, and administrative staff Mrs. Gabriela Hageman and Mrs. Nora Anderson.

In extending its invitation for the Commission to conduct this on-site visit, the Colombian Government has given ample assurances that the Commission will be at complete liberty to visit the country and to confer with any individual or institution it deems necessary. It has also given assurances that persons and institutions that wish to speak with the Commission may do so and will encounter no obstacles of any kind. The IACHR's Special Commission will be staying at the Hotel Tequendama in Bogota and will have its offices there as well. During its visit to Colombia, the Commission's Special Commission will meet with officials from various sectors of government, from the legislature, the judiciary, and the military, the clergy, and representatives of labor, indigenous and rural organizations. It will also meet with agencies and individuals representing nongovernmental human rights organizations that have filed complaints on the human rights situation in Colombia, and with representatives and relatives of the alleged victims. The Special Commission will also visit a number of cities outside the capital.

Santafé de Bogotá, May 4, 1992

The following summary of the Special Commission's program during its visit to Colombia in May 1992 is organized according to the order in which the interviews took place:

INTERVIEWS WITH STATE AUTHORITIES: The Minister of Foreign Affairs, Dr. Nohemí Sanín Posada de Rubio. Present at the meeting were Ambassador Clemencia Forero, Adviser to the Minister; Dr. Luis Guillermo Grillo, Director of the Office of Multilateral Affairs, and Mr. Francisco Echeverry, an official with that office. The Presidential Adviser for the Defense, Protection and Promotion of Human Rights, Dr. Jorge Orlando Melo. The Chairman of the Superior Council of the Judiciary, Dr. Hernando Yepes Arcila. Defense Minister Rafael Pardo Rueda. General Commander of the Military Forces, General Luis Eduardo Rocca Maichel. The meeting with the Minister of Justice, Dr. Fernando Carrillo Flórez, was canceled because the Minister had to make an unexpected trip to Europe. The Attorney General of the Nation (Public Prosecutor's Department), Dr. Carlos Gustavo Arrieta, and Attorneys Delegates for the Defense of Human Rights, Jaime Camacho Flórez (Acting); for the National Police, Mrs. Tahí Barrios Hernández, and for the Military Forces, César Uribe Botero. The Public Defender Jaime Córdoba Triviño. Prosecutor General, Dr. Gustavo de Greiff. President of the Supreme Court, Dr. Pedro Lafont Pianetta, and Dr. Jiménez, President of the Labor Law Chamber. Director of the Administrative Security Department (DAS), Dr. Fernando Brito

Ruiz. Dr. Néstor Javier Arango, Director (E); Dr. Alberto Arango Avila, Secretary General; Dr. Maryluz Rubio, Human Rights Assistants, Col. Osvaldo Caraballo, Director of Protection, Col. Manuel González Enríquez, Director of Investigations, Dr. José Elías Munévar, Inspector General; Dr. Carlos Cañizales Ovalle, Central Intelligence. Chairman of the Council of State, Dr. Alvaro Lecompte, and Advisors from the Third Section of the Administrative Chamber. Constitutional Court, Dr. Jaime Sanín, Alejandro Martínez Caballero, Simón Rodríguez and Ciro Angarita. Minister of Government, Dr. Humberto de la Calle Lombana. President of the Congress, Dr. Carlos Espinosa Faccio-Lince. Advisers for Peace, Social Policy and Security, Dr. Horacio Serpa Uribe, Dr. Gilberto Echeverri Mejía, and Dr. Ricardo Santamaría; Dr. Luis F. Londoño Nicholls, Presidential Reassimilation Program for Reinsertion (Office of the President of the Republic). Luis Fernando Londoño (Reassimilation Programs), Tomás Concha (reassimilation into civilian life and agreements). Director of Criminal Investigation, Dr. Carlos Eduardo Mejía Escobar, Dr. Pedro Alonso Arias Hernández, Dr. Raúl Rodríguez Zambrana, Dr. Dib Ali Salek Baquero. Dr. Armando Segovia Ortiz, National Security Chief, Technical Corps of the Criminal Investigations Police; Dr. Francisco Sintura, Deputy Prosecutor General of the Nation. Víctor Navarro, Deputy Director; Mrs. María Claudia Pulido, DIC Human Rights Coordinator, and the Honorable César Gaviria Trujillo, President of the Republic.

Outside the capital, in Medellín (Antioquia): the Provincial Prosecutor of Medellín, Dr. Iván Velázquez. Provincial Prosecutor Dr. Blanca Gil de De Santi; Coordinator of the Human Rights Office, Nilsa Elena Good; Public Magistrate Sergio Estarita Herrera. The Mayor of Medellín, Dr. Luis Alfredo Ramos. Governor of the Department of Antioquia, Dr. Juan Gómez Martínez. Presidential Adviser for Medellín, Dr. María Emma Mejía. In the city of Barrancabermeja (Santander): the city's Mayor, Public Magistrate and Provincial Prosecutor.

INTERVIEWS WITH NONGOVERNMENTAL HUMAN RIGHTS ORGANIZATIONS: the Colombian Section of the Andean Commission of Jurists, Dr. Gustavo Gallón Giraldo, Director. Comité Permanente para la Defensa de los Derechos Humanos, Committee Chairman Dr. Alfredo Vásquez Carrizosa and other members. Instituto de Estudios Políticos y Relaciones Internacionales de la Universidad Nacional de Colombia, Dr. Eduardo Pizarro, Dr. Hernando Valencia and Dr. Alejandro Reyes. Centro de Estudios Internacionales de la Universidad de los Andes, Dr. Juan Tokatlián, Director. Centro de Investigación y Educación Popular (CINEP), Francisco de Roux, S.J., Director. From its Human Rights Office: Ruth Bastidos Castro, María Eugenia Ramírez and Diego Pérez. Comisión para la Superación de la Violencia, Dr. Alejandro Reyes. A semi-governmental commission created as a result of the peace agreements the Government concluded with the Popular Liberation Army and with the Quintín Lame Armed Movement. Corporación Colectivo de Abogados "José Alvear Restrepo": Dr. Rafael Barrios Mendiivil, President, Eduardo Carreño Wilches, Alirio Uribe Muñoz, Daniel Medina González, Eduardo Umaña Mendoza (a legal defense team). Comité de Solidaridad con los Presos Políticos, Dr. Jaime Prieto (a legal defense committee). SEMBRAR Attorneys Group, Dr. Marta Pardo (a legal defense group). Santillana Foundation. Central Unitaria de Trabajadores (CUT). Federación Colombiana de Educadores (FECODE). Organización Nacional Indígena de Colombia (ONIC). Asociación Nacional de Usuarios Campesinos Línea Armenia (ANUC). Partido Político Unión Patriótica and the Asociación Colombiana de Asistencia Social (ASCODAS), Héctor Félix Rivera, Attorney; Miguel Castañeda Agudelo, Deputy Director for Education; Orlando Pérez Rojas, Treasurer; Aladies

Parfa Galeano, attorney; Saúl Cruz Rojas, Public Relations. Reinsertados Alianza Democrática M-19, Esperanza, Paz y Libertad (EPL), Partido Revolucionario de Trabajadores (PRT), and Movimiento Indígena Quintín Lame. Ramiro Orjuela Aguilar, Secretary General of the Asociación Nacional de Ayuda Solidaria (ANDAS), Piedad Cifuentes Madrid. Fundación para el desarrollo social, la democracia y la paz (Progresar). Silvio Ruiz Grisales, Cooperative Executive Director. Esperanza Paz y Libertad (EPL), Aníbal Palacio Tamayo, Senator of the Republic, Chairman of the EPL, and Carlos Franco Echevarría, National Representative of the EPL. Asociación de Funcionarios y Empleados de la Rama Jurisdiccional (ASONAL Judicial), Dr. Antonio Suárez, President. CEDAVIDA, Dr. Constanza Ardila Galvis. Servicio Universitario Mundial (SUM), Dr. Blanca del Pilar Rueda Jiménez. (Human Rights Program). Asociación Nacional de Recicladores (union), José Daniel García Castaño and Carlos Arturo Alemán Chávez. Partido Comunista Colombiano, Jaime Caycedo Turriago, Deputy Secretary General. Asociación de Familiares de Desaparecidos del Palacio de Justicia, Dr. Enrique Rodríguez. During the hearing they reaffirmed their petition and request for IACHR intervention. Asociación Nacional de Usuarios Campesinos, Línea Sincelejo. Instituto Latinoamericano de Servicios Legales Alternativos (ILSA), Amanda Romero Medina and Carlos Alberto Ruiz. Liga Internacional por los Derechos y la Liberación de los Pueblos, Colombian Section, Hernando Gómez Serrano, President, Leopoldo Múnera, Vice President. Comité Nacional de Víctimas de la Guerrilla (VIDA), Fernando Vargas (Chairman) and Angel Escobar and Leonor Galvis (assistants). Vicente Peña, from the newspaper *La Prensa*, also participated in that meeting. Conferencia Episcopal de Colombia por la Vida, la Justicia y la Paz, Executive Committee, Monsignor Guillermo Vega. Consultoría para los Derechos Humanos y el Desplazamiento Interno (CODHES), Mr. Jorge Enrique Rojas. Asociación de Familiares de Detenidos-Desaparecidos, Mrs. Gloria Gómez and Mrs. Gloria Mancilla de Díaz.

In Medellín: the Comité Permanente para la Defensa de los Derechos Humanos de Antioquia, Dr. Jesús María Valle. Archdiocese of Medellín, Monsignor Héctor Fabio Henao. Representative of the Episcopal Curia. Instituto Popular de Capacitación, Dr. Pablo Emilio Angarita. Comité de Solidaridad con los Presos Políticos, Medellín Office, Mr. Jesús Puerta. Asociación de Familiares de Detenidos y Desaparecidos de Antioquia. Corporación Región, Mr. Carlos Iván Lopera. Antioquia Bar Association, Colegas (ASONAL Judicial) de Antioquia, Dr. Rubén Darío Pinilla. In Barrancabermeja, Santander: Comité Regional para la Defensa de los Derechos Humanos de Barrancabermeja, (CREDHOS), Dr. Jorge Gómez Lizarazo. Unión Sindical Obrera (USO), petroleum workers. Asociación de Usuarios Campesinos (ANUC). Community of the Municipality of Yondó, Puerto Wilches. Comunidad Franciscana Sector Nororiental de Barrancabermeja. Pastoral Social (Catholic Church). Municipalities of Carmen, San Vicente, ANUC, Farm Villages, Proyecto Jurídico Agrario. Bishop of Barrancabermeja, Monsignor Sarasti. Pastoral Social and the Organización Femenina Popular. Community of the Municipality of Sabana de Torres.

Special hearings with relatives and representatives of victims whose cases are being processed with the Commission: the case of Olga Bernal (10,537); the case of Irma Vera Peña (10,456); the case of Valentín Basto Calderón (10,455); the case of Luis Fernando Lalinde (9,620); the case of the 1982 mass disappearance (10,235); the case of Patricia Rivera (9,477); the case of Alirio Pedraza Becerra (10,581); the case of Isidro Caballero Delgado (10,319); the case of Martín Calderón Jurado (10,454). International Federation of Journalists and Bogota Journalists Circle. Mr. Fabián Chacón and others. Institución FECOL

(photographers). Rafael Baldovino. Ruby Mora de Torres and Piedad Díaz K., wives of journalists murdered on April 24, 1991. Héctor Rolando Ch., brother of Julio Daniel Chaparro. Guillermo Ala, Colombian Journalists Circle. Hernando Chávez Carrera. Colombian Newspaper Reporters Circle.

To move beyond the perimeter of the capital city, on Wednesday the IACHR's Special Commission divided into 3 working subcommissions. Subcommission A consisted of Dr. Fappiano, Dr. Velasco and Mrs. Anderson and remained in Bogota, where it carried out its own program of activities. Subcommission B, composed of Dr. Leo Valladares, Dr. Osvaldo Kreimer and Mrs. Hageman, went to the city of Medellín, while Subcommission C, composed of Dr. Michael Reisman and Dr. David Padilla, went to Barrancabermeja in the department of Santander in Magdalena Medio.

At the end of its visit, the IACHR's Special Commission held a press conference where it fielded questions from journalists and issued the following press release:

PRESS COMMUNIQUE

No. 7/92

Santafé de Bogota, May 8, 1992

Today, Friday, May 8, 1992, the Inter-American Commission on Human Rights concluded its on-site visit, which began on May 4, at the invitation of the Colombian Government.

During its stay in Colombia, the Commission met with the President of the Republic, the President of the Supreme Court, the President of the Congress, the Minister of Foreign Affairs, the Minister of the Interior, the Chairman of the Superior Council of the Judiciary, the Minister of National Defense, the Commander General of the Armed Forces, the Prosecutor General, the Deputy Director of Criminal Investigations, Chief of the DAS, Chairman of the Council of State, President of the Constitutional Court, the Public Prosecutor, the special prosecutors for human rights, for the national police, and for the military forces, the Public Defender, and the presidential advisors for human rights, for peace, security and social policy.

Outside the capital, the IACHR's Special Commission went to Barrancabermeja in the Department of Santander, where it met with the city's mayor, its public magistrate and provisional prosecutor. During its visit to the Department of Antioquia, the Special Committee met in Medellín with the departmental and provincial prosecutors, the public magistrate, the city's mayor, the Governor of the Department of Antioquia and the Presidential Advisor for Medellín. The Special Commission set up separate offices in Barrancabermeja and Medellín to receive complaints and hold talks with nongovernmental human rights organizations.

The Commission also had meetings with representatives of a number of nongovernmental human rights institutions, representatives of the Church, the press, humanitarian groups, labor, unions, indigenous groups, rural organizations, professional associations and others, all of which furnished important information relevant to the subject matter of the visit.

The Commission is encouraged by and pleased with the positive developments in the country. At all levels, the Presidency included, the Government has acknowledged that many of the patterns of human rights violations in Colombia are grave and widespread. Studies have been ordered to obtain factual data and very promising programs have been created.

The Special Commission took particular note of the establishment of the Public Defender's Office and the creation of the Constitutional Court, the Office of the Prosecutor General of the Nation and the Superior Council of the Judiciary, as well as several special human rights offices in various government ministries. New procedures have also been developed that indicate that the Government is becoming increasingly sensitive to the human rights issue.

The Government itself acknowledges that many of the changes are recent, and it remains to be seen whether they will significantly improve the human rights situation. In the meantime, as the Government's own statistics and those of nongovernmental organizations indicate and as the authorities have confirmed, violence in general and murders remain at alarming levels. In some cases, guerrillas, paramilitary groups and drug traffickers are responsible, but many are attributable to government agents. Very few government agents who commit such crimes are ever brought to trial and convicted. The negative image is compounded by the fact that where there are convictions, the sentences imposed are not publicized. Criminal and disciplinary proceedings also tend to move very slowly.

The Special Commission received testimony and compiled considerable evidence in the following general areas: a) allegations of human rights violations committed against a backdrop of armed conflict by newly formed militarized groups and by guerrilla groups, drug traffickers and paramilitary groups, some of whom, it is alleged, act in concert with the Army or with its acquiescence; b) reports of murders, torture and forced disappearances; c) charges that government agents have threatened and murdered labor leaders, journalists, professionals and human rights activists; d) allegations of violations to the right to due process and use of questionable procedures by the so-called Public Order Courts; e) reports from several groups of the practice known as "social cleansing", where prostitutes, street children, vagabonds, beggars and homosexuals are murdered, and a disturbing pattern of stereotyping adolescent males as "delinquents"; f) information on the successful reassimilation of groups of former guerrilla fighters, though there were also reports that some of the commitments made in the peace agreements have not yet been fulfilled; g) many reports of citizens, most of them peasants, who fled embattled areas only to become displaced persons and refugees in their own country, and h) requests for urgently needed protection and aid to victims of terrorist acts.

Under the Commission's Regulations, the Special Commission cannot advance any opinion regarding the facts in this investigation. The Special Commission will present a

report to the Commission's full membership when it meets in Washington in September for its 82nd session. The Commission will examine the information compiled during the on-site visit, the documents and reports supplied to it, and the other sources available, and take the decisions it deems most advisable based on its vested authorities.

The Commission is grateful for the facilities that the Government supplied to enable the Commission to accomplish its mission and would like to thank the authorities, those who provided valuable testimony and the various institutions representative of Colombian society with whom it met, for the information, facilities and courtesies they furnished to the Commission.

CHAPTER II

THE VIOLENCE PHENOMENON

A. ORIGINS OF THE VIOLENCE

Of all the Latin American countries, with the exception of Brazil, Colombia has experienced the greatest economic growth in the last 30 years; in the 1980s it had the highest growth in all South America. Colombia's rate of demographic growth has been dropping rapidly and even though social indices like life expectancy, infant mortality, literacy and schooling have markedly improved and the number of people with unmet basic needs has declined, social inequalities persist and wealth is still very concentrated. Colombia continues to be a country of stark contrasts, a country where people of enormous economic prosperity coexist with people who live in dire poverty.

According to recent data, the situation of economic and social rights in Colombia is as follows:

Between 1970 and 1986, poverty levels in Colombia dropped; but in recent years there has been no significant improvement in this regard. By a conservative estimate, measured on the basis of unmet basic needs (housing, education, public services, etc.), in 1990 the poor accounted for 36% of the population (11,960,000 people). But this figure climbs to 49% (16,116,000 people) if the criterion is the so-called poverty line, i.e., the income levels needed to purchase the minimum in the way of food and to satisfy other basic needs (see Libardo Sarmiento, "*La revolución pacífica: una mirada premoderna sobre los derechos sociales in Colombia*" in *Economía colombiana*. Bogota, No. 188, p. 33). At present, only 20% of Colombia's population has social security even though an IDB study shows that the average coverage in Latin America for the 1985-1988 period was 43% (See IDB, *Economic and Social Progress in Latin America*. Special Report: social security. Washington, 1992, cited by *Coyuntura Social*, No. 7, p.23).

The cause is not the lack of resources, but other factors instead. The concentration of wealth continues to be high: while the poorest 50% receive only 17.6% of the income, the wealthiest 20% receive 55% (Libardo Sarmiento. *op.cit.*, p. 35). At the farm level, while less than 2% of the owners control 40% of the farmland, 60% of the peasant farms account for only 5% of the land (See CEGA. *Reforma agraria: elementos para el debate*. Bogota, 1987, pp. 11-12). Government social spending is also down sharply. While in 1984 it represented 9.4% of GDP, by 1989 it had dropped to 7.6%, while debt service went from 3.1% of GDP to 7.5% in that same period. (See Office of the Comptroller General of the Republic. *Informe Financiero*, May 1990, p. 9). According to DANE, whereas wages accounted for 44% of GDP in 1983, they were only 39% in 1990. (Libardo Sarmiento. *op.cit.*, p. 29). All this could help explain why social indices have been at a standstill since the mid-1980s.^[1]

The contradictions implicit in persistent inequities despite economic development and slower demographic growth and the tension resulting from the ideological-political debate have been a constant source of conflict in Colombia during the period under study. Some of the principal protagonists in this conflict are the guerrilla movements and organized crime, which operate outside the law through a confusing combination of alliances and

simultaneous clashes either in one specific place or in various places throughout the national territory.

In the last 15 years, organized crime has radically changed all aspects of Colombian society, but has had a particularly heavy impact on values and the justice system. The guerrilla movement, on the other hand, has been losing its ideological influence because it resorts so routinely to the common crimes it is known for, such as extortion, kidnapping and the murder of civilians.

Ironically, the most embattled and violent areas are rich in economic development and wealth but poor in social development; in these areas, rural property and wealth are concentrated in the hands of a few and the State's presence is mainly in the form of military spending.

B. THE HISTORY OF VIOLENCE IN MODERN-DAY COLOMBIA

This report contains a chapter devoted exclusively to violence, because it is one of the principal causes of human rights violations in Colombia. There are few who understand the problem of violence as well as the Colombian people do, or are as disturbed by it. In Colombia, the causes of the violence have been studied and investigated for many years now. In 1958, for example, the Government of General Rojas Pinilla established the First Committee to Investigate the Causes of Violence. In January 1987, almost 30 years later, the Ministry of Government, then headed by Dr. Fernando Cepeda Ulloa, created another committee to study violence in order to update the research on that subject, develop some hypotheses on violence in the future and some recommendations as to the type of measures that could be adopted to curb it. This committee found that violence in Colombia has consistently been used as a tool of political action. The study distinguishes three stages in the country's political violence: the first is one of civil wars, basically involving the problems or rivalries among the country's governing classes during much of the XIX century; the second is known historically in Colombia as "La violencia" and took place in the mid-twentieth century. The third phase is insurrectionist violence.

C. MAJOR FACTORS AND SOURCES OF POLITICAL VIOLENCE

The Frente Nacional [National Front], which began as of the fall of General Rojas Pinilla on May 10, 1957, opened up a period of reconciliation that lasted approximately 16 years. This was a new and different phase in Colombia's political life: the reins of power went back and forth between liberals and conservatives, who between them shared the country's government offices in an effort to maintain the kind of stability that would allow economic and social development.

Once the National Front was consolidated, armed resistance groups identified with the liberal wing of political thinking disbanded and laid down their weapons. Once this period of basically civil violence was over, the Armed Forces once again took the lead in combatting the guerrilla groups that were beginning to form, especially in rural areas. These were people who had not availed themselves of the amnesty or who had chosen to continue to try to defend their own interests and principles. And so, moral, political and economic principles were among the reasons or factors behind the mobilization and violence that

began around that time. But there was another factor contributing to the guerrilla violence in Colombia as well, which was the influence of the Cuban revolution.

The guerrilla movement of the 1950s, as noted earlier, began as a response to government-sponsored persecution of the liberal party in rural areas. Hunting down liberal peasant farmers became an excuse for expanding capitalist agriculture and for forming and consolidating the traditional *latifundio*. Estanislao Zuleta, a leading expert on the violence who has analyzed the political situation at that time,^[2] maintains that it was not simply a question of killing people but also of driving them out by terrorizing them, "using the most sadistic and horrifying methods imaginable."

In spite of the peace agreements that followed the formation of the Frente Nacional, the people who remained in the countryside and who were unable to avail themselves of the amnesty created a second brand of violence during what came to be called the period of *bandolerismo*. This went on for years and by the time it reached crisis proportions in 1964, "there were more than 100 active bands of armed peasant farmers operating in more or less organized fashion; ignoring the peace agreements concluded among the official leaders of the traditional parties, these bands prolonged the bipartisan struggle."^[3] But just as this "*bandolerismo*" was beginning to fade in the 1960's, guerrilla groups began to surface. These groups had their own political agenda and their own political ideologies. This marked the start of a truly revolutionary war, not so much against the government as against the system of land distribution, social injustice and a two-party monopoly that excluded the country's other political forces.

The doctrine known as National Security developed as a response to the guerrilla insurgency that lasted from the 1960's through the 1980's, when the FARC (Fuerzas Armadas Revolucionarias de Colombia - Revolutionary Armed Forces of Colombia), the ELN (Ejército de Liberación Nacional - National Liberation Army), the M-19 (Movimiento 19 de Abril - April 19th Movement), the EPL (Ejército Popular de Liberación - People's Liberation Army), the ADO (Autodefensa Obrera - Workmen's Self-defense), Ricardo Franco and Quintín Lame (an indigenous guerrilla group) emerged.

Guerrilla Groups

FARC (Fuerzas Armadas Revolucionarias de Colombia
- Revolutionary Armed Forces of Colombia)

The FARC are the oldest guerrilla groups. They have a longer history and are better organized in Colombia and elsewhere in Latin America. According to Estanislao Zuleta, the FARC trace their roots to the guerrillas of the 1950s and even back to earlier peasant struggles in the 1930's and 1940's, when the first agrarian leagues and syndicates were established. The FARC have always been linked to the communist party and in fact are regarded as the armed wing of the Colombian communist party. They also had ties with the international communist party, first through Moscow and then through Havana, which provided them with ideological and military support, supplies and training until the late 1980s when the communist world fell apart. They date back to 1947, when the Central Committee of the Colombian Communist Party decided to organize a populist self-defense system against the then conservative regime of Ospina Perez that had taken over in 1946.

The FARC had close ties with the Colombian peasantry, which was their mainstay of support. This organization, originally designed as a means for the people to defend themselves, would later become a guerrilla movement. Its tactic was to hold out in jungle areas, which made it very difficult and costly for the regular army to combat, pursue and eliminate it.[\[4\]](#)

The FARC won the support of large sectors of the peasantry in certain areas of the country when they defended the peasants against the abuses of land owners and local authorities. However, the FARC never managed to win broad-based peasant support. Later, when their support began to erode, they often resorted to threats and terror tactics to hold on to that support. The FARC have been part of the Colombian Communist Party's strategy, whose policy was one of "combining all forms of struggle"; so while the FARC operate on the military front, there were also legal political organizations to win over voters or serve as social organizations.

The FARC would become not only the largest guerrilla movement in Colombian territory but also the best equipped, both materially and financially, for an armed struggle. They obtained their resources illegally, through kidnapping, extortion, collecting money in a procedure known as "*vacunas*" [vaccinations], and robbing banks and businesses, etc. Later, the FARC would also get funds through associations with drug cartels. But the alliance that drug traffickers and paramilitary groups formed would ultimately bring about the clashes still taking place with the guerrilla groups.

ELN (Ejército de Liberación Nacional - National Liberation Army)

The ELN was created by FARC dissidents influenced by the ideas exported by the Cuban Revolution. This group won the support of certain labor sectors in the department of Santander. University elements joined its ranks as did a number of Catholic priests, following the example set by Father Camilo Torres who joined the movement and died in a clash with the Army in 1966.

The ELN has become a very dogmatic guerrilla group, probably the result of the combination of Marxist ideology and a religious, messianic fanaticism introduced by priests who have joined the ELN, like its present leader the Spanish priest Father Manuel Pérez. From the start, this group has gone to great lengths to preserve the movement's unity and to keep it ideologically uncorrupted and has executed many of its members either for treason or for deviating from the ideological line.

EPL (Ejército Popular de Liberación - People's Liberation Army)

The People's Liberation Army was organized and surfaced in 1965 as the armed wing of the Maoist Communist Party. It was, in other words, the most orthodox wing of the armed guerrilla struggle. Originally, it refused to participate in the peace efforts initiated by President Belisario Betancur. Finally, however, one of its leaders, William Calvo, shifted his position and signed the peace agreements in 1980. While some EPL members took advantage of the political amnesty, many of those who had been reassimilated eventually returned to guerrilla warfare when William Calvo was assassinated on a Bogota street on November 20, 1985. The EPL was a party to the peace agreements concluded during the Barco administration and, under the present administration, its members have rejoined

civilian life and its name has been changed to Esperanza, Paz y Libertad (Hope, Peace and Liberty). Its members are in the reassimilation process and are dealing with the problems that this program has encountered. A disproportionately high number of EPL members being reassimilated into mainstream society have been assassinated; its leaders basically blame the dissident faction that did not sign the peace accords and the FARC, as well as paramilitary groups opposed to the peace negotiations.

The three guerrilla groups still active form what is called the Simón Bolívar Guerrilla Steering Group.

M-19 (Movimiento 19 de Abril - April 19th Movement)

The M-19 began as an urban movement mounted against the traditional parties and the oligarchy. It was a populist movement that sought to win over the urban masses by ridiculing democratic elections as a means of effecting change in the country. Small by comparison to the FARC, the M-19 was always given to sensationalism and spectacle to draw media attention to its activities.

Indeed, the name of the movement comes from a spectacular robbery the group pulled off on April 19, 1974, when it stole the sword of General Simón Bolívar. The robbery took place at the Quinta Museo del Libertador, located in Bogota, where it had been housed for many years. M-19 emerged in national politics as the ally of the movement called the Alianza Popular Nacional [National People's Alliance], which was originally linked to General Rojas Pinilla, who had failed in his new bid for power in the elections held on April 19, 1970. ANAPO's electoral defeat, where it won only 500,000 votes as compared to the 3,000,000 won by candidate López Michelsen, not only frustrated the M-19's political aspirations but also caused it to reject thereafter the democratic system of elected government. In all its years of armed struggle the M-19 operated clandestinely. It defined its political ideology and activity as being a continuation of the popular struggles for national liberation and for socialism; it described itself as a nationalistic and revolutionary political-military organization fighting for the cause of socialism, made up of armed ranks driven by a political-military principle and practice designed to wage the people's war.^[5]

M-19 joined Colombia's democratic system in March 1990, thus breaking Colombia's traditional two-party system. It participated in the elections for the Constitutional National Assembly and its candidate Antonio Ramiro Wolff won the highest number of votes nationwide. Though the M-19, now called the M-19 Democratic Alliance, is still critical of the Government of President Gaviria, its contribution has been a constructive one.

D. THE SELF-DEFENSE GROUPS AND PARAMILITARY GROUPS

The paramilitary movement is nothing new in Colombia, as it has precedents well back in the country's history. Paramilitarism is precisely the opposite of a monopoly or total control of power by the armed forces, using in its place unlawful organizations made up of individuals who would replace the State's system of authority and justice with their own brand of vigilante violence exercised through mercenary militia that are in some cases supported by agents of the State.

The first self-defense groups to surface in Colombia's history were created by the Colombian Communist Party to protect peasant farmers from Army violence. On December 5, 1975, at the XII Congress of the Colombian Communist Party the following agreement was adopted: "Article 1. Self-defense is a movement of the people open to anyone whose physical safety and interests are threatened by reactionary repression, the greed of the *latifundistas*, and the territorial, economic, political, ideological and cultural conquest of Yankee imperialism."

As the guerrilla movement of the 1960's developed, other even more extremist and violent groups surfaced and the subversive armed movement became more technologically sophisticated with the international support and advisory assistance it received. This was a problem for the Colombian Army, which was prepared for a different style of national defense, not for an internal confrontation with other Colombians. As the subversive war escalated, it deviated from all the traditional patterns. And as noble and important as its professed objective of social justice was, there was no way to rationalize the atrocities it committed against its military adversary and against the Colombian people that it claimed to be defending.

This problem, the relatively small size of the Colombian armed forces and the difficulties of financing any expansion of the armed forces prompted civilian politicians in charge of governing the State to opt instead to provisionally arm the private citizenry. There were precedents, as the civil wars of the XIX century had basically pitted armed civilians against one another.[\[6\]](#)

The 1968 enactment of Law 48 created the self-defense groups. As a result, groups of individuals with ties to economic or political sectors in the country's various regions emerged in the 1970's and became entrenched in the 1980's. With the sponsorship or acquiescence of sectors of the armed forces, these groups used violence to protect partisan or group interests. Originally, the relationship between the self-defense groups and State national defense organizations was occasional and informal in nature. However, these legal self-defense groups started to grow stronger and to coalesce precisely when the Army was finding it increasingly difficult to perform its function of defending public law and order in the country.

As these paramilitary groups were being formed, the doctrine of national security emerged in the late 1970's and early 1980's as a means of dealing with subversive warfare. It was a new strategic and military concept based on the East-West confrontation that dominated that era. Its premise was that the antagonism between the United States and the Soviet Union polarized every conflict, based on deep ideological roots, with Western Christian civilization on the one hand and Eastern Communist dialectical materialism on the other. At stake was the domination or liberation of the world. It held that Soviet Communism engaged in a permanent and systematic offensive of world domination; that subversive activities were international aggression orchestrated from abroad and planned and executed from within. It put the blame on the demagoguery of the traditional politicians who had systematically sown ugly hatreds and made Utopian promises that could never be fulfilled.[\[7\]](#) The doctrine held that a new national unity had to be formed around a concept of man and society based on Western Christian thought; the purpose of that

national unity was to overcome the antagonisms among the various human groups within a nation that the theory of class struggle had sown; because the problem was so complex, a global strategy had to be mapped out on all fronts: political, economic, cultural and military. According to the doctrine of national security, the enemy is omnipresent and anyone who gives the enemy aid and comfort must also be regarded as the enemy; that subversive groups had infiltrated the universities, workers associations, professional organizations and labor unions, which made them all potentially dangerous organizations, as were some villages and communities that had also been infiltrated.

In answer to the disturbing question of why self-defense groups and paramilitary groups had to be created in Colombia, Father Adolfo Galindo Quevedo states the following:

It was often said that this was the logical reaction. In three months there are "x" number of kidnappings and 600 million in ransom is demanded. The owner of a ranch says to himself: "Well, if I have to pay 20 million in ransom for every kidnapping, then I'll pay a million for protection and save 19 million in the bargain". If a hundred people think that way, then there's a hundred million for self-defense groups. A peculiar coincidence occurs: in Puerto Boyacá all these elements from the extreme right come together: wealthy young men from good families, colonels with very special ideologies all their own, and people who say to themselves that these types have to be defended. Someone came up with the expression "if you want to take our property, you're going to have to fight for it." This is my analysis. It's a violent situation and the one who bares his teeth the most controls... [\[8\]](#)

For its part, the subversive movement had grown considerably. Each group had its own way of exacting tribute, which was obligatory but called "*voluntario*". It was a system in which certain people were required to pay a war tax. The decision to form the self-defense groups was not just a necessity for entrepreneurs in the agrarian sector; it was also good business since it was less expensive to maintain a small army of completely loyal men willing to do anything than to pay tribute to the guerrillas, which was more costly and would only keep the area in chaos and unrest. Moreover, the war tax was no guarantee that guerrillas would not attack or would remain neutral. Another phenomenon that triggered the development of the self-defense groups was the fact that entrepreneurs in the agricultural sector and the civilian population engaged in agriculture understood that there was a natural alliance between the Army and the farmers.

The combined operations of self-defense groups and members of the Army were, at the beginning, simply a matter of self-defense groups collaborating with members of the Army for the sake of protection and defense; gradually, however, they began to engage in actual attacks and pursuit of guerrillas. One of the first types of operations that the Army and self-defense groups conducted jointly was known as "fumigating" a region, which meant driving out all subversives. Galindo Quevedo has the following explanation: "The 'vaccination' process had already gotten underway. The paramilitaries countered with the "fumigation" process. Paramilitary groups began "fumigating" all elements that had heretofore been "vaccinating" or those they suspected of subscribing to the vaccination policy." [\[9\]](#)

The Chairman of ACDEGAM had the following version of how this spiral of violence took shape and of how the self-defense groups were created:

Here, a movement was created 20 years ago to combat thieves; it preached equality... that it had to fight the rich, that they were exploiters... Then came the turbulent period of kidnapping, family quotas, vaccinations, blackmail, extortion, "*boleto*". Life here became unbearable. Those people who could pay became the victims of multiple kidnapping. They ultimately left and we were left behind to fend for ourselves. Although not rich, we had farms, a few head of cattle. But the burden that the rich had once shouldered, we now had to take on our own backs. They began to kidnap people who had no means of paying ransom... It was then that the people abandoned the farmland. That was about four and a half years ago (1981-1982). Those people were dying of hunger... until at last they decided that they would rather die at the hands of some bandit who might shoot them, than to die of hunger with their families... So the people joined together and began to gravitate to the farms nearest the town and where the guerrillas were already kidnapping people ... less than 45 minutes from the town and 20 minutes from the Military Base known as Calderón. They were all united and, of course, carried their pistols around with them, ready to fight anyone. These people became rebellious; they wanted respect. It was then that they began to join forces with the Army.[\[10\]](#)

The Colombian Government was compelled to increase the Army's power because self-defense groups were spreading to the point that many of them had become virtual paramilitary armies that the Army--as it was--was helpless to control; countless outrages and atrocities were, in one way or another, being blamed on the Colombian Armed Forces; and the guerrilla movement's attacks posed a constant threat. The anti-subversive struggle led, almost inexorably, to the country's militarization and gradually became more a military than a political matter. In the end, the military was left to map the strategies for this warfare. The independence of the military gradually eroded its members' respect for the law; a kind of tolerance of violence against guerrillas and against the civilian population suspected of being linked to guerrillas began to set in.[\[11\]](#)

As the paramilitary groups became stronger, some of them began to be absorbed and then run by drug cartels. The cartels originally used them as a means to protect the lawful businesses that they had acquired with their ill-gotten gains. Later, however, they began to use them as actual armies, to eliminate political opponents and to deal with and resolve problems between drug cartels, especially between the groups in the Medellín cartel and those in the Cali cartel. The paramilitary groups also started to carry more sophisticated weaponry and were given highly specialized training, for which Israeli, British and mercenaries of other nationalities were recruited. These mercenaries established training camps and actual schools to train the paramilitary and hired gunmen that drug traffickers used in their gang wars and on their suicide missions to assassinate prominent people and Colombian politicians.

To control the spread of the paramilitary movement made possible thanks to Law 48, enacted in 1968, provisions were enacted, especially under the administration of President Barco, to restrict and later to prohibit altogether the activities of paramilitary groups. The government ban on paramilitary activity was upheld by the Supreme Court in a ruling that declared unconstitutional the 1968 Decree that had eventually become Law 48. The Council of State also came out against paramilitary organizations and ordered that private citizens

who had weapons of war in their possession were to return them to the Army and to refrain from using them.

This campaign against the paramilitary movement found support in one sector of the citizenry, but encountered violent criticism and opposition in another. The latter argued that outlawing the self-defense groups jeopardized its safety and left a large sector of the civilian population that was fundamentally productive without any means of defense; this sector argued that it was obvious that the State was unable to do what the self-defense groups had done to protect businessmen, farmers, ranchers, industrialists, and other economic groups in the country.

Even though the law now makes it illegal to form private, armed self-defense or paramilitary groups, many such groups continue to exist, although they no longer have the open, legal support they enjoyed prior to 1989. A few have turned in their weapons, availing themselves of the 1990 laws that enabled them to do so in exchange for suspended sentences for belonging to unlawful armed groups or for bearing arms. Others have disbanded because of differences inside the group or because the major drug traffickers who controlled them have died or fled. Others are weaker now because in some cases the Army has taken them on. However, in many rural areas, land owners continue to use armed groups to defend themselves from possible guerrilla attacks and to kill those whom they believe have ties to the guerrilla movement. The government's weakness in enforcing its own provisions ordering the dissolution of the self-defense and paramilitary groups continues to be one of the factors most disruptive of the peace in rural areas. Although the Government has dismissed some officers for providing clandestine aid to paramilitary groups, it is frequently charged--and never disproved--that in some places local military authorities continue to promote the formation of self-defense groups or encourage the peasant farmers to join them.

The Government's credibility on the human rights issue depends in large measure on its ability to control these groups effectively. The excesses committed by paramilitary groups and the State's inability to control them are doubtless a major source of human rights violations for which the Colombian Government is responsible: 1) because it is not providing the citizenry with the protection to which it is entitled; 2) because many of the paramilitaries' actions have some kind of support from members of the Armed Forces, and 3) because almost 90% of the murders and atrocities committed by paramilitary groups have never been punished and the facts will never be brought to light. The latter not only damages the international image of the justice system in Colombia, but also tarnishes the images of recent administrations, despite their obvious and genuine efforts to control the violence rampant in Colombia.

To illustrate the magnitude of the problem, given the uncontrolled harm it is inflicting, the following is an alphabetical listing of the paramilitary groups that, according to some news sources and nongovernmental human rights organizations, are operating or have operated in the last ten years in Colombia, either on a national scale or in certain regions:

NATIONWIDE (10)

Juventud Anticomunista de Colombia (JACOC)
Muerte a Secuestradores, MAS, founded in 1981
Alianza Anticomunista Americana, Triple A
Movimiento Anticomunista Colombiano
Mano Negra
Los Pájaros
Comandos Revolucionarios de Colombia
Democracia
Alianza Anticomunista Colombiana
Los Extraditables

ANTIOQUIA (18)

Autodefensas del Nordeste Antioqueño (ANA)
Escuadrón de la muerte (Medellín and Pereira)
Estrella Roja
Comité Estudiantil Unión Revolucionaria
Muerte a jibaros y basuqueros (Medellín)
Muerte a Revolucionarios del Nordeste (Segovia)
Amor a Medellín (Medellín)
Limpieza total (Medellín)
Muerte a jueces, MAJ
Juventud Obrera Estudiantil Nacional Socialista, JOENS
Movimiento Obrero Estudiantil Nacional Socialista, MOENS
(Antioquia, Urabá, Córdoba and Magdalena Medio)
Los Magníficos (Antioquia, Urabá and Córdoba)
Muerte a Delincuentes Comunes (Urabá)
Matando a viciosos
Muerte por la fe, el recato y la moral (Medellín)
Ojo por ojo (Urabá and Córdoba)
Sendero Luminoso
Grupo Obrero Revolucionario

ATLANTICO (7)

El Grupo, Atlantic Coast
Muerte a Abigeos, MAOS
Castigo a firmantes e intermediarios estafadores, CAFIAS
Muerte a invasores, colaboradores y patrocinadores, MAICOPA
Muerte a Antisociales, Sindicalistas y Comunistas, MASCO
Los Rebeldes
La Mano Negra

BOLIVAR (1)

Muerte a Secuestradores Comunistas

BOYACA (3)

Muerte a Delincuentes
Banda de los López
Banda de los Barrera

CALDAS (2)

Movimiento de Autodefensa Ciudadana (Manizales)
Muerte a homosexuales (Manizales, Medellín and Calí)

CAQUETA (2)

El Escuadrón Machete
Mundo Libre (Florencia)

CASANARE (1)

Fuerzas de Autodefensa del Casanare, FAC, or
Movimiento de Autodefensa del Casanare

CAUCA (14)

Falange
Alianza Revolucionaria Bolivariana
CRC
Falange Bolivariana (Cauca)
Frente de Amistad Juvenil
Los compañeros de la paz (Popayán)
Escuadrón de la Muerte Bolivariana
Muerte a ladrones del Norte (Popayán)
Frente Democrático de Amistad
Frente Democrático del Pueblo
Grupo Bolivarense Antiterrorista
Grupo Juvenil 12 de octubre
Movimiento Democracia
Muerte a Militares y Paramilitares

CESAR (2)

Terminator (César or Santander)
Comando Unificado de Acción Revolucionaria

CHOCO (1)

Roya 87

CORDOBA (5)

La Cascona (Córdoba and Sucre)
El Orcón, counterrevolutionary group
Grupo Camilo Daza
Los Mazudos
Los Mochacabezas

CUNDINAMARCA (12)

Muerte a jaladores de carros (Bogotá)
Muerte a ladrones del Norte, MAL, or
Muerte a rateros del Norte, MARNO or MURN (Bogota)
Movimiento de Cristianos Anticomunistas (Bogota)
El Gatillo (Guadas)
Organización revolucionaria contra ampones, ORCA (Bogota)
Autodefensa Obrera y Campesina (Yacopí)
Plan Fantasma (Bogota)
Muerte a gamines (Bogota)
Comité de Seguridad y Autodefensa Civil de Cundinamarca
(Zipaquirá)
Coordinadora Nacional de organizaciones paramilitares (Bogota)
Brigadas populares del Suroriente

HUILA (4)

Comandos Urbanos Democráticos Latinoamericanos, CUDL
Comité de Vigilancia y Desarrollo de Colombia
Comunidad de Huila
Los Vampiros

LA GUAJIRA (1)

Siete Machos

MAGDALENA MEDIO (9)

El Embrión
Alfa 83
Prolimpieza del Valle del Magdalena
Los Tiznados
Los Grillos

Muerte a revolucionarios, MAR
Menudos
Comando Cor. Rogelio Correa Campos (Magdalena Medio, Santander)
Autodefensa Magdalena Medio

META (11)

Aguijones
Amor por el Llano (Villavicencio)
Frente Contra-guerrillero
Frente Llanero de Autodefensa Democracia Nación
Boinas Rojas
Frente Revolucionario Campesino
Hombres de maíz
Amnistía Narco
Los Mechudos
Autodefensa de los Bienes de los Narcotraficantes
La Mano Negra

NORTE DE SANTANDER (5)

Los Rampuches
Autodefensa popular (Cúcuta and Norte de Santander)
Rambo (Tibú)
Sociedad de amigos de Ocaña, SAO (Ocaña)
El Justiciero

QUINDIO (3)

El justiciero quindiano, JUQUIN
Ejército clandestino obrero
El Vengador Anónimo (Armenia)

RISARALDA (4)

Muerte a prostitutas y ladrones (Pereira)
Koyak
Escuadrón de la Muerte
Las Aguilas Blancas

SANTANDER (18)

Falcón 2
Los Vampiros
Legión de las águilas blancas (Barrancabermeja)
Escorpión (Barrancabermeja)
Los Caracuchos
Falco

Bandera Roja
La Gota Negra
Comando Ariel Otero
Estrella Móvil
Comando Henry Pérez
Comando Pedro Gordillo
Movimiento Muerte a Revolucionarios y Comunistas (Marco)
Comando Rojo Simón Bolívar
Ejército de los Pobres
Toxicol 90
Escorpión
Boinas Verdes

SIERRA NEVADA (1)

Los Justicieros (Sierra Nevada de Santa Marta)

TOLIMA (1)

Rojo-Ata

VALLE DEL CAUCA (19)

Juventud inconforme de Colombia, JIC (Cali and Valle del Cauca)
Comandos verdes (Cali and Valle)
Kan-Kil (Cali)
Boinas rojas (Valle, Santander and Meta)
Bandera negra (Cali, Buga and Tuluá)
Nosotros, Palmira Eficiente (Palmira)
Frente Unido Silencioso
Alianza Democrática
Fuerza Militar de Occidente
Justiciero Implacable
Escuadrón Limpieza Cali (Cali)
Muerte a ratas (Cali)
Los vengadores (Cali)
Jumbo
Ejército Popular Revolucionario
Movimiento Cívico Revolucionario
Organización del Pueblo Armado, OPA
Organización Militar del Pueblo
Muerte a Jíbaros, MAJI

MISCELLANEOUS (5)

(These groups do not operate nationwide or in any single region in particular)
Ejército Rojo
Los Cobras

Los Kils
Los Monjes
Los Nevados

GROUPS OF COMMON CRIMINALS OR HIRED KILLERS: There are other groups that work for these paramilitary organizations and, according to government spokesmen, belong to them. These include: los Priscos; los Tesos; los Quesitos; los Cuchos; los Picados; los Nachos; los Nata; los Cucarachos; los Rebeldes (active in the Atlantic coast region); los Barriales (active in Cali); the group known as the Federación de Organizaciones Revolucionarias y Obreras, FORO (active in the Viejo Caldas and Valle area); Grupo Bolivarense Antiterrorista (active in the Cauca region); Orden y Patria (active in Bogota); and Democracia (active in Antioquia and Valle).[\[12\]](#)

When the present Head of State, Dr. César Gaviria Trujillo, was Minister of Government under President Virgilio Barco, he addressed a session of the House of Representatives, of which he was also a member, on September 30, 1987, and reported that State security forces had uncovered 128 paramilitary groups in Colombia.[\[13\]](#)

The self-defense groups: their organization and financing

The Commission received information about the *modus operandi* of the most well-known self-defense group in the country, the one in Magdalena Medio. Even though with the death of its leaders it ceased to operate on a national scale since its structure was similar to the structure of other groups of equal or less importance, its functional structure is described below:

1. Staff: Members of the Staff had nationwide authority and were responsible for coordinating and issuing operational instructions. Composition: a) a national military chief, and a chief for each region; b) a political and public relations chief, each region having its own representative (for some time, this was the position held by Luis Antonio Meneses Báez, alias Ariel Otero); c) a logistics chief in charge of coordinating the arms and provisions supply networks for each region (the chief of transport of the self-defense groups in the Magdalena Medio was Hans Ortiz Loaiza whose body was found on December 16, 1991, in Mariquita, Tolima); d) a chief of training responsible for training the members; e) a chief of intelligence and counterintelligence who coordinates security measures that the groups must use in each zone.
2. Civilian security and surveillance committees or local self-defense boards. There is one such committee or board for every region where there are groups. The members are people who live in the area and their functions are to collect funds and divide it between the Staff and the front, to organize the ranchers who sponsor the organization in each locale, to coordinate health and sporting activities, among others. Each board is made up as follows: a) a chairman directs the board's activities and coordinates activities and operations with the front; b) a secretary replaces the chairman in his absence and keeps a record of the board's meetings; c) a treasurer does the accounting and sends 10% of the monies collected to the Staff; the remainder is distributed between the board and the front; d) an auditor checks to see how the money is being used and the board's activities; e) two members settle differences in the decision-making process. Board sympathizers do intelligence work,

provide transportation, means of communication, housing, etc. This is the structure in Rionegro (Antioquia) and El Guavio (Cundinamarca), the Magdalena Medio valley, which includes portions of Santander, Antioquia, Western Boyacá, Caldas, the southern portion of Bolívar, Urabá and the mining area of Antioquia; Sinú valley (Córdoba); the Magdalena banana area; Viejo Caldas, Sur del Huila, Caquetá, La Guajira, Putumayo, Cauca, Casanare, Meta, Tolima, the Cauca Valley and Sucre.

3. Armed fronts. The fronts serve as regional coordinators of other groups operating at the local level; as yet it has been impossible to determine exactly how many such fronts exist. Each one has a command group made up as follows: a) a commandant or individual in charge of military affairs; b) a political chief; c) an intelligence chief; d) an economist; e) the members, who are the combatants, drawing a salary that ranges between \$100 and \$150,000.
4. Financing. These vigilante organizations are bankrolled with funds from a variety of sources, among them: a) the amount that ranchers, businessmen and farmers in the region are required to pay, collected by means calculated to conceal the fact that the money will be used for criminal purposes; b) payment received from drug traffickers for the services rendered in each region; c) money received for performing criminal activities for which they were hired; d) profits from the use and exploitation of farms, and e) the resale of arms.

E. THE CATHOLIC CHURCH'S STANCE ON VIOLENCE AND HUMAN RIGHTS IN COLOMBIA

Today Colombia's institutions are in crisis. There are injustices in every sphere of society. These are the manifestations of a selfish and intolerant society. The phrase "culture of violence" that appears in some of the studies.. is debatable... Commission of Studies on Violence, coordinated by Gonzalo Sánchez.

The findings of the 1987 Committee to Investigate the Causes of Violence were published in a 1988 report titled "Colombia: Violence and Democracy". Its authors call themselves "experts on violence". The crisis in our society is fed by intransigence and an intolerance for different views, even in key sectors of national politics.

The human rights situation in the country also has to do with the poverty in which much of the population lives. According to DANE statistics, while 3,000,000 Colombian households are poor, 1,200,000 live in abject poverty, unable to cover even their basic food needs.

That endemic violence has been plaguing our society for some time now. However, there are now agents, catalysts of violence, who have made the problem even worse. In addition to poverty, human rights violations have become widespread, all part of the problem of violence.

The nature and causes of the human rights violations are many, but to understand the problem better one must bear in mind that apart from the political violence, especially the political violence caused by extremists on both the right and the left, there are other forms of violence that bring death or violate the right to life, the right to humane treatment, and other rights. Drug trafficking, abuses of authority, socio-economic violence rooted in social

injustice and land problems are but some of the forms of violence that lead to human rights violations.

There are other, more insidious violations not so heavily reported in the press, such as enforced disappearances of families and individuals. Individuals or entire families are displaced. And yet, there are no laws that address these outrages. On the other hand, guerrillas engage in kidnapping, extortion, "*boleteo*", the vaccinations, theft of livestock, while drug-traffickers kidnap or hold hostage journalists, entrepreneurs and relatives of high-ranking state officials. The incidence of these violations has increased in recent months.[\[14\]](#)

F. VIOLENCE IN 1992

In 1992, violence by drug traffickers, guerrillas and common criminals left 27,100 people dead in Colombia, higher than the 25,100 violent deaths in Colombia in 1991. Within that same period there were 1,136 kidnappings and 1,100 assaults.[\[15\]](#) The alarming number of kidnappings in 1992 was, nevertheless, one third less than the previous year. The cities hardest hit by the violence were Bogota, in the Department of Cundinamarca, and Medellín in Antioquia. Bogota had 7,081 murders and Medellín 6,662.

According to government reports,[\[16\]](#) in the war on terrorism Colombian authorities rescued 131 kidnapping victims; they seized 28,016 kilos of cocaine; they destroyed 83.5 million poppy plants, seized 17,318 weapons, deactivated 149 explosive devices and arrested 61,333 people. All this cost the lives of 600 policemen.

The number of people killed illustrates the terror now rampant in Colombia. The members of the Special Commission that visited Colombia were told by any number of people that no one in Colombia knows when or where one of these attacks, which happen every day, will claim the life of a friend, a loved one, or even one's own life.

[1] Andean Commission of Jurists, Colombian Branch. "*Las ilusiones perdidas? Derechos humanos y derecho humanitario en Colombia en 1992*". Bogota, 1993, mimeo.

[2] Estanislao Zuleta, *Colombia: Violencia, Democracia y Derechos Humanos*, Ediciones Attamir, Bogota 1991.

[3] Gonzalo Sánchez, Dony Meertens. *Bandoleros, gamonales y campesinos: El Caso de la Violencia en Colombia*, Bogota, Ancora, 1985, p.42.

[4] Op.cit. Estanislao Zuleta, p.125.

[5] Document called *Concepción y Estructura de la OPM (Organización Político Militar del M-19)*, product of the Sixth Conference of the M-19, March 1978. A quote by Enrique Neira in the journal "Guión", Bogota, March 1980, pp.153-162.

[6] *Al filo del Caos, Los Paramilitares y su Impacto sobre la Política*, Jorge Orlando Melo, Tercer Mundo Publisher, May 1991.

[7] "*Derechos Humanos: ficción y realidad*", Elisabeth Reimann/Fernando Rivas Sánchez, 1979 Aaka publisher, Spain.

[8] Father Adolfo Galindo Quevedo, *Autodefensas, Paramilitares y Narcotráfico en Colombia*, Carlos Medina Gallego, Editorial Documentos Periodísticos, Bogota, 1990.

[9] Carlos Medina Gallego, op.cit.

[10] Ibid, p.177.

[11] Jorge Orlando Meio. *Los Paramilitares y su Impacto sobre la Política*, op.cit. pp. 482-484.

[12] Sources: nongovernmental human rights organizations and newspaper reports (El Tiempo, El Espectador, El Mundo, El Caleño, Voz and Vanguardia Liberal).

[13] *El Espectador*, October 1, 1987, pp. 1A and 13A.

[14] Conferencia Episcopal de Colombia. Document No. 2, Bogota, November 30, 1990.

[15] According to information supplied by the Government of Colombia and attached to this report, the number of kidnapping victims was higher in 1991; it was not 1,136, but 1,717. As for 1993, while there were already 513 kidnappings in the first six months, this would still seem to indicate that kidnappings have declined somewhat.

[16] *Centro de Informaciones Criminológicas de la Policía (CIC).*

[17] The voting results by party were as follows: Liberal, 1,055,033, 28.3, 24; M-19, 950,174, 26.82, 19; MSN, 555,403, 15.68, 12; PSC, 388,842, 10.9, 8; UP, 82,728.3, 2; OTHERS, 509,529, 14.3; Yes votes: 2,696,826; No votes: 71,836; Total number of voters: 3,541,480; 93.90% of the votes were tallied. Total number of votes: 3,438,418, 100.00%.

[18] Observations and Comments of the Government of Colombia on the IACHR's Second Report on the Situation of Human Rights in Colombia, August 3, 1993.

[19] It is legally incorrect to argue that the state of internal disturbance can be extended so that it remains in effect for as long as 360 days: it can remain in effect for up to 270 days; the other 90 days are how long the measures adopted can remain in effect, which is a different matter. If the 90 days following the first 270 days were part of the state of emergency, the government could adopt new measures, which is not the case. **Notes and comments on the Commission's Report that are not part of the Colombian Government's official reply; they arrived at the Commission on September 22, 1993.**

[20] As for the objection made by the Inter-American Commission on Human Rights to Decree 1810, which gave the Army criminal-investigation functions and which, as said before, was nullified, the Government of Colombia stated that the decree had been a temporary and strictly emergency measure and that with the Constitutional Court's ruling the guarantees of due process were better protected.

[21] The crimes listed under paragraphs 4, 8, 9, 10, 12 and 24 did not become permanent law.

[22] The acts criminalized in Decree 180/88 and in those that pre- and post-dated it: Decree 3564 of 1986, 474/88, 2490/88, 1194/89, 813/89, 814/89, 1857/89, 1858/89, 1895/89, all of which were State of Siege Decrees, became permanent law by virtue of Decrees 2253/91, 2265/91 and 2266/91.

[23] The decrees that have recognized these benefits are: Decree 2047/90, Decree 2872/90, Decree 3030/90, Decree 303/91 (all of which became permanent law under Decree 2265 of 1991), Decree 1933/92 (article 1), Decree 264/93 (which the Constitutional Court nullified in its ruling of May 3, 1993), and Decree 1495/93. The rules governing rewards for cooperation are now stipulated in the Code of Criminal Procedure, in articles 37, 37A, 37B and 369B (Decree 2700/61 and Law 81 of November 2, 1993).

[24] The public order judges are now called prosecutors during the investigation and pretrial hearing, and regional judges in the trial phase. The Public Order Tribunal is now the National Tribunal, and the Regional Jurisdiction has now absorbed what was once the Public Order Jurisdiction.

[25] Amended by Law 81, which provides that the parties to the proceedings have an equal right to copies thereof.

[26] Decree 2790/90 also became permanent law, but after the following articles were eliminated: 14, 15, 16, 41, 62, 69, 70, 71, 72, 73, 74, 75, 89, 91, 95 and 102.

[27] The practice of holding individuals incommunicado following arrest was declared unconstitutional and was not included in the permanent law.

[28] Declared unconstitutional and therefore not included as part of the permanent law.

[29] Sources: National Bureau of Criminal Investigation; Technical Corps of the Criminal Investigations Police; National Human Rights Unit, December 1990, and Andean Commission of Jurists, November 1993.

[30] A maxim of the law that means that agreements must be honored.

[31] The Party Law is revitalizing Colombian politics; it is requiring parties to modernize and is encouraging citizens to overcome their apathy and to exercise their democratic rights. since this statute did not include rules to govern the exercise of rights by minorities, the Government has pledged to present a draft opposition statute, as the necessary corollary of the new Political Party Statute. **Footnote cited.**

CHAPTER III

THE POLITICAL AND LEGAL SYSTEM IN COLOMBIA

A. EARLIER CONSTITUTIONAL PROVISIONS THAT PROVIDED THE FRAMEWORK FOR THE POLITICAL, LEGAL AND HUMAN RIGHTS SYSTEM IN COLOMBIA

The 1886 Constitution of Colombia examined under the section on the Legal and Political System of Colombia in the Commission's 1981 report, was based on earlier constitutions in Colombian history: the Constitutional Act of the Independent Free State of El Socorro, August 15, 1810; the Constitution of Cundinamarca, March 30, 1811; the Constitution of the Republic of Tunja, December 9, 1811; the Constitution of the State of Antioquia, March 21, 1812; the Constitution of the State of Cartagena de Indias, June 15, 1812; the Constitution of the Republic of Cundinamarca, July 18, 1812; the Constitution of the State of Mariquita, June 21, 1815; the Constitution of August 30, 1821; the Constitution of April 29, 1830; the Constitution of the State of Nueva Granada, February 29, 1832; the Constitution of Nueva Granada, April 20, 1843; the Constitution of Nueva Granada, March 20, 1853; the Political Constitution for the Granadian Confederation, May 22, 1858, and the Constitution of the United States of Colombia, May 8, 1863. The Constitution of the Republic of Colombia adopted on August 4, 1886, was amended by, *inter alia*, Legislative Act No. 3 of October 3, 1910, Legislative Act No. 1 of August 5, 1936, and Legislative Act No. 1 of February 16, 1945.

B. HISTORY OF THE NATIONAL CONSTITUTIONAL ASSEMBLY

The history behind the new Constitution of Colombia adopted in 1991 is as follows: via Decree No. 1926, dated August 24, 1990, the Government of President César Gaviria Trujillo convened a National Constitutional Assembly. On December 5, 1990, the people of Colombia elected the 70 members of that Assembly. It was an historic election in that the voters and candidates included former members of the guerrilla movement, recently reassimilated into mainstream society, among them the leaders of the April 19th Movement (M-19). The outcome of the election was as follows:

Partido Liberal: 25 Assemblymen; Alianza Democrática M-19: 18; Movimiento de Salvación Nacional: 11; Partido Social Conservador: 5; independent Conservative Party slates: 4; Unión Patriótica: 2; the Indigenous Movement: 2; the Evangelical Movement: 2; Esperanza, Paz y Libertad: 2; Partido Revolucionario de los Trabajadores: 1; Movimiento Indígena Quintín Lame: 1. These last two assemblymen were elected but do not have the right to vote in the Assembly.

| COLOMBIA | | OUTLINE OF THE NEW CONSTITUTION OF THE REPUBLIC OF | |
|----------|------------------------|--|--|
| | | (In force since July 5, 1991) | |
| Title | Chapter | Sections | |
| I. | Fundamental principles | I/10) | |

| | |
|---|--|
| II. Rights, Guarantees and Duties (11/40) | |
| 1. Fundamental Rights (11/41) | <p>D. Life (11); disappearance-torture (12); liberty, equality, nondiscrimination (13); legal personality (14); privacy, reputation (15); personal fulfillment (16); slavery, servitude (17); freedom of conscience (18); freedom of worship (19); freedom of expression, the freedom to disseminate one's thoughts and opinions, to give and receive truthful and impartial information (20); honor (21); peace (22); file petitions (23); freedom of movement (24); work (25); right to choose one's profession or trade (26); right to an education (27); all persons are free (28); due process (29); <i>Habeas corpus</i> (30); the right to appeal a court ruling (31); self-incrimination (33); exile (34); extradition (35); asylum (36); meetings-public demonstrations (37); assembly (38); formation of trade unions (39); political rights (40).</p> |
| 2. Social, Economic and Cultural Rights (42/77) | |
| 3. Collective and Environmental rights (78/82) | <p>Family (42); women and men have equal rights (43); the rights of children (44); the rights of adolescents (45); the rights of the elderly (46); the rights of the handicapped (47); social security (48); health care (49); children under age one (50); decent housing (51); recreation (52); labor (53); strike (56); private property (58); intellectual property (61); education (67); culture (70); freedom of information and press (73)</p> |
| 4. Protection and Exercise of Rights (83/94) | |
| 5. Duties and Obligations (95) | <p>D. Clean environment (79); natural resources (80); ban on chemical weapons, etc. (81)</p> |
| III. Inhabitants and the Territory | |
| 1. Nationality (96/97) | <p><i>Habeas corpus</i>, <i>amparo</i> (85); protection, 86; indemnization 989); precedence of international law (93).</p> |
| 2. Citizenship (98/99) | |
| 3. Aliens (100) | |
| 4. Territory (101/102) | |
| IV. Democratic Participation and | <p>Nationality (x nationality, x adoption 96; in</p> |

| | |
|--|---|
| Participation of Political Parties | case of war, 97) |
| 1. Forms of Democratic Participation (103/106) | Citizenry (loss, suspension 98; necessity, 99) |
| 2. Political Parties and Movements (107/111) | Aliens (rights of aliens 100) |
| 3. Status of the Opposition (112) | |
| V. Organization of the State (116); | Political rights and their exercise (103/112) |
| 1. State Structure (113/121) | |
| 2. Civil Service (122/131) | |
| VI. The Legislative Branch | |
| 1. Membership and Functions (132/137) | The Branches of Government (113); the justice system (116); Public Prosecutor's Department (118). |
| 2. Meeting and Procedure (138/149) | Public servants; notaries public (123; 126) |
| 3. Laws (150/170) | |
| 4. The Senate (171/175) | |
| 5. The House of Representatives (176/178) | |
| 6. Congressmen (179/187) | |

OUTLINE OF THE NEW CONSTITUTION OF THE REPUBLIC OF COLOMBIA

(In force since July 5, 1991)

| Title | Chapter | Sections |
|--|--|--|
| VII. The Executive Branch | | |
| | 1. The President (188/199) | |
| | 2. Government (200/201) | |
| | 3. Vice President (201/205) | |
| | 4. Ministers and Directors of Cabinet Departments (206/208) | State of war (212); Internal disturbance (213) |
| | 5. Civil Service (209/211) | |
| | 6. States of Emergency (212/215) | |
| | 7. Law Enforcement (216/223) | |
| | 8. International Relations | |
| VIII. The Judicial Branch | | |
| | 1. General Provisions (228/233) | |
| | 2. Ordinary Courts (234/235) | |
| | 3. Administrative Courts (236/238) | |
| | 4. Constitutional Court (239/245) | (Indigenous Peoples, 246) |
| | 5. Special Courts (246/248) | |
| | 6. Office of the Prosecutor General of the Nation (249/253) | |
| | 7. Superior Council of the Judiciary (254/257) | |
| IX. Elections and Electoral Organization | | |
| | 1. Suffrage and Elections (258/263) | |
| | 2. Election Authorities (264/266) | |
| X. Control agencies | | |
| | 1. Office of the Comptroller General of the Republic (267/274) | |
| | 2. Prosecuting Authority (275/284) | |
| XI. Territorial Organization | | |
| | 1. General Provisions (285/296) | |

2. Departmental System (297/310)
3. Municipal System (311/321)
4. Special System (322/331)

XII. Economic System and the Public Treasury

1. General Provisions 9332/338)
2. Development Plans (339/344)
3. Budget (345/355)
4. Distribution of Resources and Authorities (356/364)
5. The Social Function of the State and of Public Services (365/370)
6. Central Bank (371/373)

XIII. Amendment of the Constitution (374/380)

Transitory provisions (1/60)

Horacio Serpa of the Liberal Party, Antonio Navaro Wolff of the M-19 Democratic Alliance and Alvaro Gómez of the National Salvation Movement were elected presidents of the National Constitutional Assembly.[\[1\]](#)

C. THE 1991 CONSTITUTION

After 6 months in session, on July 5, 1991, the National Constitutional Assembly enacted the new Constitution, which consists of 380 articles and 60 transitory provisions.

This report contains a very brief description of the new Colombian Constitution, emphasizing the main features of the political structure of the Colombian State. Also mentioned are the human rights provisions contained in that Constitution, with an indication of the specific article wherein each human right is addressed.

Under Title I, on the Fundamental Principles, articles 1 through 10 provide the following frames of reference: Colombia is a State organized as a single, decentralized, participatory and pluralistic republic, founded upon respect for human dignity, the work and the solidarity of its people and to ensure that the general welfare prevails. The essential functions of the Colombian State are to serve the community, promote general prosperity and guarantee the effectiveness of the principles, rights and duties established in the Constitution; to enable all its citizens to have a voice in the decisions that affect them and in the economic, political, administrative and cultural life of the Nation; to defend the Nation's independence, preserve its territorial integrity, and ensure peaceful coexistence and justice; it adds that the authorities of the Republic are instituted to protect the life, honor, property, beliefs, and the other rights and freedoms of all residents of Colombia and to ensure that the State and private parties fulfill their social obligations.

The fundamental principles set forth in Articles 1 and 2 of the Constitution contain the bases upon which the rule of Colombian law and respect for and defense of human rights rest: that sovereignty resides exclusively in the people from which the public power emanates and that it is the people who exercise sovereignty, either directly or through their representatives.

Article 4 provides that the Constitution is the law of laws and that in the event of some incompatibility between a provision of the Constitution and a law, the provisions of the Constitution shall take precedence; under article 5, the State recognizes the primacy of the individual's inalienable rights, without discrimination of any kind, and protects the family as the basic institution of society.

Other basic principles are that individuals who have violated the law or the Constitution are answerable exclusively to the Colombian authorities; that public servants are answerable for failing to perform their functions or overstepping their authority; that the State recognizes and protects ethnic diversity; that it is the obligation of the State and of its parts to protect the property and cultural heritage of the Nation; that foreign relations are based on national sovereignty, respect for the self-determination of peoples and on the recognition of the principles of international law to which Colombia is bound; that Spanish is the official language of Colombia, but the languages and dialects of ethnic groups are also official within their territory and education in communities with linguistic traditions shall be bilingual.

Title II of the Colombian Constitution contains an impressive catalogue of human rights, which are enumerated in detail in the corresponding section. They appear in Chapter 1 (articles 11 to 41) under the heading of fundamental rights; Chapter 2 (articles 42 to 77) contains the social, economic and cultural rights; Chapter 3 (articles 78 to 82) contains the collective rights and environmental rights; Chapter 4 (articles 83 to 94) refers to the rights to protection and enforcement of the rights described earlier, while Chapter 5 (article 95) concerns duties and obligations.

Particular mention should be made of the fact that under Article 93, international human rights treaties ratified by Congress are preeminent and may not be restricted in states of emergency. It also provides that the rights and duties established in the Constitution shall be interpreted in accordance with international human rights treaties ratified by Colombia, adding that the rights and guarantees contained in the Constitution and in international conventions shall not be understood as a denial of other rights that, being inherent in the human person, are not expressly stipulated in either the Constitution or those conventions.

Title III concerns nationality, citizenship, aliens and territory. Title IV concerns the political rights and their exercise. Its Chapter 1 regulates the methods of democratic participation (voting, plebiscite, referendum, public consultation, open town meetings, legislative initiatives and removing elected officials from office); in Chapter 2 of this title, the Constitution regulates political parties and political movements, while Chapter 3 concerns the status of the opposition. The Constitution repeals the bipartisan system of government instituted in 1958 with the so-called "National Front".

D. POLITICAL-LEGAL STRUCTURE OF THE STATE

Like the 1886 constitution it replaced, the 1991 Constitution establishes three branches of government: legislative, executive and judicial. It also establishes independent autonomous organs with specific functions. Colombia's constitutional history has been one in which the executive branch of government has always been preeminent. However, the present Constitution tries to balance the relationship between the executive and legislative branches by increasing the latter's powers. Accordingly, the executive's authorities to legislate were curtailed and the Congress was given greater political control over government. The governance and functions of the legislative branch of government are in article 114 and in articles 132 to 187.

The Legislative Branch of Government, addressed in Title VI under the heading of Legislative Branch (articles 132 to 187), is composed of senators and representatives elected directly by the people to four-year terms of office that begin on July 20 following their election. Their basic function is to amend the Constitution, make laws and exercise political control over the government and the administration. Its members represent the people and must consider justice and the common welfare. They are answerable to both society and to their constituents in discharging their duties. The Senate and the House of Representatives together constitute the Congress, which has its seat in the capital of the Republic. Congress has two regular sessions each year when it is a single legislature. The Senate is composed of 100 members elected nationwide, while the House of Representatives, whose members are elected in territorial and special elections, has two representatives per territorial district and one for every 250,000 inhabitants or fraction over 125,000.

One of the Colombian Congress' functions is to make the laws and, through them, to exercise the following functions: interpret, amend, and repeal laws; issue codes in all fields of law and amend their provisions; establish the rules by which government must operate when exercising the inspection and oversight functions stipulated in the Constitution; invest, for up to six months, the President of the Republic with specific, extraordinary authorities to issue norms that have the force of law when necessity so requires or the public interest so counsels. These authorities are not to be conferred for purposes of issuing codes, statutes, charters, etc.; approve or disapprove the treaties that the Government concludes with other States or with entities of international law. By a majority of two thirds of the members of both houses and for grave reasons of public interest, it may grant amnesties or general pardons for political crimes. Should the persons pardoned or given an amnesty be relieved of any civil liability vis-a-vis private parties, the State shall be obligated to pay any damages due, etc.

The Executive Branch is composed of the President of the Republic, who is head of government and supreme administrative authority, and of the ministers and directors of government departments. Under Article 188, the President must not only observe and enforce the Constitution and the laws of the Republic but must also guarantee the rights and freedoms of all citizens. Articles 115 and 188-227 concern the structure of the executive branch of government.

Within the Office of the President of the Republic, there is an Office of the Presidential Adviser for the Defense, Protection and Promotion of Human Rights, organized as follows:

Case area. This area acts upon the complaints of human rights violations filed at the national level. The work is performed jointly with the competent authorities, especially with the Office of the Attorney General and the Judiciary. For cases reported by international organizations, an inter-institutional working group has been formed and must ascertain the status of the investigations and compile any information needed. Through the **Municipal and Regional Area** and the municipal authorities that represent it, the job of defending, protecting and promoting human rights is performed on a national scale. There is also a **Human Rights Promotion and Dissemination Area**. The **International Area** involves functions established under Article 2, paragraph 3 of Decree No. 2111, to address requests that governmental and nongovernmental international entities make of the Colombian Government in connection with the human rights situation in the country and the obligations it has undertaken by virtue of treaties and conventions signed and ratified by the State. This function is performed jointly with the Ministry of Foreign Affairs.

The Judicial Branch is covered under Title VIII, under the heading Judicial Branch. Title VIII contains 7 chapters: 1, General Provisions; 2, The Regular Courts; 3, Administrative Courts; 4, The Constitutional Court; 5, The Special Courts; 6, The Office of the Prosecutor General; 7, the Superior Council of the Judiciary. The judicial branch of government is governed under Article 116 and articles 228 to 257 of the Constitution. Under Article 116, the administration of justice is the responsibility of the Constitutional Court, the Supreme Court of Justice, the Council of State, the Superior Council of the Judiciary, the Office of the Prosecutor General of the Nation, the tribunals and judges. That same article also mentions military criminal justice. Congress is to exercise certain judicial functions. Under Title VIII, the administration of justice is a public function; the decisions of the judiciary are independent and its proceedings are to be public and ongoing, with the exceptions that the law allows.

a) The Supreme Court (Ordinary Jurisdiction) is the highest of the ordinary courts. It consists of 23 magistrates elected by the Court itself to an eight-year term from slates submitted by the Superior Council of the Judiciary. The members of the Court sit on the full bench and on the Civil, Criminal and Labor Appeals benches. While it is an appellate court, it also investigates and tries the President, ministers of state, the attorney general, the public defender, and in general high-ranking officials and members of Congress for any punishable offense of which they stand accused.

b) The Council of State (Administrative-Adjudicatory Jurisdiction) is the Government's advisory body on matters of administrative law and the supreme court for litigation in administrative law. It consists of 26 magistrates elected by the Council of State to an eight-year term, from slates containing no fewer than three candidates, which the Superior Council of the Judiciary shall refer to it. The members of the Council of State shall serve through the full chamber, the chamber for administrative law and the advisory and civil service chamber.

The Administrative-Adjudicatory Chamber shall take cognizance of actions seeking nullification, on grounds of unconstitutionality, of any decree issued by the National Government that does not fall within the jurisdiction of the Constitutional Court; it shall also hear cases arguing the illegality of national administrative acts issued in any branch of

government and by private bodies performing public functions; it shall hear cases to which either the nation or a territory or decentralized entity is party and cases wherein national bodies are seeking a ruling on government authorities. The third section of the Administrative-Adjudicatory Chamber deals with direct reparations for government acts, omissions or operations, which would include proceedings in which the State is being held responsible for a human rights violation.

c) The Constitutional Court (Constitutional Jurisdiction) also has an uneven number of members, as determined by law. Its magistrates are to represent various areas of the law. They are elected by the Senate to an eight-year term and are not eligible for re-election. The functions of the Constitutional Court are as follows: to decide cases brought by citizens arguing the unconstitutionality of acts that amend the Constitution, whatever their origin, on the grounds of procedural error; to decide, before the people speak, whether a referendum or a constitutional assembly to amend the Constitution is constitutional on purely procedural grounds; to decide on the constitutionality of referenda on laws and on the public consultations and national plebiscites (in these last two cases, the actions can only assert procedural error in the convocation and conduct of the public consultation and plebiscite); to rule on cases filed by citizens claiming the unconstitutionality of laws on the grounds of both material content and procedural error; to settle suits brought by citizens arguing the unconstitutionality of decrees issued by the government with the force of law based on Article 150, paragraph 10, and Article 341 of the Constitution, on the grounds that they are materially or procedurally flawed; to rule on the exemptions covered in Article 137 of the Constitution; to hand down a definitive ruling on the constitutionality of the legislative decrees issued by the government pursuant to articles 212, 213 and 215 of the Constitution; to issue a final ruling on the constitutionality of bills or draft statutes that the Government has challenged as unconstitutional because of their material content and procedural error; to review, in the manner prescribed by law, court decisions on the protection of constitutional rights with a view to determining the scope of those rights; to rule definitively on whether the international treaties and the laws that approve them are exigible. The Government shall refer those treaties and the laws that approve them to the Court within six days of the latter's enactment. Any citizen may become a party to an action before this Court to argue for or against the constitutionality of the treaties and the laws approving them. If the Court declares them to be constitutional, the Government may proceed to the exchange of notes; otherwise, the treaties shall not be ratified. When the Constitutional Court declares one or several provisions of the multilateral treaty to be non-exigible, the President of the Republic may only indicate consent if the necessary reservation is stipulated.

The work being done by the new Constitutional Court, whose magistrates were sworn in as recently as March 1992, deserves a special word of recognition from the Inter-American Commission on Human Rights for the work it is doing to defend, strengthen and consolidate Colombia's constitutional system.

d) The Office of the Prosecutor General. The Office of the Prosecutor General of the Nation consists of the Prosecutor General, the attorneys delegates, and other officials that the law prescribes. The Prosecutor General of the Nation shall be elected to a four-year term by the Supreme Court of Justice, from a slate submitted by the President. He/she may not be reelected. The Prosecutor General must have the same qualifications required to be a magistrate on the Supreme Court. The Office of the Prosecutor General is part of the judiciary

and is to have administrative and budgetary autonomy. The Prosecutor General of the Nation and his/her delegates have competence throughout the national territory. It is the function of the Office of the Prosecutor General--either ex officio or in response to a complaint filed--to investigate crimes and to bring charges against the suspected guilty parties with the competent courts and tribunals, except in the case of service-related crimes committed by members of the armed forces or National Police on active duty, in which case it shall: 1) ensure that those suspected of violating the criminal law appear before the courts, adopting the measures necessary to that end. Also, if need be it shall take steps to see to it that those whose rights have been violated by the commission of the crime have their rights restored and are properly compensated for any damages caused; 2) evaluate and close the investigations conducted; 3) direct and coordinate the criminal police functions performed, by law, by the National Police and other agencies; 4) protect the victims, witnesses and parties in a legal proceeding; 5) perform the other functions that the law stipulates.

The Office of the Prosecutor General is by law required to investigate that which is favorable and that which is unfavorable to the accused, and to respect his fundamental rights and procedural guarantees. It is the duty of the Prosecutor General of the Nation: to investigate and indict, where appropriate, high-ranking officials who enjoy constitutional privilege, with the exceptions stipulated in the Constitution; to appoint and remove, in keeping with the law, the employees in his government department; to help shape the State's policy toward crime and to submit bills in that regard; to invest public entities with temporary authority to serve as criminal investigations police, under the responsibility and functionally answerable to the Office of the Prosecutor General of the Nation; and to provide the government information on the investigations being carried out, whenever necessary to preserve public order.

The Commission believes that the Office of the Prosecutor General may represent a significant change in Colombian criminal procedure. The existing criminal procedure has two stages: the investigatory stage where the evidence is compiled; and the trial itself, where the criminal responsibility of the accused is established. To understand the function of the "fiscal" [prosecutor], one must recall that under the previous system both phases were performed by independent judges: an examining judge investigated the crimes denounced and if he found sufficient cause requested that another judge, the trial judge, bring the suspected guilty parties to trial. Under the new criminal procedure, it is not the judge, but rather the prosecutor who must investigate and indict suspected criminals after which judges will determine whether or not they are guilty. Under the previous system, there was no single authority who took responsibility for the criminal investigation as a whole, so that each examining magistrate conducted his or her own investigation of the complaints that came to his or her office. The system did not necessarily have specialists in specific subjects or someone to coordinate the many authorities involved in criminal investigations (the DAS, F2, DIJIN, the Technical Corps of the Criminal Investigations Police, etc.) that assisted them in their functions. All these difficulties were compounded by the complexity of the cases and by the fact that the judges were not protected.

During its first year, the Office of the Prosecutor General managed to handle 186,000 of the 325,000 cases it received when it started to function, which made the system 50% more efficient than it had been. Criminal investigations rely on more technologically sophisticated

methods, prosecutors' performance is more closely scrutinized and the procedures have been streamlined. As for the protection of human rights, the report on the first year of the Prosecutor's Office stresses that it handles requests from governmental and nongovernmental, national and international organizations concerning criminal investigations being conducted into human rights violations anywhere in the national territory and constantly monitors each investigation to make certain that the relevant constitutional and legal principles are being observed. It states that thus far, it has or is investigating 1,724 cases involving human rights violations of various types: 700 cases of disappearance, 782 cases of murder, 70 cases of mass murder, 20 cases of torture, 69 cases of threats, 50 kidnapping cases and 28 cases of arbitrary arrest, routed through various government agencies, particularly the Ministry of Foreign Affairs and the Office of the Presidential Advisor for Human Right, and 45 cases reported by nongovernmental organizations such as Amnesty International, Justice and Peace, the Andean Commission of Jurists, and so on.[\[2\]](#)

e) The Superior Council of the Judiciary. Chapter 7 makes provision for a new body called the Superior Council of the Judiciary. It has two chambers: the administrative, consisting of 6 magistrates (elected as follows: two by the Supreme Court, one by the Constitutional Court and three by the Council of State), and the disciplinary jurisdictional chamber, composed of 7 magistrates elected by Congress. The functions of the Superior Council of the Judiciary are as follows: to administer the judiciary service; to prepare lists of candidates for appointment as members of the judiciary and to send those lists to the body that must make the appointment (the exception is the military criminal courts, which are governed by their own rules); to examine the conduct and punish misconduct by members of the judiciary and practicing attorneys, as required by law; to monitor the performance of law firms and offices; to prepare the proposed budget of the judiciary that is to be submitted to the government and to execute it as it is approved by Congress, and to settle any conflicts of competence that may arise among the various jurisdictions.

f) Military Criminal Courts. Article 221 of the Constitution of Colombia reads as follows: Military courts martial or tribunals shall take cognizance, in accordance with the provisions of the Military Penal Code, of service-related crimes committed by members of the public forces while in active service. The military criminal jurisdiction in Colombia has been organized in accordance with the provisions of the Military Penal and Criminal Procedure Code, issued on December 12, 1988, through Decree Law No. 2550, which entered into force in June 1989.

Under the previous Code of Military Criminal Justice, issued through Decree Law No. 250 of 1956, military courts were competent to hear cases of common crimes committed by military while in active service in times of war, armed conflict, disruption of the public order or internal disturbance. Under the new criminal code, however, the scope of military criminal justice is as follows: the provisions of this code shall apply to military in active service who commit a military or service-related common punishable offense, within or outside national territory, with those exceptions stipulated in international law. It shall also apply to officers, subordinates and agents of the National Police.

Military Criminal Jurisdiction consists of the Military Superior Tribunal, the lower courts, the chairmen of the courts martial and military criminal pretrial staff. The Military Superior

Tribunal is composed of a General Commander of the Armed Forces, who presides; there are another 15 magistrates, 10 prosecutors for all the chambers and the subordinate staff required by law. The Government may add additional staff when necessary. The magistrates and prosecutors are appointed by the government to five-year terms.

[1] The voting results by party were as follows: Liberal, 1,055,033, 28.3, 24; M-19, 950,174, 26.82, 19; MSN, 555,403, 15.68, 12; PSC, 388,842, 10.9, 8; UP, 82,728.3, 2; OTHERS, 509,529, 14.3; Yes votes: 2,696,826; No votes: 71,836; Total number of voters: 3,541,480; 93.90% of the votes were tallied. Total number of votes: 3,438,418, 100.00%.

[2] Observations and Comments of the Government of Colombia on the IACHR's Second Report on the Situation of Human Rights in Colombia, August 3, 1993.

CHAPTER IV

THE RIGHT TO A FAIR TRIAL

The rights to a fair trial, to due process and to judicial guarantees deserve special consideration because of the multiple factors that come into play in their exercise and enforcement. Transcribed below are the pertinent provisions of the American Convention on Human Rights and of the new 1991 Constitution of the Republic of Colombia that protect and defend these basic rights and establish penalties for their violation:

A. LEGAL PROVISIONS IN EFFECT IN RESPECT TO THE RIGHT TO A FAIR TRIAL

| American Convention on Human Rights <u>Article 7.</u> | Constitution of Colombia <u>Article 29.</u> Due process shall apply to all types of judicial and administrative proceedings. |
|---|--|
| 5. 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 proceedings. His release may be subject to guarantees to assure his appearance for trial. | No one may be judged except in accordance with laws that existed prior to the commission of the act with which the individual is charged, by a competent judge or tribunal, and in accordance with all the proper formalities required in each case. |
| 6. 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. 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. | In criminal matters, the more benign law, even though enacted subsequent to the commission of the crime, shall be applied in preference to the more severe or unfavorable law. |
| 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. | Every person is presumed innocent until proven guilty by a court of law. The accused has the right to defend himself and to be assisted by counsel of his own choosing or appointed ex officio, during the investigation and trial; the defendant has the right to public due process and to know the charges against him; he has the right to challenge a conviction and may not be tried twice for the same crime. |
| | Any evidence obtained in violation of due process shall be null. |
| | <u>Article 31.</u> Every court ruling may be |

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| <p style="text-align: center;"><u>Article 8. Right to a Fair Trial</u></p> <p>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.</p> | <p>appealed or reviewed, save for the exceptions that the law stipulates.</p> <p>The higher court may not increase the penalty imposed when the convicted party is the only appellant.</p> <p><u>Article 33.</u> No one can be forced to testify against himself or against his spouse, permanent companion or relative to the fourth degree of consanguinity, second degree of affinity or first degree of civil relationship.</p> |
| <p>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:</p> <ul style="list-style-type: none"> 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; | <p><u>Article 30.</u> Anyone who believes that he has been unlawfully deprived of his freedom, has the right to file before any judicial authority, at any time, either personally or through another party, a petition of <i>habeas corpus</i>, which shall be decided within the space of 36 hours.</p> <p><u>Article 86.</u> Every individual shall have the right to file an action with the courts, at any time and at any place, via a summary procedure instituted by himself directly or by someone acting on his behalf, seeking immediate protection [<i>tutela</i>] of his fundamental constitutional rights, whenever said rights are violated or threatened by the actions or omissions of any public authority.</p> <p>The protection shall consist of an order that the offending public authority take action where it is lacking or refrain from taking the improper action. The ruling, will shall be executed immediately, may be challenged with the competent judge; in any event, the ruling is to be referred to the Constitutional Court for review.</p> <p>This action is only appropriate when the interested party has no other means of legal defense except that used as a temporary mechanism to avoid irreparable harm.</p> |

- 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.
3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.
4. An accused person acquitted by a nonappealable judgment shall not be subjected to a new trial for the same cause.
5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

Article 9. Freedom from Ex Post Facto Laws

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 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.

Article 10. Right to Compensation

Every person has the right to be compensated in accordance with the law

The petition for protection must be ruled on within ten days.

The law shall establish those cases wherein actions seeking protection are permissible against private parties charged with delivering a public service or whose conduct gravely and directly affects the collective interest or in respect of those to whom the petitioner is subordinate or has no means of defense.

Article 87. Every individual may go to the court to demand fulfillment of a law or administrative act. When the petition prospers, the sentence shall order the authority at fault to carry out the duty not being fulfilled.

Article 89. In addition to those established in the preceding article, the law shall establish such other remedies, actions and procedures as may be necessary to be able to challenge the integrity of the legal system or to seek protection of one's individual rights, group rights or collective rights, in the face of some action or omission on the part of public authorities.

Article 226. The administration of justice is a public function. Its decisions are independent. The proceedings shall be public and permanent, save in those cases stipulated by law and wherein the material right shall prevail. Procedural formalities shall be observed carefully and a failure to do so shall be punished. The administration of justice shall be decentralized and autonomous.

Article 229. Every person has the right to accede to the courts. The law shall indicate those cases in which he may do so without attorney representation.

in the event he has been sentenced by a final judgment through a miscarriage of justice.

Article 25. Right to Judicial Protection

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
2. The States Parties undertake:
 - a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
 - b. to develop the possibilities of judicial remedy; and
 - c. to ensure that the competent authorities shall enforce such remedies when granted.

B. INTERNATIONAL HUMAN RIGHTS LAW ON THE RIGHT TO A FAIR TRIAL

The norms that concern the right to a fair trial, as can be seen from the above table, are covered in various articles of the American Convention on Human Rights and the 1991 Constitution of Colombia.

The right to a fair trial is actively enforced when effective punishment and a given reparation are sought and obtained. The right to an inquiry into one's claim when one is the victim of a violation by another, i.e., the right to claim and demand justice, implies that the individual responsible for the violation will be somehow held accountable and that the one whose rights were violated or who suffered some injury will be paid civil damages as compensation. This right is fundamentally civil in nature and is premised on the principle that anyone who inflicts harm is obliged to pay for it and, conversely, the one who suffers the injury has the right to demand satisfaction of his right.

The right to a fair trial also implies the right to demand fair treatment when an individual is being investigated or accused of a criminal offense, in which case the first guarantee of a fair trial is the right to be presumed innocent and then to receive a fair trial, with all the guarantees that enable the accused to continue to be held innocent until his criminal guilt has been established through trial.

To avoid any confusion as to the jurisdiction of international bodies, it is important to mention the finding of the Inter-American Court of Human Rights in the Velasquez Rodriguez case, dated July 29, 1988, to the effect that "the international protection of human rights should not be confused with criminal justice. States do not appear before the Court as defendants in a criminal action. The objective of international human rights law is not to punish those individuals who are guilty of violations, but rather to protect the victims and to provide for the reparation of damages resulting from the acts of the States responsible." (paragraph 134).

To this must be added the Court's finding in paragraph 176 to the effect that the State "is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized in the Convention."

C. ORGANIZATION AND OPERATION OF THE JUSTICE SYSTEM

The report prepared by the Inter-American Commission on Human Rights in 1980 contained a careful study of the organization and operation of the justice system in Colombia. Since then, the text of Colombia's Constitution has changed, as have its code of criminal procedure, its penal code, its military justice system and others. At present, the justice system in Colombia is divided among the following jurisdictions: the regular courts (Supreme Court 234 et seq. NC, District Courts, National Courts (Public Order), judges and prosecutors); administrative jurisdiction (Council of State 236 et seq. NC, and administrative tribunals); constitutional jurisdiction (Constitutional Court 239 et seq. NC); special jurisdictions (Military 221 NC, indigenous 246 NC, justices of the peace 247 NC); disciplinary jurisdiction (Superior Council of the Judiciary, 254 et seq. NC).

The description, organization and functions of all these organs of the justice system are discussed and explained in Chapter III, section d) of this report, so that no further discussion is required in this chapter.

D. THE OFFICE OF THE ATTORNEY GENERAL AND THE PUBLIC DEFENDER'S OFFICE

While Title VIII of the Constitution concerns the Judicial Branch, Title X, titled Organs of Control --which includes fiscal control by the Office of the Comptroller General of the Republic-- also includes articles on the functions of the Attorney General of the Nation, described in Chapter 2. The Attorney General heads the Public Prosecutor's Office and is elected by the Senate to a four-year term, from a slate of candidates put together by the President of the Republic, the Supreme Court and the Council of State. The chief functions that the Constitution assigns to the Attorney General of the Nation are as follows:

To see that the Constitution, laws, court rulings and government decrees are observed; to protect human rights and ensure their observance, with the help of

the public defender; to defend the interests of society; to defend collective interests, especially the environment; to see that government functions are performed diligently and efficiently; to exercise oversight of the official conduct of those in public office, including those elected by the public; to exercise disciplinary authority; to prosecute the necessary investigations and impose the sanctions required by law; to intervene in trials and with judicial or administrative authorities, whenever necessary to defend legal order, the public domain, or fundamental rights and guarantees; to submit annual performance reports to Congress; to demand from public officials and private citizens such information as deemed necessary.

The legal system for the protection of human rights in Colombia includes an Office of the Attorney Delegate for the Defense of Human Rights, which is part of the Public Prosecutor's Office; its investigatory function is intended to defend those rights and guarantees. The Attorney Delegate monitors for the observance of human rights, investigates reports of human rights violations and imposes disciplinary sanctions. The Office of the Attorney Delegate for the Defense of Human Rights has the following functions and authorities:

- a) to mediate and help find a solution to conflicts that arise as a result of violation of Law 74 of 1968 (which approved the International Covenant of Economic, Social and Cultural Rights and the International Covenant of Civil and Political Rights) and other international agreements on this subject that the Congress of the Republic has approved, among them: the Convention against torture and other cruel and inhuman punishment, adopted by the United Nations on December 10, 1984 and approved through Law 70 of 1986; the American Convention on Human Rights, ratified by Law 16 of 1972, and the Geneva Conventions, approved by Law 5 of 1960;
- b) disciplinary action, one hearing only, for participating in acts that constitute genocide, torture and enforced disappearance and related crimes committed by members of the Ministry of National Defense, the Military Forces, National Police, directors or personnel of security agencies attached to or affiliated with those institutions and other staff and employees in the performance of their functions;
- c) to process with the competent authorities the complaints made by national or international organizations concerning human rights violations;
- d) to promote and disseminate the defense of human rights and to respond to the reports that national or international organizations request concerning violations of human rights and fundamental freedoms;
- e) to process claims demanding, by way of Colombian diplomatic authorities and on behalf of Colombian nationals, that foreign governments honor their obligations under international law, especially claims on behalf of individuals on trial;

- f) to see that human rights are observed by the prisons, courts, police, and psychiatric institutions, so that those being held in confinement are treated with proper respect, are not subjected to cruel, degrading and inhuman treatment, and receive timely legal, medical and hospital care. If a violation is discovered, the attorney delegate is to file the appropriate actions.

There is an administrative disciplinary procedure that is not jurisdictional and that is conducted directly via the Office of the Attorney General of the Nation, thanks to which certain crimes and human rights violations have been clarified and some punishment, however minimal, has been imposed against some of the authors of such violations. The procedure is as follows:

1. Any individual may file a complaint against a public employer or public enterprise. This complaint procedure is handled through one of the following attorney-delegate offices: for administrative oversight; for judicial oversight; for police oversight; for the military forces; for human rights (in cases of enforced disappearances, torture, death and genocide, but not for cases of summary execution). Since 1990, complaints can also be filed with the Office of Special Investigations, which prosecutes cases of unlawful enrichment, serious human rights violations and such others as the Attorney General may assign to it. The Office of Special Investigations, however, does not impose the disciplinary punishment; instead, it simply conducts the preliminary investigation.
2. Once the complaint has been filed, there are two alternatives: a) based on the preliminary investigation, disciplinary proceedings are instituted, or b) the case is filed.
3. If disciplinary administrative proceedings are instituted, the first step is to present the list of charges against the public official in question.
4. Next, the suspect presents countercharges rebutting the charges.
5. Evidence is introduced (a kind of probatory phase).
6. Decision: a) not to impose punishment, or b) to impose disciplinary punishment in the form of fines, suspensions of up to sixty days, or dismissal. The decision must be presented in the form of a resolution explaining the grounds for the decision.
7. The decision can be challenged, either in the form of a petition for reinstatement or as an appeal, which would trigger a review of the decision and then a new resolution either confirming the original decision or changing it.

It is important to note that this is not a confidential procedure. Quite the contrary, under a 1985 law, proceedings must be public. However, the various attorneys delegate, especially the Office of Special Investigations, have been keeping these

proceedings confidential, even though copies of the proceedings may be requested whenever necessary.

A recent report released by the Office of the Attorney General of the Nation in June 1993, almost two years after its first report, makes a critical evaluation, as did the first report, of the conduct of State agents where human rights violations are concerned. Its finding is that the number of violations by state agents has declined in the last year, while human rights violations by guerrilla groups has continued to increase. The report states that the incidence of human rights violations in which State agents are involved points up the fact that State violence is at least in part a reflection of the violence rampant in society; that social violence is one of the main causes of the excesses committed by State agents. He reports that the public institutions that have committed human rights violations during the period covered in the second report were as follows: the National Police, the Military Forces, the Administrative Security Department (DAS), and the Technical Corps of the Criminal Investigations Police. The Office of the Attorney General also points out that violations by the Technical Corps of the Criminal Investigations Police are below previous years since it is now under the Office of the Attorney General of the Nation. The report also states that the Prosecutor's Office handed down decisions in 55 cases in which military personnel were involved; of these, 56% were for acquittal, and 44% for conviction. The Prosecutor's Office has also issued 1,000 indictments against the National Police, which is the equivalent of 73% of all of the indictments against the institution during 1992; its members have been found guilty in 60% of the decisions handed down by the Attorney General of the Nation.

The Attorney General's report also mentions some of the reasons why members of the military forces commit serious human rights violations: 1) a state of mental confusion sets in, called the error theory, because agents attached to "State security and defense agencies are trained to pursue a collective enemy" and tend to assume that some sort of "direct association exists, for example, between unions or peasant interest groups and subversive elements; when counter-guerrilla activities are undertaken, these passive subjects are not identified as independent victims, but rather as part of the enemy", with the result that the State agents "violate the human rights of independent passive subjects because they mistakenly identify them as either enemies or allies of the enemies"; 2) they regard them as ideological enemies, which prompted the Office of the Attorney General to recommend that "there must, under no circumstances, be any ideological enemies; instead only military enemies. The only enemy is the one who uses arms to challenge the State. Tacit or explicit sympathies do not make any individual or group a military enemy"; and 3) military personnel, by virtue of being trained for warfare, have a tendency to violate the right to life and the right to personal integrity more than the right to freedom; they tend not to use intimidating or dissuasive tactics but rather to opt to eliminate whomever they perceive as enemy." Moreover, the report finds that in most cases the authors of the violations are subordinates or middle-level officers who are subject to very little control, operating independently and not as a link in the chain of command with a sense of obedience to higher authority; when they take decisions on their own, human rights violations are the result.[\[1\]](#)

The Public Defender

The provisions that concern the public defender appear in Title X, Articles 281 et seq of the Constitution. He/she is assigned the following functions: to guide and instruct inhabitants of the national territory and Colombian citizens living abroad, in the exercise and defense of their rights vis-a-vis the competent authorities or private entities; to disseminate human rights and to recommend policies for teaching human rights; to invoke the right of *habeas corpus* and file petitions for protection, without prejudice to the laws that assist the interested parties; to organize and direct public defense in accordance with the law; to file actions in matters related to its sphere of competence; to present bills on matters within its competence; to submit reports to the Congress on the performance of its functions, and the other functions that the law determines.

The Office of the Public Defender is part of the Public Prosecutor's Office; it is ultimately under the Attorney General of the Nation and is essentially responsible for seeing to it that human rights are promoted, exercised and disseminated. The Public Defender's Office enjoys administrative and budgetary autonomy.

Apart from the functions stipulated in the Constitution, the Public Defender's Office has the following: working with the Attorney General of the Nation to devise and adopt the policies for promoting and disseminating human rights in the country; to direct and coordinate the work of the various units that together constitute the Public Defender's Office; to make recommendations and observations to the authorities and private parties in the event of a threat to or violation of human rights and to see that they are promoted and exercised (the defender shall make those recommendations public and report to the Congress on the response received); to present an annual report to the Congress on its activities, which shall include an account of the type and number of the complaints received, the measures taken to correct them, specific mention of derelict officials and the administrative and legislative recommendations it deems necessary; to assist the Attorney General in preparing reports on the human rights situation in the country; to bring suit, challenge or defend before the Constitutional Court and at the request of any person and when appropriate, laws where constitutional rights are at stake; to design the mechanisms needed to establish permanent communications and share information with national and international governmental and nongovernmental organizations that protect and defend human rights and to conclude agreements with national and international educational and research establishments to disseminate and promote human rights.

Regulated by Law 24 of 1992, the Public Defender's Office is organized into four areas: dissemination, processing of complaints, filing of legal remedies and public defense. Attorneys delegates are being appointed for other areas such as the rights of the elderly and regional defenders.

E. THE PETITION FOR TUTELA

The petition for *tutela* to which Article 86 of the Constitution refers is a legal procedure that provides citizens a means to take rapid action in the event of injustices or abuses committed against rights upheld in the Constitution. The petition for *tutela* has the following characteristics: it can be filed either by the aggrieved party or by an intermediary at the aggrieved party's request. The public defender may participate by cooperating with the

aggrieved party. The action can be filed at any time, including weekends, and with any judge or court that has jurisdiction in the place where the events in question occurred. The aggrieved party need only describe the facts upon which the petition is based and include his or her name and address. As there are no legal formalities, the petition can be filed either verbally or in writing; if additional information is needed, the judge is to request it of the petitioner within three days following the filing of the action. The respondent also has three days in which to present his/her defense before the judge, who must hand down a ruling within ten days. Any appeal must be filed within the next three days; the decision on the appeal must be handed down within 20 days. Decisions on such petitions are reviewed by the Constitutional Court at its discretion.[\[2\]](#)

F. THE MAJOR PROBLEMS WITH THE JUSTICE SYSTEM

There are any number of problems that affect the manner in which the justice system performs the functions that the Constitution and the laws assign to it. Impunity, the military courts, violence against judges and attorneys, vigilantism: these are but a few of those problems.

a. Impunity

One of the principal manifestations of the critical human rights situation in Colombia is the weakness of its judicial system, as evidenced by the high percentage of crime that goes unpunished. According to the Ministry of Justice, approximately 20% of crimes committed in Colombia are investigated by the authorities. Of that 20%, barely 4% end in conviction.[\[3\]](#) That being the case, the Colombians do not have sufficient confidence in the ability of their judicial system to find a peaceful solution to their daily problems.

The Government generally blames practical considerations such as the lack of budgeted funds, inadequate training and insufficient technical materials for investigators, delays in trials, a backlog of cases, the low salaries paid to judges, corruption and violence targeted at judges and vigilantism by citizens who prefer not to seek justice via the courts and do not provide authorities with the cooperation they need to conduct their investigations. Based on this analysis, the government has taken a number of steps such as the drastic increase in the salaries of judges and an increase in the judiciary's budget, technical and budgetary support for the Office of the Prosecutor General, systematization and administrative improvement of the court system and legislative measures to reduce the backlog of cases. The new Constitution also introduced some reforms. For example, it has given the judicial branch of government total administrative autonomy and complete control over its budget and has changed the investigative system to create the Office of the Prosecutor General.

But there other factors, too, that adversely affect the justice system, such as using the state of emergency legislation to amend the judicial system and a system that allows the identity of the judges and the witnesses to be kept secret when the cases are for crimes of terrorism and drug-trafficking.

Other considerations such as the violence against judges and attorneys, the presence of a state-of-siege justice system, vigilantism, and certain features of the justice paradigm in

Colombia, such as the element of secrecy in many situations: these are all factors that have to be taken into account if the problem of impunity is to be dealt with. Some of these factors are discussed in the following sections.

b. The state of siege legislation

One of the factors that altered the judiciary's ability to administer justice under the previous constitution was that during states of emergency, proceedings in cases involving drug-trafficking, terrorism and political crimes were transferred to the special jurisdiction of the public order courts. With enactment of the new Constitution, and as a result of the work of the Special Legislative Committee between July 15 and November 30, 1991, the Statute for the Defense of Democracy (Law 180, of 1988) and the Statute for the Defense of Justice (1991) became permanent law in Colombia. The Statute for the Defense of Democracy classified certain behaviors as terrorist crimes, and made the penalties much harsher. The Statute of the Defense of Justice merged and restructured the public order and specialized courts that heard cases involving drug-trafficking and terrorism crimes separately.

The Legislative Committee's decision to retain the penalties in crimes established under the state of siege decree in 1988 and its decision to maintain separate judges to hear cases wherein the crimes alleged are terrorism and drug-trafficking is contrary to the democratic principles of the Constitution, especially Title II, concerning the fundamental rights. If one analyzes the Constitution rationally, there is no way to infer from it that it allows the states-of-emergency system to be institutionalized indefinitely. Article 214, subparagraph 2 of the Constitution makes legislation that suspends fundamental rights and freedoms unlawful. Nevertheless, some parts of the state-of-emergency legislation deny important judicial guarantees. An example was the declaration of internal disturbance decreed on July 9, 1992. Invoking the state of internal disturbance, Decree 1156 of 1992 was issued to the effect that anyone accused of drug-trafficking or terrorism was permitted to use *habeas corpus* only in the circumstances stipulated in Chapter III.

Equally disturbing is the fact that Law 15 of 1992, enacted by Congress to transform Decree 1156 of 1992 into permanent law, provides that *habeas corpus* can only be used if an individual's legal and constitutional guarantees are violated when he is taken into custody or if he is held too long in custody. And so, the Government has again curtailed the right of *habeas corpus*, as it did back in 1988 and 1989 by means of decrees that, insofar as *habeas corpus* was concerned, had become unconstitutional once the 1991 Constitution took effect.

The American Convention on Human Rights prohibits any infringement or restriction of basic guarantees, one of which is *habeas corpus*. It would be best if the Colombian Government would henceforth refrain from using states of emergency to modify or limit guarantees, because such measures affect the independence and the autonomy of the justice system.^[4]

By the same token, if the Constitution limits what can be legislated in states of emergency, all the more reason to conclude that what can be legislated in normal times is also limited, given the fact that such legislation is permanent. The new Code of Criminal Procedure adds to

the permanent body of law certain practices that, in the state of emergency legislation, were problematic for the human rights situation.

Though not an exhaustive analysis or examination of the problem, it might be well to mention some of the measures that could hardly be said to respect citizens' guarantees: the new Colombian penal legislation that took effect in July 1992 transformed the special public order courts into permanent courts, under the name of "regional jurisdiction and national tribunal." This is one way of keeping the identity of judges and witnesses and the evidence secret, and the lab reports and tests confidential. This was all done by Decree 2271 of 1991, which transformed decrees 2790 of November 20, 1990 and 0099 of January 14, 1991, originally issued as state of siege decrees, into permanent law.

Since it is difficult to say which part of these decrees the Constitutional Court declared to be unconstitutional and therefore null and which part is still in effect, the following are some of the provisions of Legislative Decree 0099 of 1991 which amended and made additions to the so-called Statute for the Defense of Justice contained in Legislative Decree 2790 of November 20, 1990, put into effect by virtue of Decree 2271 of 1991 and not challenged by the Constitutional Court. Those provisions of Legislative Decree 0091 concern secret evidence, secret witnesses and secret expert reports:

Article 20. The evidence will be argued during the trial phase. The Criminal Investigations Police will submit the evidence or add to the case file whatever evidence is made available to it and that it considers pertinent, and need not have an order to that effect; the only party that can be present is the agent from the corresponding public prosecutor's office ... [not the defense attorney].

Article 22. When the safety of the witnesses so warrants, authorization shall be given for witnesses to place their fingerprint on the deposition rather than their signatures; but in such cases, an agent from the public prosecutor's office must be present, who shall certify that the fingerprint is that of the person making the deposition. Any reference to the name and particulars of the individual making the deposition shall be omitted in the text, which shall be part of the corresponding case file, along with a record indicating that the identity of the deponent has been removed and where it has been sent.

To weigh the testimonial evidence, the public order judge may at any time request the separate document to which the second part of this article refers and prohibit the other parties or participants to the proceedings from access to it. The confidentiality of that document will be lifted should it be discovered or established that the witness perjured himself or gave false testimony for fraudulent purposes.

The same procedure can be followed in respect of expert reports or any other evidence where the identity of the individual who had a part in it should be kept confidential.

Article 27. As of the commission of the acts in question, the official from the office of the public prosecutor's must compile evidence to establish the nature and degree of injury caused by the infraction and may submit the evidence to any judge in the nation, with the exception of public order judges. The only costs shall be those incurred to produce the evidence and will be transferred to the case file during the proceedings. **Witnesses and expert witnesses** who play some role in the proceedings described above shall, if they request it, be entitled to the same confidentiality and safety measures provided for in Article 22 of this decree.

Article 50. When a judge believes that his/her identity or the identity of the participants in the proceedings should be kept confidential to guarantee their safety, he/she shall order that any measure or mechanism required to ensure their confidentiality and safety be taken when the evidence is submitted and that the cross-examination, requests for clarification of rulings, or any other similar petition be made and processed in writing.

No change was made in the legal system by which the previous special courts operated, so that at present the regional judges and the national tribunal have exclusive jurisdiction over crimes associated with drug trafficking and terrorism, rebellion, rioting and illegal possession of weapons. By law, these crimes are to be tried in the secret proceedings discussed earlier. The Commission is disturbed that this is still part of Colombian law.[\[5\]](#)

As for secret witnesses, the Government of Colombia responded to the criticism in the report as follows:

Decree 709 of 1993, which establishes the possibility of handing down a conviction based on testimony given by witnesses whose identity is kept confidential, has been ruled unconstitutional by the Court, so that secret testimony can only be used to order precautionary measures.[\[6\]](#)

The Commission is pleased by the important change that has been made to conform Colombian laws to the provisions of the American Convention on Human Rights. The Commission has also duly noted the recent change in Colombian law with enactment of the State of Emergency Statute, which will reportedly allow full, unrestricted exercise of the remedy of *habeas corpus*, a basic guarantee of judicial protection embodied in the Constitution of Colombia and in Article 25 of the American Convention. It is gratified to have helped restore this fundamental provision.

c. Military jurisdiction

The Colombian Constitution made no changes as regards the military jurisdiction recognized in Article 221 of the Constitution. It was extended to include members of the national police and is used in cases where the crime committed by an active member of the Armed Forces is service-related. The Commission believes that what constitutes a service-related criminal offense must be very clearly defined so that human rights violations are not classified as service-related. Such a regulation, which is highly advisable, must require that for

an act to be regarded as service-related, it must have been committed as part of an operation and on orders from a legitimate military authority. The Colombian Constitutional Court has ruled (Ospina Case, June 8, 1992) that the argument that the individual in question was "following orders" cannot be used as an excuse by a member of the military who receives an order to commit acts that are obvious human rights violations, such as torture, enforced disappearance and extrajudicial execution. It must be made very clear that such acts are utterly alien to any service duty. Rarely, however, do the military criminal courts sanction members of the armed forces for these violations. In fact, military criminal justice prevents ordinary judges from trying military and police, even in cases of crimes against humanity.

When the victims of crimes committed by members of the armed forces are civilians or when those crimes result in some damage or injury to private parties, the law must clearly establish that the aggrieved parties may be civilian parties to the proceedings. Under the present interpretation of the law, the civilian party may not be present in the proceedings, and neither relatives nor the victim may participate in the proceedings or demand swift and full justice.

The system for weighing evidence is particularly unbalanced. On occasion, military courts dismiss evidence for the prosecution because it has been supplied by the victims' relatives and is not considered credible for that reason; on the other hand, defense evidence provided by the defendants themselves is admissible.

The appropriate administrative sanctions are frequently not applied, even in obvious cases of human rights violations committed by officers. Although on occasion these penalties have been enforced either by law enforcement authorities or by the Office of the Attorney General, which has the authority to do this, there are many cases in which judicial impunity is compounded by the absence of any administrative sanction. Public officials who violate human rights must be removed from their posts using the procedures and administrative authority that the law determines.

The Office of the President of the Republic, as the highest government authority, can remove officials whose conduct, upon investigation, is found to have violated basic principles of human rights. This would undo the State system that allows agents of this type to go unpunished.

The Special Rapporteur on Extrajudicial Executions of the United Nations Commission on Human Rights, who visited Colombia in October 1989, recommended in a January 1990 report that all members of the Armed Forces and National Police who are either part of or support paramilitary groups, hired assassins or drug-traffickers be separated from service; it was also recommended that the constitutional authorities conferred upon the President to appoint and remove agents of the Executive Branch be exercised in order to sever those members of the Armed Forces involved in these groups. While the Government has already taken some steps in this direction, as in the case of Col. Luis Bohórquez Montoya and other officers who have been dismissed because of their obvious relations with paramilitary groups, a more energetic effort must be made to dismiss these armed forces and police officers.

Decree 2094 of 1992, issued in exercise of the state-of-emergency powers, allows the police authorities to retire agents without having to resort to disciplinary proceedings to prove that said agents engaged in irregular activities. There must be broader enforcement of this decree. At the same time the Government should continue to invite and act upon all dismissal and sanction requests that the Office of the Attorney General submits as a result of its disciplinary inquiries.

Another way to deal with the impunity created by the military courts would be to act upon the important recommendations made by the Public Defender's Office in a recent report on human rights violations against members of the Unión Patriótica and the reassimilated guerrilla group once known as Ejército Popular de Liberación and today known as Esperanza, Paz y Libertad. The pertinent parts of said report read as follows:

The Military Criminal Courts are constantly asserting jurisdiction over cases if the regular courts' investigations point to members of the military as the suspects. The military courts assert jurisdiction without first establishing whether the requirements for military jurisdiction are all present. Therefore, it is important that the office of the Prosecutor General of the Nation settle conflicts of competence when it is unclear whether the requirements of Article 221 of the Constitution are present.

The possibility of amending the Military Code of Criminal Justice must be examined, in order to allow civilians to participate in proceedings if their presence would further prosecution of the case. This would apply in crimes other than strictly military crimes; in other words, crimes where there is a specific and identifiable passive subject, as happens in the case of violations of fundamental rights.

It is also recommended that consideration be given to creating a Military Criminal Justice system, charged with administering military justice exclusively, and independent of the Armed Forces structure *per se*. The Constitution provides for military jurisdiction, so there must be a specialized branch that conducts proceedings against members of the public forces.

The Office of the Attorney General of the Nation should strengthen the Public Prosecutor's Office's participation in trials being heard by military criminal judges.[\[7\]](#)

In this section devoted to the military court and to the problems created by allowing the military courts to try members of the military accused of violating human rights, some mention must be made of the serious objections that the Attorney General made in his Second Report on Human Rights, June 1993, to the way in which State security and defense agencies obstruct the investigations conducted by the Office of the Attorney General, because of the **"deep-seated and sometimes misplaced *esprit de corps* among members of the military; at times an investigator finds it impossible to compile reliable information quickly because the accused's comrades-at-arms conceal information, conspire among themselves or simply remain silent."** Therefore, in the prosecutor's investigations, "members of the military forces end up with

fewer charges against them than they should have; the investigation is made so difficult that it is equally difficult to assign any blame."

Despite the power of the Office of the Attorney General, it nonetheless has difficulties investigating military personnel. This fact itself reveals just how difficult it must be for the modest military judge who is assigned the task of investigating a high-ranking military officer or noncommissioned officer from his own military unit. He has to contend with **cover-ups, complicity or plain silence on the part of the accused's comrades-at-arms and**, to use the words of the Attorney General, **a deep-seated and sometimes misplaced *esprit de corps* among members of the military that makes it virtually impossible for the investigator to compile reliable information swiftly**. These elements are compounded by the fact that the judge himself is a military man and not a judge by profession; he is subject to pressure from his own comrades, who expect him to show solidarity for the institution and its members. A lack of *esprit de corps* or failure to identify with his military comrades will be a blot on his service record. Then, of course, there is also the problem of obedience to his superior officers in the military's vertical chain of discipline and conduct; these are all problems that Colombian military justice has to contend with and that undoubtedly serve to explain why, despite the evidence, military criminal courts acquit the majority of military accused of violating human rights.

Another example of the lack of professional ethics on the part of some military judges is case 10456, which is that of IRMA VERA PEÑA, a peasant woman. This case is discussed at greater length in Chapter VII, concerning the Right to Life. The Commission established that Col. Plinio Rodríguez Villamil had served as military Criminal Examining Judge for the 25th Military Court. But this was the same person who, as the Commander of "García Rovira" Infantry Battalion No. 13, had directed the operation in which his subordinates, on his orders, had killed Irma Vera Peña; he then had the audacity to serve as the judge in the case, acquitting his subordinates and himself of any responsibility.^[8]

Another irregularity in its justice system that the Commission pointed out for the Colombian Government is that in cases where the State is accused of violating human rights, it is the military criminal court that determines legal truth, rather than the regular criminal court. When a regular court takes cognizance of a criminal case in which a member of the military is accused of committing a crime while in service, which is precisely the typical human rights violation that so often compromises the State's international responsibility in this regard, then that regular court must refrain from continuing to prosecute the case and refer it to the military courts to investigate and decide. While the administration of justice in Colombia is poorly served by such a system, so are the right to a fair trial provided for in the American Convention on Human Rights and the inter-American system itself, which requires that States parties like Colombia act swiftly to adapt their due process laws to the American Convention.

Cited below is the provision of the American Convention on Human Rights, of which Colombia is a party, that establishes the obligation of the contracting States to adopt their legislation to the provisions of the Convention:

Article 2. Domestic Legal Effects

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

d. The existence of vigilante groups

The weaknesses in Colombia's justice system and the fact that the violence that occurs in that country repeatedly goes unpunished, has generated a kind of vigilante justice that operates directly when the victim of the injustice takes justice into his own hands, or indirectly when the victim uses third parties to that end.

Contract murder is the system whereby any individual in Colombia hires a paid assassin. The hired gunman offers the prospect of swift justice to a father whose daughter has been raped and to the deceived lender. For him there is no law. It is easier and cheaper to hire the services of a gunman than to hire the services of an attorney. These hired assassins can be found at street corners or in certain neighborhoods of the major cities. No appointment or professional consultation fees are needed. Once the contract is made, generally the hired gunman performs it punctually and efficiently. Anyone who tries to avoid payment pays with his life. Hired killing has become a way of life and the hired killers are generally young men. The practice is spreading among children and youth in poor neighborhoods; once introduced to a life of crime, they form gangs and get into the business of distributing drugs in Colombia's major cities like Medellin and Cali. They then start to provide protection to those who sell drugs. The first time they carry out a paid assassination, they charge not only money but also the right to keep the weapon that they were given to carry out the killing. As of that time, and no matter how young he is, the hired gunman becomes a professional and acquires quite prominent status in his community and is accorded the "respect" paid a hired gunman.

Generally, these hired assassins work for organized crime that engages in drug trafficking and also handle private contracts to execute individuals they were hired to kill. As a rule, almost all hired gunmen end up being assassinated by other hired gunmen, to eliminate the possibility that they might testify against the individual who hired them. At times the chain of assassinations may involve three or four young gunmen, in order to eliminate any trace of the individual who originally solicited or hired the services of the gunmen to eliminate someone.

The self-defense and paramilitary groups. As indicated when discussing the subject of violence, self-defense groups were developed for protection against the guerrilla movements' constant harassment of and threats to businessmen, their businesses, banks, ranches and the relatives of the wealthy, and later became paramilitary groups. It was another form of defense and, in some cases, personal revenge that some private groups used and unfortunately still use, often with the acquiescence or complicity of the armed forces, to track down and punish those who have somehow harmed their interests or endangered their life or the lives of their loved ones. The civilian self-defense and paramilitary groups are one of the most terrible instruments of clandestine and vigilante justice that exists in Colombia. These groups are gradually being taken over by drug traffickers. Thus, they are not only identified with the vigilante justice practiced by the large hacienda owners, businessmen and entrepreneurs who employ this type

of private protection, but are also closely associated with the bloodiest crimes committed against prominent persons in Colombian politics. These paramilitary groups have not only practiced vigilante justice by eliminating one or several persons at the same time on orders from the chief or boss for whom they work, but have also been used in the wars between organized criminal groups in which the so-called drug cartels settle their differences. These groups have also engaged in the selective assassination of political leaders and union and grassroots leaders.

The social cleansing groups: For several years now, rightist groups have been operating in Colombia, basically serving the interests of the chief Colombian entrepreneurs. On orders from the latter or on their own initiative, and often with the complicity of members of the armed forces, these groups carry out what has come to be called "social cleansing" killings. This involves the murder of prostitutes, beggars, common criminals, drug addicts and other individuals considered to be on the fringes of society.

Popular militia: In some of Colombia's cities, especially in the poorer neighborhoods of Medellín and Barrancabermeja, the police presence either markedly decreased or disappeared altogether. The public had lost confidence in the police because of the latter's ineptitude, corruption and the criminal activities in which members of the police engaged. For their part, the police were themselves being intimidated; indeed, some 500 police officers were killed in the working class neighborhoods of these cities in 1991. As the police presence disappeared, in several neighborhoods the power vacuum was filled by so-called "popular militia", composed of former guerrillas or hired gunmen. Their *modus operandi* is to kill common criminals, thieves, young drug addicts as a last resort, after one or two advance warnings. In many places the apparent calm and sense of security that these groups, which actively adopted the social cleansing strategy, brought to these neighborhoods won them the support of the majority of those who lived there.

The complex process that consolidated these groups is disturbing to the Commission, since it indicates a serious breakdown in the State's ability to maintain law and order and preserve its monopoly on the use of force. The Commission is troubled by the fact that these groups have instituted what amounts to a death penalty and that the community is sympathetic to the physical elimination of criminals. These signs show the impact of the arguments once used to rationalize the so-called "social cleansing" by police agents or other elements in society.

e. Violence against judges and lawyers

Recently, a study was done of the violence targeted at judges and lawyers in Colombia during the period from 1979 -1991,^[9] which coincides with the period to which this report refers. According to that report, during that period an average of 25 judges and attorneys have been either assassinated or assaulted each year because of their professional practice. Of the 515 cases analyzed, 144 occurred in Bogota. The figures are alarmingly high in the departments of Antioquia, with 110 cases, Valle del Cauca with 78, Santander with 26, Meta with 20 and Arauca with 17. The members of the judiciary hardest hit have been the criminal examining magistrates (40 cases) and the magistrates of the superior courts (31).

Contrary to popular belief, drug trafficking is not the only or even the principal cause of these crimes. It is blamed for 58 cases out of a total of 240 for which there is a known author or motive; 80 of the remaining cases are attributed to paramilitary groups, 48 to state agents, 32 to the guerrilla movement and 22 to other factors.

Of these, 278 were cases of homicide (13 magistrates and 18 deputy attorneys died in the taking and retaking of the Palace of Justice on November 6 and 7, 1985), 51 were assaults and 124 were death threats. Fear is, without a doubt, one of the principal problems besetting the people of Colombia, but this is particularly true of those who are charged with administering justice. Fear of falling victim to some reprisal has gripped judges, regardless of their rank in the judiciary, attorneys who defend their clients, the parties involved in legal disputes, criminal investigations police who collaborate in investigating criminal prosecutions and witnesses who are keys in determining the authorship of the facts under investigation and whose testimony can shed light on the facts and convict the guilty parties.

The Special Preparatory Commission of the IACHR was told by the National Association of Judiciary Officials and Employees (ASONAL) that no judge is without fear, given the many cases of violent assassinations of judges and magistrates in retaliation for their judicial investigations. The threat to those who participated in legal proceedings was so serious that in 1986 the attorney general at the time, Mr. Carlos Jiménez Gomez, stated the following: "Prosecution appears to be on the decline in Colombia. The witness who saw something, never saw anything; the witness who heard something, never heard anything. He knows that there will come a time when he has to die for the truth."[\[10\]](#)

One case brought to the Commission's attention is that of Father Alvaro Ulcué Chocué, murdered by two individuals on a motorcycle who were said to be members of the F2 secret police. On November 10, 1984, they killed the priest, whose two cousins and sister had also been killed earlier. The case acquired notoriety when the eyewitness identified the two men on the motorcycle who killed the priest and narrated in detail how the events transpired, but was later forced to make a public retraction. Later still, when the danger had passed the same witness took back the retraction and confirmed his original statement, adding that he had been forced to lie and to retract his original version because he was being threatened.

One of the events that undoubtedly affected Colombian judges was the attitude taken by the State powers when the Palace of Justice was seized in November 1985. Something that a number of the members of ASONAL told the IACHR's Special Mission personally was that at the time judges felt that neither the country nor the public authorities considered their lives and personal safety to be worth special protection. In effect, it is a well known fact that several times the Colombian Government has negotiated with guerrilla groups to save the lives of individuals being held hostage after having been kidnapped by those groups. The Inter-American Commission was reminded that when some of the foreigners in the diplomatic corps in Colombia were taken hostage, the Commission itself had been requested to participate and to take some action to help secure the release and save the lives of the foreign diplomats being held captive by the M-19 in the Embassy of the Dominican Republic.

In the incident at the Palace of Justice, which again was the work of an M-19 commando, the Colombian Government, its armed forces and then President Mr. Belisario Betancur

disregarded the pleas from the then President of the Supreme Court and almost all its members to negotiate and enter into dialogue with the captors, in order to avoid a massacre. This obviously was not done, with the result that the army launched an attack to retake the Palace of Justice by force. It seemed as if the lives of the magistrates taken hostage either did not matter or were not taken into consideration. The result is what has come to be called the holocaust at the Palace of Justice. The following magistrates and the court personnel perished:

Magistrates of the Supreme Court: 1. Dr. Alfonso Reyes Echandía; 2. Dr. Manuel Gaona Cruz; 3. Dr. Luis Horacio Montoya Gil, 4. Dr. Ricardo Medina Moyano; 5. Dr. José Eduardo Gnecco Correa; 6. Dr. Carlos José Medellín Forero; 7. Dr. Darío Velásquez Gaviria; 8. Dr. Alfonso Patiño Roselli; 9. Dr. Fabio Calderón Botero; 10. Dr. Pedro Elías Serrano Abadía; 11. Dr. Fanny González Franco. **Deputy Magistrates:** 1. Dr. Emiro Sandoval Huertas; 2. Dr. Julio César Andrade Andrade; 3. Dr. Jorge A. Correa Echeverry. **Aides to the Magistrates of the Court:** 1. María Teresa Muñoz de Jiménez;; 2. Hermógenes Cortés Nomelín; 3. Isabel Méndez de Herrera; 4. Cecilia Concha Arboleda; 5. María Cristina Herrera Obando; 6. María Lida Mondol de Palacios; 7. Rosalba Romero de Díaz; 8. María Yaneth Roza Rojas; 9. Ruth Mariela Zuluaga de Correa; 10. Ana Beatriz Moscoso de Cediel; 11. Libia Rincón Mora; 12. Nury Soto de Piñeros. **Deputy Magistrate of the Council of State:** Dr. Lisandro Romero Barrios. **Assistant attorneys with the Council of State:** Dr. Carlos Horacio Uram Rojas and Dr. Luz Stella Bernal Marín. **Aides with the Council of State and Prosecutors:** 1. Ana María Nieto de Navarrete; 2. Blanca Inés Ramírez de Angulo; 3. María Teresa Barrios Rodríguez; 4. Jaime Alberto Córdoba Avila. **Drivers:** 1. Luis Humberto García; 2. José Eduardo Medina Garavito, 3. Plácido Barrera Rincón. **The Administrator of the Palace of Justice,** Mr. Jorge Tadeo Mayo Castro. **The COBISEC guards:** 1. Gerardo Díaz Arbeláez; 2. Eulogio Blanco. **The Elevator Operator at the Place of Justice,** Mrs. Carlota Sánchez de Monsalve.

The impunity in the judicial prosecution of these acts of violence against judges and attorneys is truly alarming: 98% of these crimes go unpunished; the courts have handed down decisions on only 13 cases, one acquittal and 11 convictions. In 80% (412) of these cases, it has been impossible to ascertain whether an investigation or trial is even in progress. Four cases (0.8%) are in trial, 79 (15.3%) are in the preliminary phase, and 1.6% have been closed when the investigations failed to produce anything.

The State has not been sufficiently effective to put the anxiety to rest. To address the issue of violence against judges and attorneys, on August 18, 1989, a Judiciary Security Fund was set up, a measure long past due since dozens of judges and attorneys had already been killed. It was equally inadequate, since the fund had little in the way of financial resources and was weak on administration.

A public order jurisdiction has been created and to protect it the identity of its judges is confidential, as is the identity of the witnesses, experts, criminal investigation staff and the nature of the evidence. All of this is contrary to the principle of due process. While these measures have afforded some measure of security to a minority sector of judges, particularly those most in danger such as judges who hear cases involving terrorism and drug trafficking,

justices on the Supreme Court, magistrates on the Council of State, the Constitutional Court, the Superior Court of the Judiciary, and the Departmental Tribunals, the majority of judges still do not enjoy any special protection.

To guarantee the safety of judiciary personnel, it is recommended that new positions for circulating judges be opened up. It is also recommended that judges' professional organizations and bar associations be strengthened and that there be permanent oversight of judicial proceedings investigating these acts of violence; that complaints be investigated, solutions proposed and carried out.

G. FINAL OBSERVATIONS

An independent judicial system must be organized that ensures proper administration of justice, the guarantees of due process and full exercise of human rights. Jurisdictional functions must be exercised by specialized, technical civilian bodies, and the justice system must be removed from under the influence of military justice.

The Commission is deeply concerned by the fact that Colombian justice is in large part governed by rules and regulations that can be traced to the powers permissible in states of emergency, which often means that the rights upheld in the American Convention are disregarded, as happened in the case of the right of *habeas corpus* and the institutionalization of secret trials.

Although secret trials are intended to serve a good purpose, i.e., to protect the safety and lives of the judges, they nonetheless seriously violate the guarantees of due process and increase the margin for judicial error to the point that those people who are tried in secret are in danger of becoming victims of a miscarriage of justice. The Commission urges the Government of Colombia to continue to seek ways to reconcile the twofold and not conflicting objectives of guaranteeing fully the lives and safety of judges, without diminishing the guarantees of due process.

Naturally, the Commission is not opposed to measures that protect the life of the judge, the witness, the expert and of others who take part in the judicial inquiry. Indeed, in exceptional cases, measures do have to be taken to protect their safety, independence and identity, so long as the basic guarantees of due process are not affected. In some international proceedings before the Inter-American Court of Human Rights, in which the Commission and the governments have been the parties, the Commission--in order to protect the life and safety of some witnesses--has petitioned the Court, and the Court has agreed, not to reveal the identity of those witnesses to the representatives for the respondent government. In such situations, the inter-American human rights justice system has tried to reconcile the quest for judicial truth, the parties' right to equal justice, and the right to life. The Commission has also done the same, acting as a quasi-judicial body in processing certain individual cases involving complaints against States parties to the Convention. The Commission believes that the search for truth and justice cannot be carried to such an extreme that it poses a threat to life; by the same token, however, the protection of the life and personal safety of the magistrates and those who cooperate with the justice system cannot be carried to such an extreme that truth and justice are compromised.

[1] Report on Human Rights, Office of the Attorney General of the Nation. June 1993.

[2] In the two years that have passed since the new Constitution took effect, petitions of *tutela* have proven to be very popular and accessible, just as the framers of the 1991 Constitution had intended. In the first year, only 7,000 petitions were filed, 40% of which were admitted; moreover, almost all of the fundamental rights recognized in the Constitution have already been the subject of specific cases. The rights most commonly claimed have been the right to due process, the right to work, to education, to equality, to autonomy and to privacy. The Constitutional Court receives between 50 and 100 requests each day to review these actions and has taken up approximately 8% of the total number of decisions. Observations and Comments of the Government of Colombia on the Commission's Report, August 3, 1993.

[3] "La acción del Gobierno en la lucha contra la impunidad" in Office of the Presidential Adviser for Human Rights. Lucha contra la Impunidad. Bogota 1989, pp. 66 and 67.

[4] The Government of Colombia has informed the Commission that with the Congress' recent approval of the State of Emergency Statute, "there are no longer any restrictions on the exercise of remedies to protect and defend rights in concrete cases, such as *habeas corpus* and *tutela*", which means that "at this point, the law is fully consistent with the jurisprudence by the Inter-American Court of Human Rights regarding judicial guarantees in states of emergency." Observations and Comments of the Government of Colombia on the Report of the Commission, August 3, 1993.

[5] As to the objection to "secret proceedings" conducted by public order courts that try cases involving drug trafficking and terrorism, the Government acknowledges that the ideal would be not to have to resort to keeping the names of judges and witnesses confidential in any type of legal proceedings; but Colombia's own experience has been that in some cases--as even the Constitutional Court acknowledged by upholding the constitutionality of the faceless judges system--this mechanism is essential to protect the life and safety of judges and of those who cooperate with the courts. This protection is the ineluctable duty of the State and even the report itself states that. Therefore, the Government believes it is unfair to dismiss outright the provisions concerning confidentiality. Moreover, these protective measures have been very instrumental in reducing the number of crimes that go unpunished. The Government points out that the protection does not extend to the material content of the evidence. It also states that Decree 709 of 1993, which established the possibility of handing down convictions based on the testimony of unidentified witnesses, was ruled to be unconstitutional by the Court, which means that secret testimony can only serve as the basis for precautionary measures. Observations and Comments by the Government of Colombia to the Report of the Commission, August 3, 1993.

[6] Observations and comments of the Government of Colombia to the Report of the Commission, August 3, 1993.

[7] Office of the Public Defender, "Report of the Public Defender for the Government, Congress and the Attorney General of the Nation: Study of the murders of members of the Unión Patriótica and Esperanza, Paz y Libertad", Bogota, October 1992.

[8] Report of the Inter-American Commission of Human Rights No. 23/93, October 5, 1993. OEA/Ser.J/V/II.84, Doc.24.

[9] International Commission of Jurists and Andean Commission of Jurists, Colombian Section, *Justicia para la justicia: Violencia contra jueces y abogados en Colombia 1979-1991*, Bogota, 1992.

[10] Andean Commission of Jurists, Colombian section: El Derecho a la Justicia, Lima, Peru, 1988, p. 91.

CHAPTER V

RIGHT TO PERSONAL LIBERTY

Transcribed below are the international provisions of the American Convention on Human Rights and the provisions of the 1991 Constitution of Colombia that protect and defend these fundamental rights and punish their violation:

A. LEGAL PROVISIONS IN RESPECT OF THIS RIGHT

| American Convention on Human Rights <u>Article 7. Right to Personal Liberty</u> | Colombian Constitution <u>Article 28.</u> Every individual is free. No person or family may be molested, imprisoned or arrested, detained or their domicile searched, except by virtue of a written order from the competent legal authority, done in accordance with the proper legal formalities and for the reasons previously stipulated by law. |
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| 1. Every person has the right to personal liberty and security. | Anyone taken into preventive custody shall be brought before the competent judge within the next 36 hours, so that said judge may adopt the necessary decision within the time period prescribed by law. |
| 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. | No one may be detained, imprisoned or arrested for debts or subjected to any penalties or security measures other than those prescribed by law. |
| 3. No one shall be subject to arbitrary arrest or imprisonment. | <u>Article 53.</u> Paragraph 5. Labor law, contracts, agreements and conventions may not diminish the liberty, human dignity or rights of the workers. |
| 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. | |
| 5. 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 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 | |

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| <p>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.</p> <p>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.</p> | |
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B. PETITIONS THAT CONCERN THIS RIGHT

The right to personal liberty was discussed at length in the Commission's 1981 report because of the many petitions that had been received alleging violations of this right. At present, politically or presumably politically motivated arbitrary arrests have become selective rather than massive; in many cases, such arrests precede the persons' enforced disappearance. According to the information supplied to the IACHR, arbitrary arrest is a violation that affects all Colombian society.

The right to personal liberty has been reinforced by the new provisions of the 1991 Constitution and with abrogation of certain provisions in the previous constitution. Under article 28 of the old constitution, even in times of peace if there were serious grounds to fear disruption of public order, the Government, after consulting the ministers, could order, at its discretion, the arrest of individuals when there was serious evidence that they had violated the public peace. The Commission's last report on Colombia discussed the problems caused and the abuses committed with enforcement of this article of the constitution.

The Special Commission had an opportunity to hear firsthand from nongovernmental human rights organizations and representatives of other university, professional and religious institutions, how very selective the arrest warrants carried out by the police and army are, most of which are to arrest individuals associated, either directly or indirectly, with the subversive movement, trade union members suspected of acting as tools to disrupt social order in coordination with subversive movements, and the friends, relatives and associates of these persons, or human rights leaders and activists, who are automatically regarded as subversive collaborators because of the work they do to protect and defend human rights. In areas where the violence is greatest, such as Medellin and Barrancabermeja, the Commission was repeatedly told, quite plainly, that those who had nothing to fear, feared nothing; this underscored the eminently selective nature of the arrests and the fact that anyone who was in no way associated with the guerrilla warfare or counter-guerrilla warfare or who was not suspected of such associations, did not have to worry about arbitrary arrest, except if some

mistake were made. The same sources, however, said that everyone was afraid of falling victim to some violation of the right to life, either when a bomb exploded or a weapon was fired.

As examples of violations of the right to personal liberty, the Commission will cite one where, as with so many other cases, the Government of Colombia was either directly or indirectly responsible. The case is No. 10,235 and concerned a series of events that occurred in 1981 and 1982 when high-ranking DIPEC officials like Col. Nacin Yanine Díaz--chief of that agency--and other agency officials carried out a series of operations to arrest a group of young men who belonged to a subversive organization. To obtain funds for their guerrilla activities, these young men reportedly kidnapped three children of a wealthy Colombian businessman associated with drug trafficking; when they were not paid the ransom that they demanded, they murdered the three children. What follows is an account of the facts and the decisions adopted by the Commission after exhausting the procedures established in the American Convention:

C. CASES INVESTIGATED BY THE COMMISSION

Case 10,235: Orlando García Villamizar and others

On October 6, 1981, a car was stopped at the third bridge on a highway north from Bogota. Inside the car were Zuleika Adied Alvarez Rojas, and Yadid and Yoluk Alvarez Murillo, who were on their way to school. The car and the children inside were intercepted by four people, one of whom was wearing the uniform of a traffic policeman; the other three claimed to be members of the F-2. The abduction of the children climaxed in late May and early June 1982, when the Alvarez children were killed by their abductors in the hamlets of Murcas and Patio Bonito, in the jurisdiction of the municipality of Gachalá (Cundinamarca). On September 18, 1982, F-2 agents with the National Police Force discovered their bodies in cloth sacks. The investigation into the kidnapping was conducted by staff of DIPEC under the command of then Col. Nacin Yanine Díaz. They arrested a number of people whom they suspected might somehow be implicated in the kidnapping and murder of the children. Between March 4 and September 13, 1982, as part of the operations conducted by the F-2, 13 people were either arrested or disappeared; two of them were eventually murdered. The sequence of events was as follows:

On March 4, 1982, as part of these investigations, two young men, Pedro Pablo Silva and Orlando García Villamizar, were arrested near the Universidad Nacional where the two were studying. Various witnesses watched as they were forced into a green panel truck, license plates HL 6794.

On March 8, 1982, two brothers, Samuel Humberto and Alfredo Rafael San Juan Arévalo, were arrested under similar circumstances. They, too, were university students.

On August 18 of that year, Edgar Helmut García, the brother of Orlando García, left his home for an appointment with Rodolfo Espitia, who was a neighbor, and

with another mutual friend. Edgar Helmut took the opportunity to take his four-year old nephew, Camilo Andrés, for a walk. The child was the son of Orlando García who had disappeared. Edgar and Rodolfo never showed up for the appointment with their friend. The boy, Camilo Andrés, was delivered to the XV Police Station by Major Alipio Vanegas Torres, DIPEC's Chief of Counterintelligence.

On August 23, 1982, Gustavo Campos Guevara, also a student at the Universidad Nacional, was the victim of an enforced disappearance. The young man left his home for the university and never returned. As to his whereabouts, his family received one phone call from him, made from some military facility.

On September 11, 1982, Hernando Ospina Rincón was taken by individuals in civilian dress who identified themselves as members of the F-2. They appeared at his mechanics shop in the "Las Ferias" neighborhood of Bogota, in a wine-colored Mercedes Benz, license plates FC-9405. They asked for the owner of the shop and when Hernando identified himself as the proprietor, they shoved him into a coffee-creme colored panel truck, with the identifying numbers 459.

On September 12, 1981, one day later, another student, Rafael Guillermo Prado Useche, a friend of Pedro Silva and the García brothers, was arrested. At the time of his arrest, Rafael Guillermo was on his way to the shop of Hernando Ospina, where he had his car for repairs. The mother and sister of the young Prado Useche say that he was pushed violently into a wine-colored Mercedes Benz, license plate FC-9405, the same vehicle used by the abductors of Hernando Ospina Rincón the day before.

On September 13, 1982, Edilbrando Joya and Francisco Antonio Medina were taken. The former was a student at the Universidad Nacional and a friend of Edgar García. He was apprehended near his house in Bogota, by individuals in a red camper. Two days later, he was seen in the municipality of Gachalá, heavily guarded by F-2 personnel. Francisco Antonio Medina left his home on the morning of September 13 and never returned. His brother Arnulfo was taken that same day by F-2 personnel. Arnulfo's captors forced him to confess to his part in a kidnapping, telling him that they had already killed Francisco. On the night of September 13, Francisco Antonio Medina was found dead in a supposed anti-kidnapping operation in the town of Anolaima.

On September 15, 1982, in an F-2 operation in the municipality of Gachalá where Edgar García Villamizar and Edilbrando Joya had been seen, the intelligence corps apprehended the brothers Bernardo Helí and Manuel Darío Acosta Rojas. When Bernardo was arrested, his brother Manuel Darío, who was deaf, rushed at the F-2 agents who were beating up his brother, which is why he, too, was taken. There has been no further news of him. Bernardo Helí was found dead on October 7, 1982, supposedly "shot down" in a police operation conducted by those same F-2 agents. These arrests were made in two stages: four occurred in March 1982, and the others were made between August and September.

This would appear to indicate that the purpose of the first arrests was to ascertain the whereabouts of the children of Jader Alvarez; the other arrests, which took place after the children's dead bodies were discovered, were for revenge.

The victims of the abductions in question were as follows:

1. Orlando García Villamizar, March 4, 1992;
2. Pedro Pablo Silva Bejarano, March 4, 1982;
3. Alfredo Rafael San Juan A., March 8, 1982;
4. Samuel Humberto San Juan A., March 8, 1982;
5. Rodolfo Espitia Rodríguez, August 18, 1982;
6. Edgar Helmut García Villamizar, August 18, 1982;
7. Gustavo Campos Guevara, August 23, 1982;
8. Hernando Ospina Rincón, September 11, 1982
9. Rafael Guillermo Prado J., September 12, 1982;
10. Edilbrando Joya Gómez, September 13, 1982;
11. Francisco Antonio Medina, September 13, 1982;
12. Bernardo Helí Acosta Rojas, September 15, 1982;
13. Manuel Darío Acosta Rojas, September 15, 1982.

Of the individuals named above, the following were defendants in the trial conducted by the 10th Superior Court of Bogota for the kidnaping and murder of the Alvarez children: Pedro Pablo Silva, Edgar Helmut, Orlando García Villamizar and Rafael Guillermo Prado Useche. Pedro Pablo and Edgar Helmut were convicted of the crime, subsequent to their disappearance. Orlando García and Guillermo Prado were cleared of all charges. The others who had disappeared and been murdered, were not named in the proceedings.

Processing of this case began on September 28, 1988, when the Commission forwarded to the Government the pertinent parts of the petition and requested any relevant information on the case.

The case was published in the annual Report of the Inter-American Commission on Human Rights for 1991, OEA/Ser.L/V/II.81, doc.6 rev. 1, February 14, 1992, Original: Spanish. Once the processing of the case was completed, it was submitted to the Commission at its 80th session, which resolved the following:

To declare that under the terms of Article 1.1 of the American Convention on Human Rights, the Government of Colombia has violated articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), and 25 (right to equal protection of the law) of that Convention of which Colombia is a State Party, in the abduction and subsequent disappearance of the following persons: Orlando García Villamizar; Pedro Pablo Silva Bejarano; Rodolfo Espitia Rodríguez; Edgar Helmut Garcia Villamizar; Gustavo Campos Guevara; Hernando

Ospina Rincón; Rafael Guillermo Prado J.; Edilbrando Joya Gómez; Francisco Antonio Medina; Bernardo Heli Acosta Rojas, and Manuel Dario Acosta Rojas.

That Colombia must pay compensation to the victims' next of kin.

To recommend to the Government of Colombia that pursuant to the recommendations made by the fact-finding committees of the Office of the Attorney General and of the Attorney Delegate for Human Rights, it order that a thorough and impartial investigation of the facts denounced be reopened and that in view of the charges made by both those bodies and to avoid censurable acts that strike at the very grave but never disproved charges against the officers whose case was dismissed, it order that the case be reviewed taking into consideration the principle whereby *res judicata* does not exist when there has been serious judicial error.

To request that the Government of Colombia guarantee the safety of the witnesses to the events, who have risked their lives to provide their invaluable corporation in the efforts to ascertain the facts, and that it give them the protection they require.

To include this Report in the next Annual Report to the General Assembly of the Organization of American States.

Case 9477: Patricia Rivera

On November 28, 1984, the Inter-American Commission on Human Rights received a petition dated November 22, 1984, which was forwarded to the Colombian Government on December 5, 1984. The text of the petition, which was supplemented by information supplied by the parties, recounted the following facts:

At approximately 3:00 p.m. on December 10, 1982, in the city of Bogota, in the presence of a number of witnesses, PATRICIA RIVERA, her small daughters ELIANA and KATHERINE BERNAL RIVERA, ages 9 and 4, respectively, were seized on the street, despite their protests, their fierce resistance and their desperate cries for help. Also seized was an elderly gentleman, MARCO ANTONIO CRESPO, who had intervened to try to help. Mrs. Rivera and her daughters were in the vicinity of their residence when they were stopped by persons who identified themselves as belonging to a State security agency. Mr. Crespo, 74, tried to prevent the arbitrary arrest, but in the process became another victim. Neighborhood eyewitnesses to the abduction were Carlos Alfonso Olave Uribe, Ana Tulia Angel Angel, María Beatriz Roa, Crispin Rios Alvarez and Irma Mahecha de Montoya, who identified the abductors as detectives Alfonso Suarez Jaime, Campo Elias Tirado Amado and Jorge Luis Barrero or Borrero, members of the Administrative Security Department, DAS.

From the eyewitnesses' statements and the verbal descriptions that some of them provided, the identities of the officers who had participated in the abduction

was established. Later, it was also shown that at the time of the disappearance, the yellow taxi, license plates SD-1485, which the witnesses had seen as the captives were forced inside, belonged to the Military Institutes Brigade, today the XIII Army Brigade, headquartered in Bogota. It was also clarified that Patricia was taken because state security agencies had mistakenly linked her with the kidnapping, some months earlier, of a well-known woman in Bogota society.

This complaint was forwarded to the Government of Colombia on December 5, 1984, and with that the statutory processing of this case began.

The information supplied by the Government of Colombia reported that the investigation into the facts denounced was instituted in Bogota's 81st Criminal Examining Court, which had implicated Alberto Alfonso Suárez Jaime, Campo Elías Tirado Amado, Armando Rodríguez Ossa and Jorge Luis Barrero or Borrero, in service with the DAS at the time these events occurred. The first three made unsworn statements before the 81st Criminal Examining Court of Bogota, while Jorge Luis Barrero or Borrero was declared defendant *in absentia*, since he was not captured even though that court had issued a warrant for his arrest. In a similar inquiry into the disappearance of Miguel Angel Díaz and Faustino López Guerra, Barrero or Borrero had been convicted and sentenced to 5 years imprisonment by the First Circuit Court of Tunja (Colombia), a sentence he served at El Barne prison in Tunja. The investigation into the disappearance of Patricia Rivera, her young daughters and Mr. Crespo is in the 103rd Criminal Examining Court and although almost ten years have passed since the crime was committed, no ruling has been handed down on the merits.

The facts denounced were witnessed by many people, many of whom either lived or worked in the neighborhood and therefore saw the abductors firsthand. They even tried to help Patricia Rivera and Mr. Crespo. The following were among the witnesses who cooperated:

CARLOS ALFONSO OLAVE URIBE knew Patricia personally because he had worked with her at Seguros Tequendama. The abduction took place at the street entrance to his tobacco shop so that he had a direct view of the abductors. Because their faces were not covered he was able to identify them. These individuals identified themselves to Patricia Rivera and to witness Olave as members of the F-2, and showed their Police credentials and a written arrest warrant for Patricia Rivera. They took her into custody on December 10, 1982, took her out of the tobacco shop and forced her and her small daughters into a yellow and black car. They refused to allow her to phone her family.

ANA TULIA ANGEL ANGEL, Mr. Olave Uribe's life-long companion and colleague, also witnessed the arrest of Patricia Rivera with her daughters and Mr. Marco Antonio Crespo; she was in the tobacco shop at the time and identified the individuals as F-2 agents.

MARIA BEATRIZ ROA DAZA, the cashier at La Milanese Bakery, also located adjacent to the scene of these events, was an eyewitness as the elderly Mr. Marco Antonio Crespo, long a regular customer, entered the bakery to get help. He told her to stop eating because the F-2 was following him. She saw the young man face to face, who took out a radio

transmitter and a card identifying him as an F-2 agent. She saw him take Mr. Crespo to the place where the other men were standing with Patricia and her small daughters and witnessed as they were all taken into custody and forced into a yellow and black cab.

CRISPIN RIOS ALVAREZ, the baker at La Milanese Bakery, was, like María Beatriz Roa, working when he witnessed the victims being taken into custody. He also saw that Mr. Crespo was not allowed to telephone his family. He got a direct look at the faces of the abductors.

IRMA MAHECHA DE MONTOYA, a neighbor, was cleaning the windows of her house, meters away from where the events occurred. She witnessed everything and recalled it in vivid detail. She also saw the black and yellow cab into which Patricia Rivera, her daughters and Mr. Crespo were forced.

Based on the statements received and on the verbal descriptions of Carlos Olave, Crispín Ríos and Beatriz Roa, the 81st Criminal Examining Court arraigned ALBERTO ALFONSO SUAREZ JAIME, CAMPO ELIAS TIRADO AMADO and JORGE LUIS BARRERO or BORRERO. The first two made unsworn statements while the third was declared defendant *in absentia*. The testimony of the witnesses was corroborated by the statements made by officers Suárez Jaime and Tirado Amado, active members of the DAS at the time of the events.

The processing of case 9477 continued over a lengthy period, during which the petitioners and the Government of Colombia had an opportunity to make their respective allegations. The Commission took into account the fact that as the case unfolded, it was established that members of Colombia's intelligence service had participated in the events in which Patricia Rivera, Gilma Eliana and Katherine Bernal Rivera and Marco Antonio Crespo were taken into custody and subsequently disappeared; that the responsible parties, nevertheless, had never been sanctioned; that the Government of Colombia did not deny the facts but continued to insist that the remedies under domestic law had not been exhausted even though the case had been under investigation for more than 10 years, an argument to which no serious consideration could be given because of the unwarranted delay; and the fact that in resolutions AG/RES. 666 (XIII-0/83) and AG/RES. 742 (XIV-0/84) the General Assembly of the Organization of American States declared that "the practice of the forced disappearance of persons in the Americas is an affront to the conscience of the hemisphere and constitutes a crime against humanity."

At its 82nd session, the Inter-American Commission on Human Rights considered this case of arbitrary arrest that became the typical case of enforced disappearance, and in exercise of its authorities, found that:

The Government of Colombia has failed to comply with its obligation to respect and guarantee articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty) and 25 (right to judicial protection) in relation to Article 1.1, upheld in the American Convention on Human Rights, of which Colombia is a State party, in the abduction and subsequent disappearance of Patricia Rivera, Gilma Eliana and Katherine Bernal Rivera and Marco Antonio Crespo.

To recommend to the State of Colombia that it pay compensatory damages to the victims' next-of-kin; that it continue and expand the investigation into the facts denounced and punish those responsible; and that it guarantee the safety and give the necessary protection to the eyewitnesses to the events.

D. KIDNAPPING IN COLOMBIA

For many years now, kidnappings in Colombia where men, women, children and the elderly are seized in order to demand ransom from their families, have arbitrarily violated their right to personal liberty. According to statistics supplied by Colombia's National Police, the number of kidnappings wherein ransom was demanded went from 44 in 1980 to 781 in 1989, 1282 in 1990 and 1550 in 1991. Of these, approximately half have been the work of rebel groups while the other half have been the work of organized crime and profit-motivated. In effect, according to those sources, the guerrilla movement was allegedly responsible for 16 kidnappings in 1980, 401 in 1989, 599 in 1990 and 802 in 1991, while common criminals abducted 28, 380, 683, and 748 people in those same years. The National Police estimate that in 75% of the cases, the victim is released once the abductors have been paid a ransom; that in 14% the victims die (some are murdered by their abductors when no deal is struck; others die in captivity from health problems, while still others are killed in rescue attempts); 11% are rescued by the authorities.

The alarming increase in this vile and inhuman crime in Colombia is due to the following: 1) guerrilla organizations are now making widespread use of kidnapping to bankroll their activities or for the propaganda effect; 2) a relatively powerful criminal machinery is developing in Colombian society organized for the very purpose of abducting people for ransom. A fairly sophisticated set-up is needed to pull off a kidnapping and to be able to establish the potential victim's patterns, hold him in one place and negotiate the ransom. All this presupposes an initial investment. There are gangs of kidnappers who break up after a number of abductions; there are others that specialize in kidnapping and remain in operation longer.

Kidnapping is a very serious problem in Colombian society and has become quite sophisticated in terms of the criminal means used to perpetrate it. The reactions have been very violent; understandably there are those who demand harsher penalties for such criminal behavior. On the other hand, State anti-kidnapping mechanisms have been devised consisting of members of security agencies. On October 22, 1990, the National Security Council created UNASE (Special Anti-extortion and Kidnapping Unit), composed of members of the National Police, the Army and the DAS. It went into operation on November 1, 1990; its purpose is to secure the freedom of kidnapping victims. The thinking was that strengthening the security apparatus and making the penalties for these crimes tougher would help stop kidnapping.

While it is the Colombian State's obligation to protect citizens from behaviors such as kidnapping, it is also important to maintain proper control of the strategy adopted, since these anti-kidnapping apparatuses could lead to serious human rights violations, as demonstrated in the case known as "collective case" No.10,235, involving the enforced disappearance of the alleged kidnappers, mentioned earlier, or the rescue of Diana Turbay. In the Turbay case, several officers of the National Police were disciplined by the Office of the Attorney General in January 1992 because of excesses committed in the operation wherein the kidnap victim was killed.^[1]

In the short time it has been in operation, UNASE has already been accused of human rights violations. Two examples are as follows: on September 11, 1991, three young students

from Antioquia (Franklin Peláez, Camilo Alberto Cervantes, Luis Guillermo Agudelo) were found dead at kilometer 15 of the Santa Helena departmental road. Their bodies showed signs of torture. Some days earlier, these young men had been detained by ten men travelling about in two Mitsubishi jeeps. Apparently they belonged to UNASE. The Office of the Regional Prosecutor of Antioquia, therefore, was investigating that unit. Also, on April 14, 1992, two members of "A Luchar" (Elgilio Mejía and Egides Povedas), were found murdered at the site known as Punto Gallina in Plato (Magdalena). The two had been detained by members of UNASE.

Because these agencies are not subject to any type of control, some of their members end up being accused of human rights violations, engaging in the very activities they are supposed to combat. An example is the case of UNASE's Second Lt. Luis Jaramillo Bedoya, who was detained in early April 1992 on charges of having participated, along with other members of that specialized corps, in the abduction of a citizen.[\[2\]](#)

In August 1992, with the backing of a million signatures, a bill was submitted to Congress to combat kidnapping, a crime that, it is said, has become an industry in Colombia. The bill is the product of a study conducted by the "Fundación País Libre", created in 1992 after the release of journalist Francisco Santos, who was held by drug traffickers. Under the bill, which is an effort to arm the State with the legal means to wipe out kidnapping, the present penalty of sixteen years' imprisonment would be increased to sixty years; there would be no pardon or amnesty for these crimes and the property used in the kidnapping would be seized and the Prosecutor's Office would keep the assets of the kidnap victim, his or her close relatives, friends and any groups of which these people are members under surveillance; failure to report a kidnapping and participation in negotiating ransom and release would also be punishable as criminal offenses.

E. STATISTICS

POLITICALLY OR PRESUMABLY POLITICALLY MOTIVATED ARBITRARY DETENTIONS, 1981-1991

1981 2322
1982 2400
1983 1325
1984 1783
1985 3409
1986 1106
1987 1912
1988 1450
1989 732
1990 1102
1991 1392

Total 18933^[3]

KIDNAPPING IN COLOMBIA

| Year | Common Crime | | Guerrilla Movement | | Total | Daily Average |
|-------|--------------|-------|--------------------|-------|-------|---------------------|
| | Cases | % | Cases | % | | |
| 1980 | 28 | 63.64 | 16 | 36.36 | 44 | 0.12 |
| 1981 | 33 | 33.33 | 66 | 66.67 | 99 | 0.27 |
| 1982 | 67 | 49.26 | 69 | 50.74 | 136 | 0.37 |
| 1983 | 66 | 39.52 | 101 | 60.48 | 167 | 0.46 |
| 1984 | 161 | 53.85 | 138 | 46.15 | 299 | 0.82 |
| 1985 | 132 | 46.15 | 154 | 53.85 | 286 | 0.78 |
| 1986 | 112 | 62.22 | 68 | 37.78 | 180 | 0.49 |
| 1987 | 122 | 47.10 | 137 | 52.90 | 259 | 0.71 |
| 1988 | 331 | 46.10 | 387 | 53.90 | 718 | 1.97 |
| 1989 | 380 | 48.66 | 401 | 51.34 | 781 | 2.14 |
| 1990 | 683 | 53.28 | 599 | 46.72 | 1282 | 3.51 |
| 1991 | 748 | 48.26 | 802 | 51.74 | 1550 | 4.25 |
| Total | 2863 | 49.35 | 2938 | 50.65 | 5,801 | 1.32 ^[4] |

F. FINAL OBSERVATIONS

At present, arbitrary arrests by Colombian authorities for political or ideological reasons are selective in nature. There are many cases of individuals who disguise themselves as security agents for the purpose of kidnapping or extortion. Prolonged detentions beyond the time allowed by law are generally not reported. It is hoped that the provisions of the new Constitution and the activities of the institutions created to protect human rights will be effective in defending this right. It is also hoped that the rules governing the public order courts will not lead to abuses.

[1] See *El Espectador*, January 15, 1992.

[2] *El Tiempo*, Friday, April 10, 1992.

[3] Source: Information from the Andean Commission of Jurists, Colombian Branch, "*La situación de derechos humanos en Colombia: compleja pero no confusa*," Bogota, September 1992, p. 4.

[4] *Idem*.

CHAPTER VI

THE RIGHT TO PERSONAL SECURITY AND HUMANE TREATMENT

What follows are the international provisions contained in the American Convention on Human Rights and the national provisions contained in the 1991 Constitution of Colombia that protect and defend these fundamental rights and punish violations thereof:

A. LEGAL PROVISIONS IN EFFECT IN RESPECT OF THIS RIGHT

| American Convention on Human Rights | Colombian Constitution |
|--|--|
| <u>Article 5. Right to Humane Treatment</u> | <u>Article 12.</u> No one shall be subjected to enforced disappearance, torture, or cruel, inhuman or degrading treatment or punishment. |
| 1. Every person has the right to have his physical, mental, and moral integrity respected. | <u>Article 44.</u> The following are fundamental rights of children: life, humane treatment, health and social security, a balanced diet, a name and nationality, a family and not to be separated from it, care and love, education and culture, recreation and the free expression of one's opinion. Children shall be protected against any form of neglect, physical or moral violence, kidnapping, sale, sexual abuse, labor or economic exploitation and dangerous work. They shall enjoy the other rights recognized in the Constitution, in the laws and in the international treaties ratified by Colombia. |
| 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person. | The family, society and the State have an obligation to assist and protect the child, so as to ensure his or her balanced and full development and the full exercise of his or her rights. Any person may require of the competent authority fulfillment of this obligation and punishment of offenders. |
| 3. Punishment shall not be extended to any person other than the criminal. | The rights of children take precedence over the rights of others. |
| 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. | |
| 5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors. | |
| 6. Punishments consisting of deprivation of freedom shall have as an essential aim the reform and social readaptation of the prisoners. | |

B. WAYS IN WHICH THIS RIGHT HAS BEEN VIOLATED

The right to security and humane treatment was discussed at length in the Commission's 1981 report. Given the many petitions received at that time concerning the unlawful mistreatment and torture inflicted upon detained persons at the time of their capture, while under interrogation, during the investigation and thereafter, even in prison facilities such as the La Picota Penitentiary in Bogota, the Model Prison in Bogota, the Bella Vista Prison in Medellin, the Villanueva Prison in Cali, the Modelo Prison and the Good Shepherd Prison in Bucaramanga, and in certain military detention facilities, the Artillery School, the Cavalry School, and the Brigade of Military Institutes and Baraya Battalion in Bogota, all of which the Commission visited personally.

The conclusion that the Commission reached at the time, after examining the documents and information in its possession, was that serious violations of the right to personal security and humane treatment had been committed. These violations, which consisted of unlawful mistreatment and torture, had occurred during interrogations of persons arrested by virtue of measures enacted to combat the violence of subversive groups. The Commission also observed that through the Office of the Attorney General of the Nation, investigation procedures had been instituted and processed aimed at confirming complaints concerning these violations, and that virtually none of them led to any disciplinary action against those allegedly responsible. Often, the cases were simply closed, arguing that there was not sufficient merit to prosecute any criminal investigation. It became apparent that efforts to prevent and suppress abuses of this type had not produced sufficiently effective results.

By comparison to the situation at the time of the 1981 report, obviously the human rights situation in Colombia has changed as regards the right to personal security and humane treatment. Colombian prisons are no longer full of political prisoners and there are few such prisoners in Colombia today because violations of the right to life have reached terrible proportions. Proof of this are the bodies that have appeared and unfortunately continue to appear every day in cities nationwide, bearing the unmistakable signs of abuse and torture. This means that the right to humane treatment and personal safety is being violated continually and then compounded by the violation of the right to life.

C. PETITIONS RELATIVE TO THIS RIGHT

There is one case, among the many, that eloquently demonstrates how abuse and torture are used against the victims of unlawful arrest and subsequent disappearances carried out by paramilitary groups with the support, participation or complicity of the Colombian armed forces. The case, Case 11,007, was denounced by the Interdenominational Conference of Justice and Peace, a serious, credible and cautious institution. The events in question, which took place in the municipality of Trujillo, Department of Valle del Cauca, involved a network of criminal activities that left a total of 52 victims. Law enforcement personnel in active service were part of that network, collaborating with groups of armed civilians in the employ of drug traffickers.

The chief witness, Mr. Daniel Arcila, describes one of the acts of torture by Colombian Army Major Alirio Ureño Jaramillo, from the Sonora District, at a ranch owned by a drug

trafficker. Called "La Granja", the ranch was used as a base to coordinate operations in the vicinity:

The Major shot water into their faces using a pressurized hose. He used his penknife to pry up their fingernails, cut pieces off the soles of their feet with fingernail clippers and then threw salt on the wounds. With a gasoline blow torch, he burned them on various parts of the body until the flesh blistered and cracked. He put the hose in the genital area; cut off the victims' penises and testicles and stuck them in their mouths; finally, he dismembered them with a chain saw, and as they did this the torturers yelled 'ai hombre'... I asked one of them what they were doing with the chain saw and he told me that they were cutting off the heads and cutting the bodies in half to let the blood drain out that day, so that they could throw them away that night. They then discarded the mangled pieces one by one... I saw the bodies as they were throwing them into the dump truck; they were inside sacks. There were around twelve sacks; in one sack they threw the trunks of the bodies and in another they threw the heads.

Daniel Arcila recounted how the dismembered bodies were thrown into the Cauca river: "They killed all of them that way and then they threw them out at night... They used a blue Ford 56 dump truck." "It was a Sunday night when they threw out the bodies, the night of April 1. "... I transported the bodies of those who had been tortured and killed. I had to do it because if I didn't, I was a dead man... A dump truck was used to take the eleven (11) bodies to the river, and I drove. Some 15 self-defense people, the lieutenant, and the sergeant were in other cars..."

The main victim in the instant case is Jesuit priest Father Tiberio de Jesús Fernández Mafla who, since his youth, had been a prominent peasant leader and enthusiastic supporter of the cooperative movement. Since his arrival in Trujillo, Father Tiberio had been active in social work within his parish to assist the more economically disadvantaged sectors, while encouraging the creation of urban and rural community businesses, convincing the people of the importance of grassroots organizations.

On **April 17, 1990**, Father Tiberio went to the city of Tuluá to be the chief celebrant in the funeral services for a person who had been murdered the day before. On the road to Tuluá, at the entrance to the hacienda known as El Topacio, there was a group of people inside a white Toyota jeep who covered their faces when Father Tiberio's taxi went by. The people in the taxi with Father Tiberio noticed this.

While on the return trip to Trujillo, at a distance of some 25 kilometers from Tuluá, several people, among them the mayor of the town, saw another white jeep carrying a number of armed men. The vehicle carrying Father Tiberio and others, among them a niece Alba Isabel Giraldo Fernández, age 22, was stopped. Father Tiberio and those with him were forced out of the car and put in another vehicle. Eyewitnesses recognized some of the armed men who kidnapped Father Tiberio, whose body was discovered in the Cauca river on **April 23**. Father Tiberio had been decapitated; his thorax and abdomen had been opened and the body

mutilated and castrated. The next day, the body was identified by relatives and friends. When X-rays of fractures that the priest had sustained in two previous accidents were compared, his identity was fully established.

D. REPORT OF THE ATTORNEY GENERAL OF THE NATION CONCERNING THIS RIGHT

As mentioned in Chapter I, during the visit made by the Special Preparatory Committee in December 1990, the then Attorney Delegate for Human Rights, Dr. Jaime Córdoba Triviño, made some public statements on the question of unlawful arrests, enforced disappearances, and abuse and torture as methods used by the security arms of the Colombian armed forces. Because these statements came from such an authoritative source, they were important to the Special Committee's investigatory work.

According to the Attorney Delegate for Human Rights, "... enforced disappearance has been used by State security agencies in Colombia as a method of investigation: individuals are surreptitiously captured; the security agencies conceal the fact of their arrest; they are tortured; information is obtained..."

Describing some of the tortures used in the country, Dr. Córdoba Triviño mentioned the fact that people are staked out in the sun during the day and left out in the cold at night; they are beaten, threatened with death, forced to watch other people being tortured, to experience mock executions by firing squads that have no ammunition in their weapons. He added: "The creative minds at the State security agencies have added still other methods of torture to this list."

The State's repeated use of enforced disappearance, as mentioned by the Attorney Delegate for Human Rights of Colombia, is very serious; the Inter-American Commission on Human Rights already knew of this practice from the many denunciations it had received in that regard.

Qualifying his statements, Dr. Córdoba Triviño pointed out, however, that while torture and enforced disappearance can often be blamed on State agents, these practices are not the policy of either the State or its armed forces.

Apart from this extraordinary statement, the Special Commission also had an opportunity to learn from very reliable sources that severe mistreatment and torture of political detainees has become widespread practice. The Special Commission was also told that these same methods are used to extract information from individuals accused of common crimes and from individuals suspected of collaborating with drug traffickers.

According to the report of the Office of the Attorney General of the Nation of September 1991, prepared exclusively on complaints and matters brought to that agency's attention, that Office has some 272 cases under investigation, cases that concern 664 alleged victims of torture; the report states that in 48.48% of the cases, the torture is blamed on members of the National Police; in 20.47% of the cases, the torture is blamed on the military, and in 29.17% inquiries were being conducted to determine who was responsible. Of those 664 alleged

victims, 46.58% were peasants, 16.97% were independent workers and workers from the informal sector of the economy, and 12.42% were prisoners.

As for mistreatment and personal injury, the report of the Office of the Attorney General notes that this human rights violation is the one most frequently denounced to the Office of the Attorney General, which had received a total of 941 complaints from people who claimed to have been the victim of some physical aggression or of various types of personal injury inflicted by State agents. The report underscores the fact that 76.25% of the agents blamed were with the National Police; 155 agents had been sanctioned, and of these 148 belonged to the police forces.

In a more recent communication, the Office of the Attorney General remarked that the Public Prosecutor's Office receives a complaint involving the torture of a citizen every day. Between April 1991 and July 1992, 304 complaints of torture were filed; of those, 47% have been filed (144 cases), 45% are undergoing preliminary investigation or under investigation (137 cases), and 8% have gone to trial and been decided (23 cases). Involved in these complaints are 106 members of the National Police, 93 members of the Army, 9 members of the Administrative Security Department (DAS) and 6 members of the Technical Corps of the Criminal Investigations Police.

E. OTHER RECENT CASES SEEN BY THE COMMISSION

The Commission has continued to receive information from serious and reliable sources, who report that torture continues to be practiced in Colombia.

On May 19, 1992, in the city of Barrancabermeja (Department of Santander), a peasant farmer by the name of Enrique Saavedra was tortured along with three other farmers, after being detained in the hamlet of El Pueblito by a patrol of the Nueva Granada Battalion. According to a statement by witnesses, the peasant farmers were beaten, threatened with death and accused of being "guerrillas". Human rights organizations reported that the civilian population continues to be victimized by the law enforcement and military personnel in the counterinsurgency struggle, all because the military believes that all peasants are "aiding the guerrilla movement."

As for the problem of torture in the city of Barrancabermeja, CREDHOS (the human rights committee in the region) presented the IACHR Special Commission with an album containing photographs of hundreds of people in the area who had been horribly disfigured by torture.

On May 7, 1992, in the city of Barranquilla, Department of Atlantico, Mr. Luciano Pérez Cueto was found murdered on the Juan Mina road. He had been shot several times in the head. The victim's father reported that several policemen had taken him away by force from a shop in the Las Américas district. He had been forced into a taxi and had been punched, kicked and hit in the head with a weapon. The father tried to follow the taxi in which his son was taken away, but the police threatened to kill the young man if he followed them.

Typical of the reports of mistreatment and torture that the Commission receives month after month, showing the changes in the human rights situation where this right is concerned,

the following is a statistical report sent by the Centro de Investigación y Educación Popular (CINEP) for June 1992, which includes a list of murder victims whose bodies showed signs of torture and who were properly identified.

June 3. **LUIS ALFONSO LOPEZ RESTREPO**, Caldas (Antioquia). A merchant found murdered, together with two other people, on the road to the municipality of Fredonia in the vicinity of the village of Piedra Verde. He lived in Bello. The bodies of the victims had multiple 9 mm bullet wounds and were partially burned with sulfuric acid. The victims had been detained at various sites in Medellin. **SADY FERNEY PEREZ URIBE**, Caldas (Antioquia). A history student at the Universidad Nacional, Medellin campus, found murdered in the hamlet of Sinifariá. Her body had multiple bullet wounds, showed signs of torture and was partially burned. She lived in the workers' district of Medellin and some days earlier had been taken by force from the university, by persons unknown. **MARIA LUISA PARRA NOSA**, Caldas (Antioquia). She was found murdered, together with her husband and a merchant, in the village of Piedra Verde. Her body showed signs of torture and was burned with sulfuric acid. The victims had been detained at various sites in Medellin. **JOSE BENIGNO CAÑAS ZAPATA**, Caldas (Antioquia). He was found murdered, together with his wife and a merchant, in the village of Piedra Verde. His body showed signs of torture and was burned with sulfuric acid. The victims had been detained at various sites in Medellin.

June 4. **MAXIMO SERGIO FLOREZ SANCHEZ, CARLOS MARIO HENAO AND JORGE NARVAEZ**, Riohacha (La Guajira). Members of the Esperanza, Paz y Libertad Movement, murdered together with seven other people, among them 3 former EPL guerrillas. The murders were the work of approximately 15 men dressed in police uniforms who went to the "El Socorro" ranch, located in the village of El Mamey in the district of El Mingueo, where 15 children and 14 adults were sleeping. They shot the people who were there. Four of the victims were taken to the Barranquilla Hospital where they died. The members of Esperanza, Paz y Libertad were taken to a bridge on the Caribe Highway, where apparently they were tortured and then thrown from the highest point of the bridge. The former guerrillas were natives of the municipality of Planeta Rica (Córdoba); they were registered with the Atlantico Reassimilation Office and managed the Tamacá Restaurant in Barranquilla. They had disappeared two days earlier.

June 4. **JORGE VELEZ TRUJILLO and PABLO JIMENEZ**, Plato (Magdalena). Workers on the "Santa Martica" ranch, found murdered inside a jeep in which they had been travelling some hours before. The bodies were burned and had multiple bullet wounds. **OCTAVIO MARIN and HERNAN ANTONIO**, Dos Quebradas (Risaralda). Members of a gang of kidnappers, murdered by persons unknown. Their throats had been cut. The gang was apparently planning to kidnap the owner of a hacienda in the village of La Esperanza. The rest of the gang managed to escape. **CARLOS ALBERTO MORALES ALZATE, LUIS DIEGO LOPEZ and RUBEN DARIO MORALES ALARCON**, Envigado (Antioquia).

These men were found dead inside a Renault 4, on the Las Palmas Road. They had been tortured and wounded with steel weapons. With the bodies was a sign that said "This is for car thieves who take the cars to Cali." The victims lived in Manizales. **GUMERCINDO ALTAMAR GUZMAN**, a bricklayer and native of Acandí (Chocó); **DARISNEL CASSIANI OBESO**, a bricklayer known as "Pastrana" and a native of the Department of Bolívar; **ALCIDES N.**, known as "El Chirri"; **JOSE GUSTAVO FONSECA**, a native of Cúcuta, whose name appears twice with SIJIN for petty theft; and **ROBERTO JULIO MENESES VILLABNA**, a criminal known as "La Pantera" who had a record with the SIJIN for petty theft and drug trafficking, Tubara (Atlántico). Found murdered on the "La Lucha" ranch, located in the Cuatro Bocas Police District. The victims lived in the Nueva Colombia district of Barranquilla. The victims were tied up and had multiple bullet wounds and signs of torture. Two of the victims had criminal records for petty theft. **ELKIN ARREDONDO GUZMAN, Medellin (Antioquia)**. Found murdered on the road to the municipality of Caldas. He was nude and his hands had been amputated (they were in a bag).

June 9. **JOSE DELFIN TORRES CASTRO, Cerrito (Santander)**. Secretary of the Tabeta Departmental Inspection Bureau, murdered along with the inspector, by a patrol of the García Rovira Battalion. At the place known as "Alto de las Cruces", the Secretary was detained by a patrol of twelve soldiers and taken to a place nearby, where for two hours he was questioned and tortured. He and the inspector were then boarded into Delfín Torres Castro's van, driven by a soldier; moments later, several shots were heard; witnesses to the arrest ran to the place and found the bodies alongside the van. José Delfín was still alive, but died moments later. The soldiers took his identification papers, \$500.00 in cash and the keys to the van. On February 5, 1987, the wife of the Secretary, Irma Vera, had been murdered by members of García Rovira Battalion.

June 10. **LUIS ALFONSO CHILLITO DOMINGUEZ, Candelaria (Valle)**. An elderly man 70 years of age, who worked as a guard at the "José Hilario Illera" sand pit; he was found murdered on the banks of the Cauca River, near the Juanchito Departmental Inspection Station. He was gagged, his feet and hands were bound and he had been shot, tortured and choked. Two days earlier, several men wearing hoods and carrying weapons came to the sand dump, grabbed the three guards and tied them up, took two dump trucks and one pistol, and then took the old man away. **NORBERTO JAVIER RESTREPO, Abejorral (Antioquia)**. He was working as a contractor with architects; his body was found in the hamlet of El Cairo. It had been burned with sulfuric acid from the waist up (all that was left of the head was bone). One arm had been broken in three places. Near the body was a pyre that apparently was to be used to burn the body. The mother of the victim said that he had been a member of the Unión Patriótica.

June 12. **LUIS ANTONIO SOTO GARCIA, Yumbo (Valle)**. A boy 9 years old was found murdered. The body of the child showed signs of strangulation. He had disappeared 12 days earlier.

June 29. **JOSE RAUL BUITRAGO MORENO, El Tarra (Norte de Santander).** A peasant, murdered by persons unknown at the place known as "Barranquilla" in a rural part of that town. He had been covered with gasoline and then set on fire, after which he was shot several times. The body of an employee of ECOPETROL was found several days later at the same site.

June 30. **ALFREDO MARBERI LOPEZ and WALTER AMININTON RODRIGUEZ MOSQUERA (et al), Cali (Valle).** They were found murdered at the place known as "La Viga" on the road to the municipality of Jamundí. The bodies had multiple bullet wounds; they were bound hand and foot and gagged. Needles had been driven into their backs and their bodies had cigarette burns; their heads were covered with plastic bags. **JOSE FERNANDO BEDOYA ARIAS, Ciénaga (Magdalena).** A peasant farmer found murdered in the Tucurín district had been shot several times and his skull had been fractured. He had been missing since March 28, when he was taken by members of a paramilitary group, as he was in a rural area of the municipality of Aracataca. **OMAR ZUÑIGA VASQUEZ, Cartagena (Bolívar).** A peasant farmer murdered by members of the Marine Infantry, who detained him, tortured him and riddled him with bullets. Relatives of the victim reported the crime at the Summit Meeting of Atlantic Coast Prosecutors, which was attended by the Attorney General and the Public Defender, who pledged to prosecute the investigations to clarify the facts.

F. FINAL OBSERVATIONS

The right to personal safety and humane treatment is seriously imperiled in Colombia. The Commission is disturbed by the fact that in spite of observations made as far back as its 1980 on-site visit, torture continues to be used at an alarming rate. More dramatic still is the fact that for a number of years now, bodies are being discovered every day. They are the bodies of the victims of extrajudicial executions and show visible signs of torture. It would seem that these cruel and inhuman methods have not been eliminated and are used by some members of the armed forces and State security agencies to obtain information unlawfully and even to extract confessions.

CHAPTER VII

THE RIGHT TO LIFE

The right to life, which protects and defends a human being's very existence, is doubtless the basis of all other rights. Hence, any increase in the number of violations of this right is indicative of a truly serious human rights situation in a country. With the violence that Colombia is experiencing, the right most often violated, as the figures contained in this report show, is precisely the right to life. To illustrate the severity of this problem, most national and international agencies that study the Colombian human rights situation have emphasized in their reports that in 1989, for example, political violence was so extreme that **in that one year alone, there were as many deaths as had occurred in the sixteen years of Chile's cruel military dictatorship**, which according to figures from the Vicaría de la Solidaridad of Chile, totaled 929 disappearances and 2,059 murders. However dramatic the example cited here is, the Colombian situation is still worse. In 1988, there were 4,204 politically motivated killings; in other words, higher by 1,000 deaths. In 1991 there were 3,742 politically motivated killings. The situation does not seem to have improved: in the first half of 1992, the number registered from January to June was 1,870. And so, violations of this right have reached atrocious levels and reveal one very painful fact: how little worth is given to the right to life and how very vulnerable and threatened it is in Colombia.

The Commission does not pretend that its study of the violations of the right to life in Colombia is an exhaustive one that covers all the facts in all cases; nevertheless, it will discuss a number of cases that illustrate the problem.

A. LEGAL PROVISIONS IN FORCE IN RESPECT OF THE RIGHT TO LIFE

The international provisions of the American Convention on Human Rights and the national provisions of the new 1991 Constitution of Colombia which protect and defend the right to life and punish violations thereof, are as follows:

American Convention on
Human Rights
Article 4. Right to Life

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 arbitrarily deprived of his life.
2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.
3. The death penalty shall not be reestablished in states that have abolished it.
4. In no case shall capital punishment be inflicted for political offenses or related common crimes.
5. Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.
6. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.

Colombian Constitution

Preamble: In exercise of their sovereign power, represented by their delegates to the National Constitutional Assembly, invoking the protection of God and for the sake of strengthening the unity of the nation and ensuring its inhabitant's life, work, justice, equality, knowledge, liberty and peace, within a legal, democratic and participatory framework that guarantees a just political, economic and social order, the people of Colombia...

Article 2. The State has three essential purposes: to serve the community, to promote the general welfare and to guarantee the effectiveness of the principles, rights and duties upheld in the Constitution; to enable all persons to participate in the decisions that affect them and in the economic, political, administrative and cultural life of the nation; to defend national independence, preserve its territorial integrity and ensure peaceful coexistence and justice.

The authorities of the Republic are instituted to protect the lives, honor, property, beliefs and other rights and freedoms of all persons living in Colombia, and to see to it that the social duties of the State and of private parties are fulfilled.

Article 11. The right to life is inviolable. There shall be no capital punishment.

Article 44. The fundamental rights of children are: life, humane treatment, health and social security, a balanced diet, name and nationality, a family and not be separated from the family, care and love, education and culture, recreation and the free expression of one's opinion. They shall be protected against all forms of

neglect, physical or moral violence, kidnapping, sale, sexual abuse, labor or economic exploitation and dangerous work. They shall also enjoy the other rights recognized in the Constitution, in the laws and in the international treaties ratified by Colombia. (First paragraph).

B. WAYS IN WHICH THE RIGHT TO LIFE IS VIOLATED

Members of the Antioquia Commission for the Defense of Human Rights described for the IACHR's Special Committee, during its visit to Colombia in May 1992, the situation of the right to life in Colombia, as follows:

There is not a day that passes when the right to life is not violated. Peasants, workers, students, judges, journalists, civil servants, parents, youth, the elderly, soldiers, police, professionals, clergy, communists, the poor, criminals, liberals, conservatives and people with no party affiliation whatsoever. No one is safe from the assassin's bullet.

At any time, at any place, indiscriminate massacres occur. Men and women are unlawfully taken from their homes and will eventually be found dead, somewhere in our city. We find again that barbaric and criminal practice of mutilating the bodies of victims to make them unidentifiable, who have been tortured, had limbs cut off, had their skin burned and every other torture that no sane mind could ever begin to imagine.

C. PETITIONS RECEIVED RELATIVE TO THIS RIGHT

For an organized discussion of the right to life in Colombia, this chapter has been divided into 4 sections: a) arbitrary and extrajudicial executions and/or selective assassinations; b) mass murders and/or massacres; c) acts of genocide, and d) enforced disappearances.

The petitions that the Inter-American Commission on Human Rights has received, considered or processed in accordance with the provisions of the American Convention on Human Rights, the Commission's Statute and Regulations, in which agents of the Colombian Government are alleged to have violated the right to life either directly or indirectly, to have collaborated in such violations, or for which it somehow bears responsibility, are as follows:

a) Arbitrary and extrajudicial executions and/or selective assassinations:

Case 10,454: Martín Calderón Jurado

On August 11, 1989, the Inter-American Commission on Human Rights received the following petition:

On October 8, 1988, Mr. Martín Calderón Jurado, President of the Asociación Nacional de Usuarios Campesinos de García Rovira, Legal Counsel to the Human Rights Solidarity and Defense Committee of García Rovira and Chairman of the Cerrito Town Council was travelling on the road from Cerrito to Chitagá when, at the fork in the road leading to Cácuta (Norte de Santander), his car was stopped by a paramilitary group that killed him, shooting him 50 times. Also killed was Primitivo Silva, the driver of the vehicle. Martín Calderón Jurado's political leanings were liberal.

Mr. Martín Calderón Jurado and his cousin Valentín Bastos Calderón had received death threats at a human rights meeting held in Málaga on August 6 and 7, 1987; the individuals named as the authors of those threats were associated with the police and the army. There is a tape of the charges they made.

Later, Valentín Bastos Calderón was murdered. Martín Calderón Jurado took an active part in the investigation that the Office of the Attorney General of the Nation conducted into the murder of his cousin Valentín Bastos Calderón and, as a result, was threatened yet again.

Corroborating his complaint, the petitioner sent to the Commission the following incriminating testimony which Mr. Jairo Alberto Carvajal Tarazona, the "El Cerrito" Municipal Magistrate, sent to the Attorney General of the Nation:

Lt. Col. Plinio Rodríguez Villamil was in the jurisdiction of the Municipality of Cerrito on the day of the murder. He was in a grey two-door Toyota, with a short-wave telephone that he used to call Sgt. Second Class Jiménez César Augusto with the battalion in the city of Pamplona. He ordered him and Sgt. Second Class Puentes Ramírez David, from the second section of the García Rovira Battalion, to take two 9 mm Madsen machine guns and their accoutrements and to use a black four-door Toyota truck, Venezuelan license plate XAS-910, which was the property of INCAL, driven by Pedro Rueda, alias Zapatoca. They were to take the road to Chitagá and near the town of Cácuta they were to stop the vehicle of Mr. Martín Calderón Jurado to kill him and whomever was with him. This was how Mr. Martín Calderón Jurado and Mr. Primitivo Silva died.

I was able to get this information because of some unusual circumstances that occurred the day their bodies were to be brought in and the day of their burial. At about 7:00 p.m. on the day the bodies were brought in, Lt. Col Plinio Rodríguez Villamil held a meeting in El Cerrito's main square. He said he was going to bomb Tabeta and Mortiño (places in this district). That same night some ten people were taken to the jail of the National Police, myself included; I identified myself but they did not acknowledge anything and we spent that night in jail.

The next day, following the burial of the men who had been murdered, that same colonel stood up in the main square and for no reason ordered anyone he considered suspect to be taken to the Police Station. That was how I learned that several people who went to bring the body of Mr. Martín Calderón Jurado had been mistreated by that lieutenant colonel. Near Puno Romeritos (Páramo del Almorzadero), he made five people walk barefoot for some forty minutes. A few days later I went to the city of Pamplona. I visited a place called El Camellón, and this Sergeant Second Class Puente Ramírez David was there talking about things he had done. He was drunk, and that was how I came to have this information.

The Commission believed that in this case it was obvious that the petitioners had been unable to secure effective protection from the domestic jurisdiction agencies; those agencies had discarded the evidence available to them and had failed to bring charges against the members of the military who were directly named as the responsible parties. Because the internal investigation of this case had been unduly delayed and since the case files had been with the Technical Corps of the Criminal Investigations Police since November 1989, the only conclusion possible was that the criminal investigations police had suspended the investigation, pursuant to articles 347, 347 bis and 348 of the Code of Criminal Procedure of Colombia.

Apart from these considerations, the Commission also took into account the fact that the investigations conducted by Colombian Government authorities via the Office of the Attorney General, the Office of the Attorney Delegate for the Military Forces and the Office of the Regional Prosecutor of Bucaramanga, found, based on the evidence made available to them, that active members of the army attached to the García Rovira Battalion were responsible for the facts; it was established--and the government did not deny--that agents of the Colombian armed forces participated in the assassination of Martín Calderón Jurado and Primitivo Silva, the driver of the vehicle in which Martín Calderón Jurado was riding.

Exercising its authorities, at its 81st session, on September 26, 1991, the Inter-American Commission on Human Rights concluded the following:

That the Government of Colombia has failed to comply with its obligation to respect and guarantee articles 4 (the right to life), 5 (the right to humane treatment), 7 (the right to personal liberty) and 25 (on judicial protection) in respect of Article 1.1, recognized in the American Convention on Human Rights, to which Colombia is a state party, in the assassination of Mr. Martín Calderón Jurado and Primitivo Silva, the individual driving the vehicle in which Mr. Calderón Jurado was traveling.

To recommend to Colombia that it pay compensatory damages to the victims' next of kin; that it order that the investigations into the murder of Mr. Martín Calderón Jurado and the driver of the vehicle, Mr. Primitivo Silva, be completed and that those responsible for this heinous crime be punished; to request the Government of Colombia that it guarantee the security and give all necessary protection to Mr. Jairo Alberto Carvajal Tarazona, Municipal Procurator of El Cerrito and the other witnesses who have helped establish the facts; to include

this report in the Annual Report to the General Assembly of the Organization of American States, should no reply be received within 90 days of the report.

The Colombian Government requested reconsideration of the report. Nevertheless, at meeting 1160 on September 25, 1992, the Inter-American Commission on Human Rights decided to confirm the report and publish it in its Annual Report.

Case 10,456: Irma Vera Peña

On August 11, 1989, the Inter-American Commission on Human Rights received the following petition:

On February 5, 1987, in the village of Piedra Azul, in the Municipality of Concepción, 18 peasants were arrested by the García Rovira Battalion and were mistreated and harassed. One of these peasants, Delfín Torres, lived only a few meters from the place where they were held prisoner, and the soldiers did not allow him to return to his home until the next day (February 6). There, Delfín reported that the Army was still in the vicinity and had killed 4 people, among them his wife, Irma Vera Peña, age 17 and pregnant at the time. Their nude bodies were lying beside the road.

Upon learning of this, the peasants banded together to demand that the Army turn over Irma's body. The military refused the request, arguing that she was "a guerrilla fighter". Finally, the body was turned over, and the peasants were forced by the Army to dig a grave in which to bury the other three persons killed. Two months after these events, Delfín Torres was arrested by the army in the same region and severely beaten.

This petition was forwarded to the Colombian Government on September 20, 1989. It reported that the information had been brought to the attention of the proper national authorities and that in due course it would inform the Commission of the status of the investigations. This note was followed by others requesting information and supplying information.

During the processing of this case, the petitioner informed the Commission that on June 9, 1992, Mr. Delfín Torres Castro, Irma's husband, and the complainant and witness in the present case, was killed by members of the García Rovira Battalion, according to statements made by peasants from the region who witnessed the event.

Having seen the background information, the Commission considered that in the instant case, it was obvious that the petitioners had been unable to secure effective protection from the domestic jurisdictional organs, which despite the irrefutable evidence made available to them, exonerated the members of the military of all responsibility; that the remedies under domestic law had been exhausted and that, whether or not they were exhausted, they could not be invoked to the Colombian Government's advantage to suspend the action that the Commission was taking on this case, given the unwarranted delay of the internal investigation into this case; the investigations conducted by Colombian Government authorities through the

Norte de Santander Criminal Investigation Section, the Twenty-fifth Military Criminal Court, the Office of the Prosecutor of Norte de Santander, the Office of the Attorney Delegate for Human Rights, the Office of the Attorney Delegate for the Public Prosecutor's Office and the Office of the Attorney General of the Nation should have compiled the evidence contained in the present report. That evidence would have been sufficient to indict and convict active members of the Colombian Army's García Rovira Battalion for the crimes in this case, had it not been for the egregious error that can be neither explained nor justified: the investigation conducted was based on an aberrant court proceeding wherein the judge hearing the case was himself the intellectual and material author of the facts in question. To allow the authors of a punishable act to go unpunished was also a serious violation of the basic human rights and principles of justice under domestic law and international law.

For these reasons, the Inter-American Commission on Human Rights concluded the following:

That the Government of Colombia has failed to comply with its obligation to respect and guarantee articles 4 (right to life), 5 (right to humane treatment), 7 (the right to personal liberty), 8 (right to a fair trial), and 25 (on judicial protection), in respect of Article 1.1, upheld in the American Convention on Human Rights, of which Colombia is a state party, by virtue of the unlawful arrest and subsequent murder of the minor Irma Vera Peña.

To recommend to the State of Colombia that it pay compensatory damages to the victims' next of kin; that it prosecute and expand the investigations into the facts denounced until those responsible for the extrajudicial execution of Irma Vera Peña are punished, thereby avoiding the consummation of acts of serious impunity that strike at the very foundation of the legal system; that it guarantee the safety and grant the necessary protection to Mr. Crisanto Peña and other witnesses to the events who have helped ascertain the facts.

As horrible as the massacres and acts of collective genocide described below are, selective assassination is still the most frequent violation of the right to life in Colombia and has claimed the greatest number of victims. Although not detailed in this report, selective assassinations also include the many murders committed by the guerrillas to retaliate against any civilians considered to be army sympathizers, loyal to the army, army collaborators or informants; the murders committed by the armed forces against those same people because it suspects them of ties with the guerrilla movement; the many cases of persecution and assassination of union, university, religious, judiciary and other leaders, the vengeance killings committed by gangs and groups of hired gunmen and even the murders regarded as the product of what has come to be called the culture of violence, committed by individuals in retaliation for some offense or insult.

b) Mass murders and massacres

The Honduras and La Negra farms:[\[1\]](#)

On March 4, 1988, at approximately 1:00 a.m., in the Currulao district of the jurisdiction of Turbo, Department of Antioquia, along the Golfo de Urabá, Colombia's banana region, 20 armed men in civilian dress went to the "Honduras" farm, where they pounded on the door of the sleeping quarters where the farmhands and their families were sleeping. Calling each by name, the armed men forced them to come out and ordered them to lie down on the ground. The women, children and other workers were told to stay in their rooms and to turn out the lights. With the workers utterly defenseless, the assailants fired their long- and short-range weapons, killing all 17 workers they had summoned out.

Having committed this crime, the assailants then headed in the direction of La Negra farm, not far from the Honduras farm. There they killed another three workers. The Honduras farmhands who were murdered were all members of the Antioquia Agrarian Labor Union, SINTAGRO and were: 1) PEDRO MIGUEL GONZALEZ MARTINEZ, 20; 2) JOSE BIENVENIDO GONZALES MARTINEZ, 20; 3) JOSE MESA SANCHEZ, married; 4) JOSE JOAQUIN MENDOZA, 30; 5) IVAN DARIO MOLINA, 30; 6) RODRIGO GUZMAN ESPITIA, 35; 7) MANUEL ESPITIA COGOLLO, 44; 8) ENRIQUE GUIZAO GIRALDO, 47; 9) RITO MARTINEZ REYES, 28 and a member of the Sintagro Labor Committee; 10) SANTIAGO ORTIZ CAUDO, 40; 11) NESTOR MARIÑO GALVEZ, 45; 12) JOSE INDOVEL PINEDA, 29; 13) NATANIEL ROJAS RESTREPO, 48; 14) OMAR OCHOA; 15) GUILLERMO LEON VALENCIA; 16) MANUEL DURANGO and 17) JOSE FRANCISCO BLANCO. The workers murdered at La Negra ranch were: 1) JULIAN CARRILLO; 2) ALIRIO ROJAS, AND 3) ADEL MENESES PINEDA. In all, 20 workers were murdered.

On February 24, 1988, eight days before these events occurred, a military patrol from Voltígeros Army Battalion under the command of Lt. PEDRO VICENTE BERMUDEZ LOZANO from B-2 (military intelligence) had conducted searches on the Honduras, La Toyosa and La Agripina farms, all in the Currulao district of the municipality of Turbo, Department of Antioquia. During those search operations, they threatened the banana workers and said they would kill anyone who voted in the elections scheduled for March 13. They also ordered them to leave Urabá within 14 days and took into custody **PASCUAL FUENTES RAMOS, JOSE ALBERTO GARCIA FERNANDEZ, JESUS PALACIOS ASPRILLA** and **OLGA LUCIA RESTREPO** (age 16). The three were taken to Voltígeros Battalion Garrison where interrogation using pressure and threat succeeded in getting the minor Olga Lucía and then the other two to make statements to the effect that a number of workers on the Honduras and La Negra farms were members of the guerrilla group Ejército Popular de Liberación (EPL); when they took her to the farm they even got Olga Lucía to show them where the workers, alleged members of the EPL, lived.

At the garrison, the individuals in custody saw two individuals whom they identified as "Lenín" and "Zacarías", former members of the EPL, and discovered that they were Army informers. These two people took part in the interrogation and offered the three money if they would work for the Army and turn in their co-workers. The three in custody recalled how at one point during the interrogation Lenín told a corporal with B-2 that Honduras, La Negra, La Toyosa and Oro Verde farms were guerrilla nests; the corporal told him not to worry, that they'd soon be paying those farms a visit.

On March 2, two days before the massacre, troops from Voltígeros Battalion under the command of Captain Luis Felipe Becerra came to the Zumbadora farm near the Honduras and La Negra farms, with an individual wearing a mask. The latter pointed to certain workers. Six workers were then arrested and beaten by the Army in the presence of their co-workers. The captain told them that he would not kill them personally, since he had someone to do that for him. He again warned them not to vote in the elections.

On April 16, 1988, the Administrative Security Department (DAS) prepared a report wherein it concluded that in the Honduras and La Negra massacres the Army had used, as guides, former guerrillas who were EPL deserters. It included them in its patrols to locate, identify and eliminate the alleged subversives. It also used hired gunmen (paramilitary) in the pay of ACDEGAM (the Association of Farmers and Cattlemen of Magdalena Medio). The DAS corroborates this finding by examining those who participated in the events and the witnesses thereto.

The **judicial inquiry** was assigned to the Second Public Order Judge, Dr. Martha Lucía González whose finding was that members of the Army were responsible inasmuch as they had collaborated in the genocide under investigation; they knew the hired gunmen who came from Magdalena Medio to Urabá to kill the people on those farms who were suspected of being members of the extreme left; they went along with those criminals on the February 24 operation when PASCUAL FUENTES and OLGA LUCIA RESTREPO were arrested; they allowed the gunmen into the Battalion Garrison, permitted them to carry long- and short-range weapons that only the Armed Forces are authorized to use, and consented to and aided and abetted the genocide of March 4, 1988, thereby making themselves ACCOMPLICES to it inasmuch as they were instrumental in carrying it out. It was obvious that the gunmen had the Army's help for the multiple homicide at **Honduras** and **La Negra** farms. One of the gunmen, EULISES BARRERO, corroborated this for the court, adding that members of the Army sometimes collaborated with the organization by providing it support, coordinating their Army activities with the organization's, and allowing them to move about, even carrying weapons. Prominent leaders of the paramilitary movement in Magdalena Medio were implicated and found responsible by the court, among them GONZALO PEREZ, HENRY PEREZ, MARCELO PEREZ, FIDEL CASTAÑO, CESAR CURE, ALAN ROJAS, HERNAN GIRALDO. Those found

responsible for the massacres at Honduras and La Negra farms were GONZALO PEREZ, HENRY PEREZ and MARCELO PEREZ. These three had hired the 8 "bosses" to go to URABA with some 30 men, some of whom, once the killings in that region had been carried out, went to Montería, Córdoba, where they were received by FIDEL CASTAÑO at its JARAGUAY farm.

Once she handed down her ruling, Dr. Martha Lucía González had to leave the country because of the constant death threats she was receiving, warning her that she would be killed if she continued this investigation. On May 4, 1989, even though the judge had withdrawn, **her father, attorney Alvaro González, was killed** as a reprisal. To replace Dr. González, the Criminal Investigations Bureau referred the case to Medellín, where its investigation was assigned to María Elena Díaz, Third Public Order Judge. She continued to take evidence on the massacre and, on June 17, 1989, confirmed the arrest warrant against Lieutenant Bermúdez, and on June 22, the arrests of Major Becerra and Corporal Ochoa. Immediately after taking over the case, Judge **María Elena Díaz** received a death threat and on July 26, 1989, **was assassinated**.

The Office of the Attorney General of the Nation, in investigating the responsibility of Colombian Army Captain (promoted to Lieutenant Colonel) **Luis Felipe Becerra Bohórquez**; Lieutenant (promoted to Captain) **Pedro Vicente Bermúdez Lozano**; and Corporal (promoted to Sergeant Second Class) **Felipe Ochoa Ruiz**, concluded that: 1) Acting as an officer of the National Army attached to the 10th Brigade, where he was serving as Commandant, Captain Felipe Becerra Bohórquez had conducted the operation at the La Toyosa and Honduras farms in the municipality of Turbo (Antioquia) on February 24, 1988, in the company of a number of heavily armed hired gunmen, who on the night of March 4 of that year killed 20 farmhands who were working at the Honduras and La Negra farms; 2) On February 24, 1988, his conduct vis-a-vis the people who worked and lived at the La Toyosa and Honduras farms was vulgar and inappropriate; 3) On March 2, 1988, he threatened the workers at the Sumadera rural holding with death, telling them they would be killed if they were not out of the region within 14 days; 4) As commandant of Voltijeros Battalion, he allowed Olga Lucía Restrepo, who had been in custody since February 24, 1988, to be taken from one place to another in the region to force her to identify people who were sympathetic to or members of subversive groups, particularly at the Honduras farm. Having considered the charges and the evidence against the accused, the Prosecutor Delegate RESOLVED: 1) To punish Army Captain (now Lieutenant Colonel) Luis Felipe BECERRA with DISMISSAL (complete separation from the Armed Services) as he was found guilty of the charges brought against him and without prejudice to any criminal action that may be brought against him; 2) To punish Army Lieutenant (now Captain) Pedro Vicente BERMUDEZ with DISMISSAL (complete separation from the Armed Services) as he was found guilty of the charges brought against him and without prejudice to any criminal action that may be brought against him; 3) To punish Corporal (now Sergeant Second Class) Félix Antonio OCHOA RUIZ with DISMISSAL (absolute separation from the Armed Forces) as he was found guilty of the charges

brought against him and without prejudice to any criminal action that may be brought against him.

This RULING was appealed by the military men involved. The Office of the Attorney Delegate handed down its decision on the appeal in February 1993, DISMISSING the petitioners' appeal and confirming the decision appealed. On April 20, 1993, the new Attorney Delegate for the Military Forces, in decision No. 221, revoked decision No. 255 of August 19, 1992, which had been upheld in decision No. 093 of February 8, 1993. The latter two decisions had found that the military men in question were at fault and had therefore ordered their dismissal. The new ruling released them from any form of punishment on the grounds that the evidence in the various proceedings had been inconsistent. The new ruling also stated that the statute of limitations for disciplinary action had expired.

Thus far, the investigations have not established the responsibility of the accused military men; instead of being punished they have been promoted, and no compensatory damages have been awarded to the victims' next-of-kin.

Case 10,738: the Holocaust at the Palace of Justice (94 killed)

In Bogota on December 3, 1990, in a special hearing with relatives of those who disappeared in the Palace of Justice holocaust, the IACHR's Special Preparatory Committee received a petition from Attorney Enrique Rodríguez Hernández, President of that association, concerning the following facts:

Background: On October 16, 1985, the Minister of Defense reported the following: "...the General Command of the Military Forces received an anonymous letter stating the following: 'THE M-19 PLANS TO TAKE OVER THE SUPREME COURT BUILDING ON THURSDAY, OCTOBER 17, WHEN THE JUSTICES ARE IN SESSION, AND TO TAKE THEM HOSTAGE, AS WAS DONE IN THE TAKE-OVER OF THE DOMINICAN EMBASSY; THEY WILL MAKE STRONG DEMANDS OF THE GOVERNMENT, CONCERNING VARIOUS MATTERS, AMONG THEM THE EXTRADITION TREATY'; on October 16, 1985, "...special reinforcements were immediately called up for the Palace of Justice, consisting of a 1-1-20" (1 is an officer, 1 is a noncommissioned officer, 20 are agents armed with Galils), to be on duty from 6:00 a.m. to 8:00 p.m. every work day; on October 18, 1985, four Bogota newspapers --"El Siglo", "Diario 5 P.M.", "El Tiempo" and "El Bogotano"-- reported this fact; on October 21, 1985, "the original order had been that the reinforcements for the Court were to have been withdrawn on the 21st (of October). But the Command of the Bogota Police Department, as a precaution, ordered that the reinforcement continue until after November 5, 1985..."; on October 23, 1985, "...the M-19 attempted to kidnap or assassinate the Commandant of the Army, General Samudio Molina... That same day, October 23, a tape recorded message was sent to a radio station where a man whose alias is Oscar ...stated that (THE M-19) WOULD PULL OFF SOMETHING SO SPECTACULAR THAT IT WOULD SHOCK THE ENTIRE WORLD"; as November 5,

1985 began, there were no guards posted at the Palace of Justice. An undated note, allegedly written by General Vargas Villegas because he was the Commandant of the Bogota Police, stated the following: "...I gave my authorization for the reinforcement guard service to be withdrawn..."; on November 6, 1985, 35 M-19 guerrillas seized the Palace of Justice at 11:40 a.m.; in two trucks loaded with weapons, they entered the building without difficulty, by the parking garage door, where no policeman was on guard.[\[2\]](#)

On Wednesday, November 6, 1985, using long-range automatic weapons, bombs, grenades, bazooka, rockets and explosives, an M-19 terrorist commando under the command of Luis Otero Cifuentes, launched a surprise and bloody attack on the Palace of Justice Building, located in downtown Bogota. At the time one solitary National Police agent and poorly armed private guards were the only persons charged with the building's protection and security; for reasons unknown, the then Commandant of the Bogota Police, General Vargas Villegas, had withdrawn the reinforced police guard service five days earlier. The chronology of events was as follows: at 11:40 a.m., a covered truck and a pick-up parked in front of the Palace of Justice parking garage on Carrera 8; some 30 heavily armed guerrillas jumped out of the trucks, entered and took over the building, taking as hostage the justices, employees and any members of the public who did not manage to escape in the confusion. At noon, F-2 agents attempted to get into the basement amid a heavy exchange of fire that lasted several minutes. At 12:55 p.m., four tanks and two armored cars from the Cavalry School entered Bolivar Plaza. At around 1:05, an armored car managed to get through the entrance to the parking garage, but the soldiers that accompanied the armored car did not make much headway because of the guerrillas' return fire. At 2:00 p.m., four large explosions were heard, one after another, in the basement of the Palacio. The gunfire was very heavy at the time; moments later, a tank made its way up the front steps of the Palacio and began to ram the main entrance. At 2:23 p.m., two police helicopters came around the east side of the building and 16 GOES agents jumped out. There was another explosion inside the Palace, apparently produced by the impact of the rockets that the military fired to overcome guerrilla resistance at key points; a half hour later a huge fire broke out in the east wing of the building, and ten minutes later three fire trucks were battling the blaze amid a barrage of bullets.

According to what the petitioners report, when the armed forces entered and took the building, eight workers and three visitors in the building cafeteria were taken into custody and disappeared, suspected of having collaborated with the guerrillas in the take-over of the Palace of Justice and of having prepared enough food supplies to hold out for a number of days. Disputing the version to the effect that their relatives had been killed in the operation to retake the building, the petitioners testified that in a news video shown on television, they had seen a number of them leave the building alive; according to the petitioners, one of the copies was in the possession of the Office of the Attorney General of the Nation. The petition noted that the case concerned only the 8 people who disappeared from the cafeteria, and they provided a list as follows:

Carlos Augusto Rodríguez Vera, manager; Cristina del Pilar Guarín Cortés, cashier; David Suspes Celis, chef; Bernardo Beltrán Hernández and Hector Jaime Beltrán Fuentes, waiters; Gloria Estela Lizarazo, self-service employee; and Luz María Portela León and Ana Rosa Castiblanco Torres, assistants.[\[3\]](#)

Since the petitioners requested that their identity not be withheld, the text, including its references to the names of the petitioners, was sent to the Government of Colombia. Processing of the case began on December 26, 1990; on April 2, 1991, the Colombian Government requested a 90-day extension to reply to the petition forwarded by the Commission, stating that in the Colombian Government's view, the nature of the facts denounced and the number of files warranted an extension.

That extension was granted. On July 25, 1991, the Government of Colombia replied to the Commission stating that:

Colombia considers the terms and content of the petition presented to the Commission to be an insult to national dignity... the Government of the Republic of Colombia reiterates its rejection of said petition, believes any examination of its content to be unacceptable and respectfully requests that the petition be dismissed.

In response to the Colombian Government's statement, the petitioners stated that they regretted the fact that the Colombian Government had not supplied information and that the Government's reply did not contain any information that would disprove the report sent to it. As an appendix, they attached the report of the Attorney General of the Republic on the holocaust at the Palace of Justice, dated May 31, 1986. That report corroborates the petitioners' complaint and blames not only the members of the M-19 Commando that attacked and held hostage the justices, employees, attorneys, and members of the public who were in the Palace of Justice at the time, but also public officials who played some part in these events. The report asks for sanctions against then President of the Republic Belisario Betancur and the Minister of Defense who was responsible for what transpired when the Armed Forces attempted to retake the Palace of Justice.[\[4\]](#)

When notified of the petitioners' observations, on November 15, 1991, the Colombian Government repeated its request that the case **be dismissed on the grounds that its content and language were unacceptable.**[\[5\]](#)

Members of the Special Commission that went to Colombia in May 1992 discussed this case with officials attached to the Foreign Ministry's International Organizations Unit. The Commission's idea was to settle some of the problems that had developed in processing the case and get the necessary information from the Colombian Government. At the time, the Special Committee repeated what had been said in the formal note sent by the Commission to the effect that the request for information did not constitute a prejudgment or endorsement of the petitioners' statement; that the note sent was a photocopy of what the petitioners had delivered to the Special Preparatory Committee during the hearing at the Hotel Tequendama in December 1990. At that time they requested that their identity not be withheld and stated that the text of their petition had already been brought to the attention of the Colombian

Government authorities, which had not given it the proper attention. The Special Committee also made it clear that the petitioners were not referring to events that occurred under the administration of President Gaviria.

The Commission should again point out the following: the fact that the Commission processes a petition does not mean that it is necessarily endorsing the petitioner's statements or accepting as true the facts under investigation. The Commission disapproves of any offensive statements made by petitioners, but it cannot exclude the facts denounced by the petitioners from this report. The Colombian Government is fully aware of these facts. The Commission regrets that no reply was given and that the case of the individuals who disappeared from the Palace of Justice has still not been clarified or settled once and for all.

Since then, there have been new developments, one of them being the fact that a Public Order Judge, one of the "jueces sin rostro" [faceless judges] recently ordered that the Palace of Justice case be reopened and that the M-19 leaders who had just been reassimilated under the peace agreements, be arrested for the events that occurred at the Palace of Justice. His argument was that the events at the Palace of Justice were of such extreme gravity as to constitute crimes against humanity and were therefore not eligible under an amnesty law. Some of those affected by this ruling are M-19 leaders now actively participating in democratic government and working with the government of President Gaviria. Mention should also be made of the inquiry made in May 1992 by President Gaviria of the Attorney General of the Nation, Dr. Carlos Arrieta, concerning the implications of the court's decision and the position that the Public Prosecutor's Office should take vis-a-vis prosecution of this case, in spite of the amnesties that had been decreed for all those who participated in those events.

Finally, in connection with this same case, it should be noted that the executive and legislative powers reached a political agreement to stop the proceedings ordered by the Public Order Judge, so as to enact a special law declaring that all of the events at the Palace of Justice were, without exception, subject to an amnesty and were, therefore, res judicata. Therefore, all investigations and sanctions against those in the M-19 who participated in taking the Palace of Justice and those in the Armed Forces who participated in its retaking were canceled.

The Commission does not know whether, based on the scope of this new law, the courts will definitively close the specific case of those who disappeared from the Palace of Justice, to which this report refers. It must, however, point out that it agrees with the Public Order Judge's ruling that no political amnesty can be ordered in the case of such egregious crimes and crimes against humanity; enforced disappearance is among those crimes for which there can be neither an amnesty nor a statute of limitations.

OFFICIAL REPORT OF THE "DAS" ON MASSACRES

What follows are excerpts from the official report that the Administrative Security Department (DAS) supplied to the Special Committee of the Inter-American Commission on Human Rights that visited Colombia. The report was delivered on May 7, 1992, during the meeting that the Special Committee had with Mr. Fernando Brito Ruiz, Director of DAS, and with his senior officers. It summarizes some of the most serious incidents of violence in

Colombia between January 1990 and February 1992, showing the date, scene of the events, geographic location, number of persons killed, where the massacre took place and the name of the entity responsible for the massacre.

[1] The events surrounding this massacre, which were widely publicized in the national and international press, are also being examined by the IACHR, pursuant to the provisions of the American Convention. Therefore, without making any value judgment, the Commission is confining itself to recounting those facts that are public knowledge or that figure in public documents and whose veracity the Colombian Government has not challenged.

[2] Text taken from the remarks by the Minister of Defense, General Miguel Vega Uribe, to the House of Representatives (Dec. 1985), published in the pamphlet "Las Fuerzas Armadas de Colombia y la defensa de las instituciones". Summarized version by journalist Manuel Vicente Peña. Las Dos Tomas, Centro de Estudios Vida, Bogota, Fourth Edition, 1991.

[3] After the terrible events at the Palace of Justice, some members of the Armed Forces tried to blame Dr. Alfonso Reyes Echandía, President of the Supreme Court and one of the victims in this incident, for removing the security personnel guarding the building. This version was immediately refuted by eyewitnesses closest to the President of the Supreme Court, among them his personal secretary Herminda Narváez de Tello, Secretary of the Office of the President of the Supreme Court, a woman by the name of Janet, Dr. Inés Galvis de Benavides, Secretary General of the Supreme Court, and Dr. Carlos Betancourt Jaramillo, Chairman of the Council of State, which also had its offices in the Palace of Justice. The son of the President of the Supreme Court filed an action against the State and the Army, which is pending settlement. There is a report on the holocaust at the Palace of Justice by the Special Examining Tribunal, page 59. Official Gazette No. 37509, June 17, 1986.

[4] Report on the Holocaust at the Palace of Justice, Official Gazette of the Republic of Colombia, Bogota, June 17, 1986.

[5] The Commission had already been warned of the following: ... In Colombia the governments and officials are reluctant to give explanations for their official conduct, and much more so in the case of the Palace of Justice... "the authorities are so sensitive and the fever in our democracy is running so high that whatever is seen as less than unqualified support for the Government's actions is construed as being sympathy for the M-19 terrorists" ... any questioning of the Armed Forces, however reasonable it may be, draws a defensive and angry response from the upper echelons of command. Idem.

CHAPTER VIII

THE RIGHT TO FREEDOM OF ASSOCIATION AND TO FORM AND JOIN UNIONS

The right to form and join trade and professional associations is a basic principle that all 34 member states of the Organization must observe. All are bound by the provisions of the American Declaration of the Rights and Duties of Man, and 20 must abide by the provisions of the American Convention on Human Rights.

For the ILO, the world agency that oversees and protects these rights, the freedom to form and join labor unions must be guaranteed not only in law but in practice as well. The State bears international responsibility for seeing that the conventions are observed, regardless of whether the violations were committed by employers. The ILO's Union Freedom Committee believes Colombia's record of violations of union freedom is one of the most serious, especially as regards the guarantee of basic civil rights, which is a condition *sine qua non* for proper exercise of freedom of association. After examining the death threats made to union members, in its 259th report the ILO's Union Freedom Committee concluded that the Colombian case was one of the most serious cases it had ever seen where violation of the right to life was concerned; that impunity was widespread in the country and that the dramatic violence that Colombia was experiencing in general made any normal existence for the people impossible and prevented full exercise of union activities.

It added that the climate of terror that these threats create can only have an deleterious effect on the exercise of union activities, which can only be exercised when basic human rights are respected, in an atmosphere free of any form of violence, pressure or threat.

The international standards contained in the American Convention on Human Rights and the national standards embodied in the 1991 Constitution of Colombia to protect and defend the right to freedom of association and the freedom to form and join unions and their violation are as follows:

A. LEGAL PROVISIONS IN RESPECT OF THE RIGHT TO FREEDOM OF ASSOCIATION

| American Convention on Human Rights | Colombian Constitution |
|---|---|
| <u>Article 16. Freedom of Association</u> 1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or | Art.38. The <u>right to associate freely</u> to conduct the various activities in which people in society engage shall be guaranteed. |

| | |
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| <p>other purposes.</p> <p>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 or the rights and freedoms of others.</p> <p>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.</p> | <p>Art.39. Workers and employers have the right to <u>form unions or associations</u>, without state intervention. They shall obtain legal status merely by registering their charter.</p> <p>The internal structure and functioning of unions, social organizations and professional organizations shall conform to the legal system and principles of democracy.</p> <p>Legal status may be revoked or suspended only via court action.</p> <p>The authority of union representatives is hereby recognized, as are the guarantees necessary for them to perform their functions.</p> <p>Members of the armed forces and the police do not have the right to form unions.</p> <p>American Declaration of the Rights and Duties of Man</p> <p><u>Right of Association</u></p> <p>Art.XXII. Every person has the right to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature.</p> |
|--|--|

B. WAYS IN WHICH THIS RIGHT HAS BEEN VIOLATED

Members of the Colombian Labour Confederation (CUT) and the Special Committee of the IACHR discussed at length the various problems with the right to freedom of association and the right to form and join unions. The members of the CUT told the Special Committee that organized labor has some 900,000 members nationwide, out of an economically active population of 11.5 million. There are some 3 million that could be unionized. The serious impediments in the country's labor legislation, the posture taken by officials of the Ministry of Labor and Social Security, the anti-union sentiment among the vast majority of entrepreneurs, the campaign constantly being waged from the highest levels of Government via the mass media, and the war that the most

conservative elements of Colombian society have been waging against union leadership and activism are some of the reasons why more of Colombian labor is not organized.

They said that very few workers in Colombia are able to exercise their rights to organize for labor purposes, petition, bargain, collective contracting and strike. As for the application and enforcement of the ILO Conventions, Colombia --they maintain--is one of the few countries where this has never been possible, even though it ratified those conventions back in 1976 through Laws 26 and 27.

Although the 1991 Constitution recognizes the right to collective bargaining and strike, these continue to be severely limited because of the restrictions imposed on a number of activities that government authorities regard as a public service. These authorities ignore the observations of the ILO's Union Freedom Committee to the effect that a general restriction of the right to strike is permissible only in the case of those services that are classified as essential, which the ILO defines as those whose suspension could jeopardize the safety or life of all or part of the public. ILO watchdog agencies have also challenged the restriction on the right to collective bargaining imposed on a large group of civil servants classified as public employees.

It is obvious that in Colombia at the present time the civil and political liberties which the International Labor Organization (ILO) defines as being essential to the exercise of the right to form and join unions are being seriously curtailed, especially the right to the security of one's person. But **other rights are also being violated**, such as the right to **freedom of opinion, the right to express one's opinion and the right of assembly**.

C. PETITIONS RELATIVE TO THIS RIGHT

According to the CUT, between its establishment in November 1986 and May 1990, 538 union activists and leaders were killed and disappeared; from May 1990 to November 1992, another 35 were assassinated, bringing the total to 573 workers assassinated in the union's short four-year existence. The CUT then presented the IACHR's Special Commission with a petition denouncing the following assassinations of its leaders and members between 1988 and November 1990:

YEAR 1988

NEMESIO MACHUCA PAYAN was murdered around 7:00 p.m. on February 14, 1988, while at a drinking establishment. Gunmen shot him to death. He was 33 years old and the father of two. **JOSE FRANCISCO POLO** was killed on April 9, 1988, following a sports event at the Workers Recreation Center. He was killed by gunmen using weapons of differing caliber. He was 50 years old and the father of three. Also killed in this incident were **HUMBERTO MARTINEZ** and **JOSE ARLEY BEDOYA IBARRA**. **ANGEL DAVID CASTAÑO AGUDELO** was killed on September 24, 1988, at a commercial establishment. A group of locally-known gunmen was present when armed men entered and attacked the gunmen, gravely wounding the worker, who was then shot by the gunmen themselves. He

left two daughters. **EMILTON RODRIGUEZ**, December 19, 1988, was wounded by gunmen at around 10:00 p.m.; the company ambulance took him to Bucaramanga, where the same gunmen shot him again and killed him. He left one daughter. **JOSE ANTONIO VEGA HERNANDEZ** was murdered by two armed men at the door to his home, on December 27, 1988. One of his small daughters was wounded in the incident. He left four children.

YEAR 1989

PEDRO SOLANO was shot and killed on January 1, 1989, while in a commercial establishment. He left four children. **SEFERINO CUADROS** was killed by hired gunmen on January 14, 1989, as he was headed for a public establishment. **PEDRO PAEZ** was killed on the street on January 14, 1989. He left five children. **JOSE HOMES ESTEBAN** was killed on January 29, 1989, as he was headed home. He left three children. **LIBARDO RENGIFO**, agrarian leader of the municipality of Palestina, department of Caldas, was attacked on Saturday, April 29, when a gunman shot him five times in the back; he was taken to Hospital Universitario in Manizales, where he died on Tuesday, May 2. On May 9, **BENJAMIN SOTELO**, **JOSE FRANCISCO MANTILLA** and **JOSE SANTOS CAREPA**, members of the Mining Union in the Municipality of Ataco, Department of Tolima, were attacked there by gunmen, who killed Sotelo and Mantilla and wounded Jose Santos. **TEODORO QUINTERO**, auditor for SINTRACUEMPONAL, Bucaramanga, disappeared on May 11, at 8:30 a.m., after being forced into a taxi bearing license plates XK-9371. He was later found dead on the road from Bucaramanga to Piedecuesta, in the Department of Santander. **NICOLAS CIRO GIRALDO DE JESUS** was assassinated on May 12, 1989, while waiting for the bus to work. He left two children. **ADOLFO PEREZ AROSEMENA** and **CARLOS ENRIQUE MORALES**, journalists and collaborators of the Office of the Deputy Director of the CUT in Valle, were found dead in the city of Cali, Department of Valle, on May 21. Their bodies showed obvious signs of torture. **ISMAEL MONTES PEÑA** and **EVERT MANUEL CABRERA** (17 years old), a high school teacher and student, respectively, were murdered by hired gunmen in the village of Guadual, district of Los Manguitos, municipality of Arboletes, Urabá region, Department of Antioquia, on May 26. Professor Montes was a member of the Antioquia Teachers Association, ADIDA. **CESAR ARCADIO CERON CHANTRE**, auditor with the Inderena Workers Union, SINTRARENA, Cauca branch, and a member of the Human Rights Committee in that department, was killed by gunmen on June 10. They shot him twice in the head as he was leaving his home in Popayán, Department of El Cauca. **LAUREANO SANTAMARIA** and **JAIRO LEON VILLEGAS**, payroll clerk and professor, respectively, from the Necoclí Rural Development Center in Antioquia, disappeared on June 15. The two were forcibly removed from the educational facility and shoved into a vehicle probably belonging to Inderena. **TOMAS VILLA VIVERO**, a

former laborer on the La Suerte farm, former member of the farm's worker-employer committee and a member of the CUT-affiliated National Agroindustrial Labor Syndicate (SINTRAINAGRO), was murdered by a paramilitary group in Apartadó, Department of Antioquia, on July 18 at 7:00 p.m. **JORGE GONZALEZ, MIGUEL MARTINEZ Y TORREGLOSA**, peasants affiliated with the CUT-affiliated National Small Farmers Union (SINPAGRI), disappeared in the district of Costa de Oro, municipality of Tierra Alta, Department of Córdoba, on July 18. Their whereabouts are still unknown. On July 28 **MARIA ELENA DIAS PEREZ**, Third Public Order Judge, a member of the National Association of Judges and Judiciary Employees (ASONAL JUDICIAL) who was conducting the investigation into the Urabá and Córdoba massacres, was assassinated in Medellín by hired gunmen as she was on her way home. **MANUEL JOSE ZAPATA CARMONA** and **OMAR LEON GOMEZ MARIN**, professors at the Universidad de Antioquia and members of the Association of University Professors (ASPU), were shot down by hired gunmen in the Municipality of Bello, Department of Antioquia, July 29. **HENRY CUENCA VEGA**, a worker at the Valle Cement Company and President of the National Federation of Cement and Construction Workers (FENALTRACONCEM), Secretary General of the Latin American Federation of Construction, Cement and Wood Workers (FLEMACON) and a member of the National Board of Directors of the CUT, was assassinated by three hired gunmen in front of his home in Bogotá, at 9:30 p.m. on July 30. Mr. Cuenca had already been the victim of an assault in the district of Yumbo. **GILBERTO SANTANA**, principal of the Algarrobo District High School and a member of the Magdalena Teachers Association (EDUMAG) -an affiliate of the Colombian Teachers Federation (FECODE) and of the CUT, was shot and killed by hired gunmen in the district of Fundación, Department of Magdalena Medio, at 6:00 a.m. on August 1. **IVAN RESTREPO** and **FIDEL ROA**, driver and worker on the Guatapuri banana plantation, respectively, and both members of the National Agroindustrial Labor Syndicate (SINTRAINAGRO), were abducted on July 27 and found dead in the District of Chigorodó, Department of Antioquia, on August 1. **DANIEL JOSE ESPITIA**, general treasurer of the Asociación Nacional de Usuarios Campesinos (ANUC) and **FABIO MIRANDA PUPO**, Coordinator of the UP political organization in Ayapel (Córdoba), were shot down by hired gunmen at 6:00 p.m. on August 9, in the Cantacalero district of the city of Montería, Department of Córdoba. **JUAN RIVERA**, Vice President of the Union of Construction Materials Workers (SUTIMAC), was assassinated by hired killers in the District of Puerto Nare, Department of Antioquia, on August 11. In protest, the Nare cement workers conducted a work stoppage in the Sierra and Caracolí districts, along with the Colcarbueros Union. **ORLANDO ROA GRIMALDUS**, 30, an employee of the Santander Power Company and a member of the National Union of Electrical Workers of Colombia (SINTRAELECOL), was shot down by hired killers on the night of Sunday, August 13, while at his home in Bucaramanga, Department of Santander. **CARLOS ENRIQUE VALENCIA**, Magistrate with

the Bogota Superior Court, was assassinated by hired gunmen in Bogota, Wednesday, August 16. **JUAN DE DIOS RINCON** was assassinated on August 30, 1989, as he was waiting for the bus to work. He was President of the San Alberto Council. He left three children. On September 9, in the district of Apartadó, Urabá region, Department of Antioquia, **SEBASTIAN MOSQUERA**, accountant for the National Agroindustrial Labor Syndicate (SINTRAINAGRO) and a member of the National Board of Directors of the CUT, was killed by hired gunmen as he was on his way to inform workers of the status of the labor negotiations. **EULISES GOMEZ**, union activist and negotiator of the most recent demands of the SINTRAINAGRO-affiliated banana workers, was assassinated by paramilitary on the Rio Vista farm, Municipality of Carepa, Department of Antioquia, on September 9. **CARLOS MARTINEZ**, a SINTRAINAGRO bargainer on the Agrocarambolos farm, was taken by force from his home by four heavily armed individuals in civilian dress, who then killed him. The incident took place in the municipality of Apartadó, department of Antioquia, on September 9. In Cali, in the Department of El Valle, **MANUEL NOVOA**, an activist with the National Rubber and Plastic Workers Union (SINTRACAUCHOPLASTICO) and former president of the Goodyear Workers Union, disappeared on September 15 as he was coming off work; on September 18, his body was found floating in the Cauca river and showed visible signs of torture; his hands were tied behind his back. **LUIS E. DURAN**, a member of the Nare Cement Workers Union, was murdered by a hired gunman as he was headed home from work, on Friday, September 29, in Nare, Department of Antioquia. In Medellín, department of Antioquia, at 7:00 a.m. on October 17 **HECTOR JIMENEZ RODRIGUEZ**, a Magistrate with the Criminal Court of Antioquia and a member of the ASONAL JUDICIAL, was assassinated by hired gunmen as he was waiting for friends to pick him up. **DIEGO LUIS MARTINEZ**, a worker and member of the National Labor Union (SINDEBRAS), was murdered by hired gunmen while at his home in the district of Turbo, Department of Antioquia, Friday October 20, at 6:30 p.m. **ENOC CAMPOS** and **ALBERTO LOPEZ**, members of the National Agroindustrial Labor Syndicate (SINTRAINAGRO) and part of the Strike Committee formed in connection with the list of demands submitted by the banana workers, were murdered by hired killers in the municipality of Apartado, Uraba region, on the night of Saturday, October 21. On October 23 the banana workers conducted a work stoppage to protest this new act of violence. **NEL DARIO GOMEZ**, a worker at the Colombian Agrarian Reform Institute (INCORA), was assassinated in Montería, Department of Córdoba, on November 20, at 6:00 p.m., as he was leaving his place of work. Two men on a motorbike shot him down. He was Secretary General of the INCORA Syndicate, SINTRADIN, in Córdoba. On October 25, **EUCLIDES LIZARAZO PERTUZ**, a teacher and member of the Magdalena Teachers Union (EDUMAG) and employed at the Cristo Rey High School in Santa Marta, was killed there by hired gunmen. Mr. Lizarazo had been threatened on numerous occasions. **RODRIGO**

QUINTERO DE LA PAVA, once a member of the Executive Board of ASONAL JUDICIAL, and **GUILLERMO MENA LOZANO**, an activist in that organization, were killed in Cali on October 26. Their bodies, found in the Cauca river, showed signs that they had been tortured after being abducted as they were leaving their place of work the previous Thursday night. **MARIELA ESPINOZA ARANGO**, magistrate and member of ASONAL JUDICIAL, was assassinated by hired gunmen in Medellin, Department of Antioquia, on November 1. On November 24, **ARTURO LOPEZ** and his wife **MARIA DE LOPEZ**, both teachers and members of the Meta Teachers Association (ADEM), were attacked by hired gunmen in Guamal (Meta). Maria de Lopez was killed instantly, while Arturo Lopez survived. **HECTOR MARTINEZ** was murdered by hired gunmen on November 27, 1989, as he was on his way from San Alberto to Puerto Carreño. **LUIS ALFONSO PEREZ VINAZCO**, an active member of the CUT-affiliated National Agricultural Workers Union (SINALTRAINAL), disappeared in the municipality of Bugalagrande, Department of Valle del Cauca, on the evening of November 30. **HERIBERTO ESPINOZA**, Secretary General of the Antioquia Amalgamated Union (FESUTRAN) and a member of the National Executive Board of the CUT, was assassinated by hired gunmen in Medellin, Department of Antioquia. The assassination occurred on Friday, December 15 at 6:00 p.m., two blocks from FESUTRAN headquarters. He was shot seven times and taken to a clinic, but died shortly thereafter.

YEAR 1990

AQUILES GUTIERREZ OCHOA and his **FATHER** disappeared on January 4, 1990, as they were on their way to a farm outside San Alberto. On January 14, peasant farmers **JOSE DEL CARMEN ALVAREZ BLANCO**, **SANTIAGO GONZALEZ**, **JORGE FERMIN CALDE HERNANDES**, **ANDRES FLOREZ ALTAMIRANDA**, **CARMELO GUERRA PESTAÑA**, **JOSE PETRO HERNANDEZ**, **LUIS CARLOS RICARDO**, **ELIDE RICARDO PEREZ**, **GENARO CALDERON**, **RAUL PEREZ**, **WILSON FUENTES**, **DIOMENES BARRERA OROZCO**, **VICTOR ARGEL HERNANDEZ**, **JUAN MEZA SERRANO**, **MIGUEL PEREZ**, **JUAN LIOS ESCOBAR**, **LEONEL ESCOBAR**, **OVIDIO SUAREZ**, **JUAN CRUZ**, **BENITO PEREZ PEDROZA**, **JENOR ARRIETA LORA**, **MIGUEL GUTIERREZ ARRIETA**, **RICARDO BOHORQUEZ**, **LUIS MIGUEL ESPINOZA**, **URIAS BARRERA OROZCO**, **JOSE BARRERA OROZCO**, **MIGUEL LOPEZ**, **JORGE MARTINEZ**, **MANUEL MONTES MARTINEZ**, **CRISTOBAL ARROYO BLANCO** and **JORGE CASTRO**, of Pueblo Bello in the municipality of Turbo, Department of Antioquia, were taken away by a group of 40 men in military dress and by civilians carrying galil rifles or submachine guns. The paramilitary group that calls itself Los Tangueros claimed responsibility for this act. **JESUS ALBERTO BONILLA PICO**, former Treasurer of the Colombian Teamsters Union (UNIMOTOR) and former Vice Chairman of the Santander Labor Union (USITRAS) -both CUT affiliates-, was assassinated by two hired killers, who shot him in the back

as he was leaving the USITRAS offices at 10:00 a.m. on January 26. He was employed by the department and was a member of SINTRADEPARTAMENTALES. For some months he had been receiving telephone threats warning him that he would be killed if he did not abandon his union activities. **EPAMINONDAS ALZA** and **FELIPE BLANCO**, members of the CUT-affiliated Indupalma Workers Union (ASINTRAINDUPALMA), were assassinated by hired gunmen, who also wounded PEDRO MARIA RINCON and another individual whose identity is unknown. The incident occurred in San Alberto, Department of Cesar, on January 27. **FREDY PEREZ, JAIME BELTRAN, ELIECER SUAREZ** and **SAUL ORTIZ**, members of the National Indigenous Organization of Colombia (ONIC), were murdered in the indigenous community of Zenu on January 30. **MARCOS PADILLA** and **ELIECER GUERRERO**, workers on the La Toscana farm in the municipality of Carepa, Department of Antioquia and members of the National Agroindustrial Labor Syndicate (SINTRAINAGRO), were murdered by armed men who came to the encampments on the farm in question. **FELIPE BLANCO VARGAS** was shot by armed gunmen on January 27, 1990, as he was waiting for transportation along the road in the La Palma district. Military stationed at a base some 100 meters away were immediately notified of what happened, but refused to pursue the gunmen. He died on February 7, leaving four children. At 9:00 a.m. on February 13, a man and a woman shot **GUSTAVO DE JESUS GONZALEZ**, Vice President of the National Union of Colcarbuos Workers, La Sierra branch, in the Department of Antioquia, while he was on a Medellín city bus. **AMPARO TORRES SERRANO**, a teacher and a member of the Santander Teachers Union (SES), was murdered by hired gunmen in Bucaramanga, Department of Santander, on February 13. **AMAYER MARQUEZ**, director of the National Association of Hospital, Clinic and Medical Office Workers (ANTHOC), Cartago Branch, was killed by three hired gunmen as he was leaving his home in the municipality of Cartago, Department of El Valle, on February 16. **DARIO OSPINA**, professor at the Juan XXIII School and a member of the Antioquia Teachers Association (ADIDA), was killed by a group of hired gunmen in the municipality of Bello, Department of Antioquia, on February 16. **ANGEL GONZALEZ, DOMINGO GONZALEZ** and **RODRIGO JIMENEZ**, farm workers on the Mundo Nuevo hacienda and members of the National Agroindustrial Labor Syndicate (SINTRAINAGRO), Cordoba branch, were taken from the hacienda by a group of 10 heavily armed men who surrounded some of the workers and then cut their victims' throats and threw them in a pond on hacienda land. This happened in El Carmelo, Alto Sinu region, Department of Cordoba, on February 17. **BERTA GALEANO** disappeared in the same incident. On February 19, two armed men driving by in a Renault 4 shot and killed **FABIOLA ROCIO LOAYZA ALZATE**, 38, married, Director of the Simona Duque School and a member of the Antioquia Teachers Association (ADIDA); when the shooting happened, the victim was entering home in the neighborhood of Aranjuez in Medellín, Department of Antioquia. **MASSACRE IN THE**

TOWN OF EL CASTILLO, Department of Meta. Farmhands **JACINTO SOA** (60), **BERNARDINO PRIETO** (55), and young **HORACIO PRIETO, OMERLY MONTOYA, JOSE ARCADIO ZEA** and **EUGENIO PRIETO** were killed by 15 men in military dress, on February 24. **RUBEN DARIO ULLOA ULLOA**, a teacher and member of the Caldas Teachers Union (EDUCAL) and working in the municipality of Risaralda, Department of Caldas, was murdered by hired gunmen in the municipality of Virginia, department of Risaralda, on February 24. **SILFREDO RODRIGUEZ** was killed on February 24, 1990, as he was headed for his home in Cachira (Norte de Santander). He was shot after being forced out of the vehicle he was in. He left two daughters. **NORA RUIZ FLORES**, librarian with the Unguia Agricultural Institute and a member of the CUT-affiliated Union of National Education Ministry Workers (SINTRENAL), was killed along with another four leaders of the Unión Patriótica, in the municipality of Unguia, Department of Choco, on February 28. Also on February 28, **JOSUE VARGAS MATEUS, SAUL CASTAÑEDA**, leaders of the Carare Peasant Association, and journalist **SILVIA MARGARITA DUZAN** and **MIGUEL ANGEL BARAJAS**, members of the Bogota Journalist Club, were killed by hired gunmen in the town of Cimitarra, Department of Santander, as the journalist was doing a story on them. **PABLO EMILIO CARDENAS**, Treasurer of SINTRAPROACEITES, and his brother-in-law **ALVARO MORA**, a worker and member of ASINTRAINDUPALMA (both SINTRAPROACEITES and ASINTRAINDUPALMA, headquartered in San Alberto in the department of El Cesar, are CUT affiliated), were murdered as they were going from San Alberto to Bucaramanga on March 4. Then their bodies turned up in the town of Chimita. They had been tortured and shot in the head. Cardenas left two daughters. **GILBERTO JOSE MONTES MONTIEL** (28), a teacher at the Rabo Mocho School in the village of Tapa Sola, municipality of Planeta Rica, Department of Cordoba, and a member of the Cordoba Teachers Association (ADEMACOR), was murdered by hired gunmen on March 6. On March 14, **ANTONIO ESPEJO HERRERA, JAIME VIDES AMARIS** and **JORGE POLO CAMARGO**, of the National Natural Resource Institute (INDERENA), were harassed near the mouth of the Fundacion River, Department of Magdalena, by the Colombian Air Force (FAC), COCUM III Airbase. When they reached Cienaga, they were hit by machine-gun fire and Mr. Espejo was killed. In the municipality of Apartado, Department of Antioquia, **DIONISIO BOLIVAR**, a banana worker on the El Congo plantation and a member of SINTRAINAGRO, was assaulted by gunmen on Tuesday, March 13, and died on Wednesday, March 14. **AUGUSTO MALDONADO**, a political and grassroots labor leader and a member of the ASINTRAINDUPALMA union, was murdered by hired killers as he was leaving his house in the Primero de Mayo neighborhood in the municipality of San Alberto, Department of El Cesar, on March 15. **JOSE AUGUSTO MALDONADO** was killed by a hired assassin on March 15, 1990, as he was arriving home in the Primero de Mayo neighborhood of San Alberto (Cesar). On March 23, **RENE CASTILLO BOHORQUEZ**, a leader of the FECODE-CUT affiliated Boyaca Teachers Union (SINDIMAESTROS),

was assassinated by hired gunmen in the municipality of Almeyda, Department of Boyaca. On March 27, **GENTIL CORDOBA**, a worker on the Guatapuri farm and treasurer of the Chigorodo section of SINTRAINAGRO and a town councilman, was taken from the farm by a number of men and found dead several hours later. **ANSELMO DIAZ**, a worker on the Guatapuri farm and a member of SINTRAINAGRO, was taken away by force by a group of men and found dead several hours later. This incident occurred in the municipality of Chigorodo, Department of Antioquia, on March 27. **MIGUEL A. CORREA** and **FELIX ESPITIA**, workers on the El Romeral farm in the municipality of Chigorodo and members of SINTRAINAGRO--Mr. Correa was Secretary General of SINTRAINAGRO--, were assassinated by hired gunmen. **LEON DARIO JIMENEZ**, a member of the Complaints Committee of the National Union of Coffee Bank Workers (SINTRABANCA) -an affiliate of FENASIBANCOL-CUT, was shot by two hired gunmen who had been lying in wait on a motorbike in Monteria, Department of Córdoba, on March 29. **LUIS FERNANDO MUÑOZ**, a worker with Curtiembres Titan and member of the company union (SINTRATITAN), was murdered by several armed men who identified themselves as members of the Cali death squads; when they were unable to get into his house, they fired their weapons, killing a friend and wounding his wife and mother-in-law. This happened in Cali, Department of El Valle, on April 17. **JOHN JAIRO GALINDO** and **JOHN EDWARD FANDIÑO CORREA**, workers on the La Venturosa and Araguates farms and members of SINTRAINAGRO, were at the Palermo Restaurant when they were arrested by police in Medellín on May 16. They were found dead on May 17. On June 6, **JULIO CESAR ARIAS CASTAÑO**, 40, a teacher serving as Director of the Teachers Services Center in the Municipality of Bolivar (Antioquia) and a member of the Antioquia Teachers Association (ADIDA), was assassinated while on a city bus, as he was headed for work in Medellín. **AMERICO TORRES IBARGUEN**, a worker on the La Caridad farm and a member of its Employee-Management Committee, and **CLAUDIO BENITEZ**, another farmhand at La Caridad, were both members of SINTRAINAGRO; on June 6, at around 6:30 a.m., 12 uniformed men, some wearing wigs, came to the farm carrying long- and short-range weapons and machetes. They assembled the workers and, claiming to be a guerrilla group, grabbed the two workers and shot them in the presence of their co-workers. Mr. Americo was wounded and started running; they caught him and killed him with a machete. In Cali, at 10:15 p.m. on June 6, **PEDRO PABLO OSPINA**, an ECOPETROL worker and member of the USO Labor Union, was attacked by an armed gunman who shot him four times and killed him as he was getting ready to board the bus for work. Mr. Ospina had survived an attempt two years earlier. **SILVIO VALENCIA MEDINA**, Professor and Director of the La Rejoya Rural School and a member of the Cauca Teachers Association (ASOINCA), was killed in Popayan on June 7, at 7:30 a.m. **HECTOR MARIO LOPEZ**, Secretary General of the Cali Public Enterprise Labor Union, was assassinated at his home in Cali on June 18. **EUGENIO GALINDO OROZCO**

and **JOAQUIN GALINDO OROZCO** were assassinated on June 6, in the municipality of Apartadó, by two hired assassins in civilian dress, who were firing their guns when they entered the Galindo Orozco home. Eugenio was Secretary of Education of the Apartadó Branch of SINTRAINAGRO. Both were members of the Frente Popular. **APOLINAR FABRA** was assassinated on July 8 at Galicia farm in the municipality of Carepa (Antioquia). A group of armed men in civilian dress came to his place of work, called for him by name and then shot him dead at close range. Apolinar was the Solidarity Secretary at the Carepa Branch of SINTRAINAGRO. **ALFONSO CUESTA** was murdered on July 9 on the Marta Teresa farm in the municipality of Carepa (Uraba Antioquia) by a group of armed men in civilian dress, who shot him at close range. The farm had been searched some days earlier by the Army. Alfonso was a banana worker and a member of SINTRAINAGRO. **JORGE SIERRA**, Director of the Monteria Small Businessmen's Syndicate (UPECOMON-CUT), was murdered on July 7 in Montería (Córdoba). **ALVARO GOMEZ PADILLA**, Education Director and Chief of the Montería Education District, and a member of the ADEMACOR-CUT Teachers Union, was murdered in Montería on July 15, by gunmen who shot him in his own home. **GONZALO CASTAÑO ZAPATA**, President of the Caldas Federation of Labor (FEDECALDAS-CUT) and a member of the National Board of Directors of the CUT, in events that transpired in Manizales on July 19. **AVELINO ACHICANOY**, 32 and a member of the Strike Committee of the Nariño Coca Cola Bottling Plant Union, was found dead on the outskirts of the city, beside the road north. He had been shot in the head. His death orphaned 5 children. He was killed in the city of Pasto on July 25. **MARBI ALONSO FORONDA**, a worker from La Palma and a member of USITRAS, was murdered on Monday, August 6, in the El Pedregal District, Municipality of Puerto Wilches, Department of Santander, by a band of hired gunmen who showed up at his house at dawn. To protest this new crime, 500 workers held an indefinite work stoppage to pressure national and local authorities to give them protection. **RAFAEL JARAMILLO**, a worker from Croydon and a SINTRAINCAPLA delegate, was murdered as he was leaving his home on his way to work, by two men who shot him seven times in the head. This happened in the Barlovento neighborhood of Bogota, on August 23. **HECTOR CASTRO, ROQUE JIMENEZ** (workers) and **LEONEL SUMAQUE** (foreman) of the Alameda farm, all members of SINTRAINAGRO, were on their way to work in Chigorodó (Antioquia) at 5:00 a.m. on August 27, when they were attacked by a group of men dressed in army clothing. On August 26, **MANUEL VERONA**, a member of the National Agroindustrial Labor Syndicate (SINTRAINAGRO), was murdered on the Chinia farm in Urubá (Antioquia). He was with friends when a group of armed men suddenly appeared and fired at close range; one worker and his wife were wounded. **ROEL ALVIS**, a member of the Complaints Committee of the National Board of the Securities Teamsters Union (SINTRAVALORES), was taken into custody at his home on August 29, at 7:30 a.m. Two individuals who identified themselves as F-2 agents

ordered him to accompany them and put him in a black jeep. His bruised body was found later at El Espinal (Tolima), with bullet wounds to the head. **HERNANDO LUGO**, a member of the Hospital Workers Union of Cartagena, was killed on September 6 in Cartagena. **RUTH CLAVIJO**, a school teacher in Medellín, was murdered there on September 7. **HERBERT HENAO**, a worker at the Villanueva farm in Apartadó (Antioquia), was shot and killed instantly by a group of men who showed up at the farm on September 14. **SAUL ANAYA MAZA**, a member of the Córdoba Teachers Association and of the Colombian Federation of Teachers (FECODE), was assassinated on a main street in Montería on September 19. **EDILMA MORENO**, an activist with the National Agroindustrial Labor Syndicate (SINTRAINAGRO) and a member of the Apartadó town council after being elected to it as the candidate of the Unión Patriótica, was killed on October 19 as she was leaving the Apartadó town festival with friends. On October 25 **PABLO ANTONIO GONZALEZ** and **JOHN JAIRO GOMEZ**, members of the SINTRAPROACEITES Union, were killed when they were assaulted by a group of armed men wearing military dress. Gonzalez and Gomez were forced out of their vehicle and shot immediately. **PABLO ANTONIO GONZALEZ** was murdered by gunmen on October 24, 1990, in the municipality of San Alberto. **ESTEBAN PALMET DOMINGUEZ**, Director of the Secondary Education Institute (INEM) of Apartadó (Antioquia), was killed by gunmen at 10:00 p.m. on October 26, as he arrived home. To protest his assassination, the Antioquia Teachers Association (ADIDA) began a department-wide work stoppage. On October 27, as he was crossing a main street in the town of Ricaurte, **LUIS EDUARDO CALDERON**, a leader of the FENSUAGRO-affiliated Cundinamarca Farm Workers Union (SINTRAGRICUN), was killed by two gunmen on a motorbike. **OFER HERNANDEZ**, a member of the Departmental Board of the Antioquia Labor Federation, Envigado Branch, and a worker with the FURESA company in the Ardila Lulle group, was killed on October 31 in the northwestern corner of Manrique District, at around 11:30 a.m., as he was leaving his place of residence to go to work. He was approached by a gunman who shot him seven times and killed him. **HERNAN GENTIL MARTINEZ PABON**, a teacher working for the Department of El Cauca, in the district of San Lorenzo, municipality of Bolívar, was murdered by hired gunmen on the night of November 4. He was 33 and left two small children. **GERMAN REDONDO**, Secretary General of the Colombian Sugarcane Industry Workers Union (SINTRAICAÑAZUCOL), was murdered at 6:45 a.m. on November 13, on board a bus that was carrying the workers from the San Carlos de Tuluá (Valle) mill.

For their part, representatives of the Colombian Teachers Federation (FECODE) described in detail the problems that teachers and teachers' unions were experiencing and delivered the following list of teachers murdered in 1989:

FERMIN MELENDEZ ACOSTA, former President of ADEMACOR, President of the CUT-affiliated Córdoba Federation of Labor (FETRACOR) and a member of the National Board of Directors of the CUT, was murdered on January 1. **FRANCISCO DE PAULA PEREZ CASTRILLON**, a professor at the "Pedro Luis Villa" School, Manrique district, Medellín, was killed on January 1. **GILDARDO CASTAÑO OROZCO**, Professor at the ESAP and the Universidad Catolica de Pereira and President of the Risaralda Teachers Association (APROR), was killed on January 6. **MARIA ELVIRA DE ANGULO**, a teacher at the Barrancabermeja National School, Department of Santander, was killed on January 9, 1989. **ALFONSO GARCIA CANO**, professor at the "Piedrecitas" village school in the municipality of Turbo, Department of Antioquia, was crossing the campus of the Universidad de Antioquia on January 12, 1989, when he was shot by individuals from a passing vehicle. **MARIO ORTIZ**, professor of the Universidad del Valle. **LUIS FRANCISCO CHAPARRO**, Vice President of the Office of the Deputy Director of the Caquetá Teachers Association (AICA), was murdered on January 25, 1989, in the district of Curillo in the department of Caquetá. **JONHY JOSE VANEGAS**, a professor in the Caracolicito district, municipality of El Copey, department of El Cesar, was murdered on January 26. **JAIME GOMEZ LONDOÑO**, a teacher, was killed on January 28, 1989, in the municipality of Quinchia in the department of Risaralda. **HECTOR AUGUSTO SINNING CARDENAS**, full-time professor of Social Sciences at the "Manuel H. Iriarte U." Night School, was killed on February 16, 1989. **ORLANDO ANIBAL MONROY VERGARA**, IDEM professor in the municipality of Caucasia, department of Antioquia, was killed in that municipality on February 19. **JAIME E. JESUS GALLEG0 FLOREZ**, another IDEM professor, was also wounded. **JOSE VICENTE MUNAR OSORIO**, a teacher at the Primavera Rural School in Génova, department of Quindío, was murdered on February 27 as he was on his way to work. **Sister TERESA RAMIREZ**, a nun with the Company of Mary and a union activist, was teaching at the Cristales High School in the municipality of San Roque, department of Antioquia when she was murdered on February 28, 1989. **JORGE LUIS GARCES**, a teacher at the Miraflores School, village of San Antonio, municipality of Mistrató, department of Risaralda, was murdered on March 12. He had been receiving threats since 1987. **SAUL REINA PEREA**, professor at the Salado Grande Village School, municipality of Puerto Leguizamón, Putumayo National Intendancy, was assassinated on March 20 at his place of work, in the presence of his wife and two children. **HERNAN CASTRO CALDERON**, professor of the San Pablo High School, municipality of Curillo, department of Caquetá, was murdered on April 3. He had been receiving threats. **LUIS ALBERTO CARDONA**, Professor at the Santa Rosa de Cabal Cooperative University in the department of Risaralda and Chairman of the Greater Caldas Human Rights Committee, was killed on April 4 near Tarapacá, on one of the Alcalá Express Line buses. He had been receiving threats. **FERNANDO MESA CASTILLO**, professor of the Cartago National High School, department of El Valle, and a professor at a

private high school. **JORGE OSORNO OSORNO**, a teacher from the municipality of Amalfi and its delegate to the Assembly of the Antioquia Teachers Association (ADIDA), was killed at his home in Amalfi on May 7. **HERNAN CUELLO DAZA**, a teacher at the José Antonio Dávila Departmental High School in the municipality of San Juan del Cesar, Department of La Guajira, was killed on May 19. **HUMBERTO JOSE BLANCO JULIAO**, professor at the Gabriel Escobar Ballesta National High School in the Municipality of Plato, department of Magdalena, was killed at his home on May 20. The professor had been receiving threats. **MIGUEL ANTONIO RODRIGUEZ RUBIO**, principal of the Córdoba Institute in Bogota, D.E., was attacked at the school on the night of May 21 and was taken to the San Ignacio Hospital, where he died moments later. **MILTON MARQUEZ MONTAÑES**, professor of the La Pitala rural school, municipality of El Carmen, department of Santander, was killed in that village on May 24. **EDILBERTO MARIN PATIÑO**, professor at the La Dorada National Institute, La Dorada municipality, department of Caldas, was killed on May 28. **LEONEL GARCIA RESTREPO**, a teacher who worked at the farm camp, was killed on July 8. **MANUEL MARIA MALLARINO** was killed in the presence of his 9-year old son. **GUILLERMO PASOS**, a professor at the Puerto Wilches Industrial Technical Institute, department of Santander, was killed on July 8. A member of the staff of the National Rehabilitation Plan Program was also seriously wounded. **ANTONIO FERNANDEZ CHILITO**, a teacher at the César Negrette Velasco School in Popayán, department of El Cauca, was murdered on August 2, 1989, as was his father, Mr. **DEMETRIO FERNANDEZ** and his brother **BANDELINO**, in the municipality of San Sebastián, department of San Sebastián. On August 10, **GUSTAVO DE JESUS MIRA RAMIREZ**, a teacher at the Maria Bernal School in the Municipality of Itaguí, department of Antioquia, and an activist with the Antioquia Teachers Association (ADIDA), was coming from the Peldar Union and headed for the highway when he was killed. **JULIO CESAR PEÑALOZA**, a professor at the Soacha Departmental High School and a town councilman, was seriously wounded on August 18 in the attack on Dr. Luis Carlos Galán Sarmiento. He died on August 23. **RICARTE CUARTAS RAMIREZ**, auditor of the Caicedonia Local, was killed on September 20 as he was returning from presiding over the Municipal Assembly. He was a guidance counselor at the José Eusebio Caro High School. **TEODORO VASQUEZ BORIGUA**, a professor at the Samper High School in the municipality of Guaduas, department of Cundinamarca, was killed on September 24 as he was about to enter his house. He had been transferred from Chaguaní (Cundinamarca) because he was being threatened. **ALVARO CAÑAS LONDOÑO**, a teacher at the La Presentación High School and union coordinator in the municipality of La Virginia, Department of Risaralda, was killed on September 28, at a place called Guadalupe, between Pereira and La Virginia. **JOSE ALIRIO RODRIGUEZ**, a teacher at the Santa Cecilia rural school (municipal contract teacher) in the municipality of Landázuri, department of Santander, was killed on October 9 in the village of El Estanco in that

same municipality and department. **EVER GENTIL HOYOS PALECHOR**, a teacher at the Santa Marta Rural School, municipality of La Sierra, department of El Cauca, was killed on October 14. **LUIS FERNANDO MESA RIOS**, a teacher at the Village School in El Barcinal, municipality of El Santuario, department of Risaralda, and a community leader, was killed on October 19. **EUCLIDES LIZARAZO**, former member of the Norte de Santander Teachers Union (ASINORT), a former secretary of UTRANORTE and a teacher at the Cristo Rey School in Santa Marta, department of Magdalena, was killed on October 25 as he was leaving his place of work. He had been receiving threats since May 1988. **CRISTOBAL ALVAREZ ROJAS**, a teacher in the municipality of Aratoca, department of Santander, was killed on November 21. **MARIA DE JESUS NEIRA RODRIGUEZ DE LOPEZ**, a teacher in the municipality of El Guamal, department of Meta, and her husband **ARTURO LOPEZ** were shot on November 23, as they were leaving the school on the outskirts of El Guamal. MARIA DE JESUS NEIRA died instantly and ARTURO LOPEZ was gravely wounded and received emergency treatment at a Villavicencio clinic. On November 20, **BORIS ZAPATA MESA**, professor at the University of Córdoba, was shot and killed in the main square of Montería, capital of the department of Córdoba. **LUIS ANTONIO GARAVITO PARRA**, a teacher from the village of Lejanías, municipality of Granada, Department of El Meta, was killed on November 28, in Dosquebradas, a municipality in the same department. **ILDUARA SANCHEZ PALACIOS**, a teacher from the village of Barcinales, municipality of Santuario, department of Risaralda, was killed on December 9 in Pereira in that same department.

These very serious collective complaints, which involving a succession of separate incidents, cannot be processed by the Commission according to the mechanisms and procedures established in articles 48 to 51 of the American Convention since the collective Colombian cases are beyond the scope of any procedural mechanism contemplated in either the Convention or the Commission's Statute and Regulations. Nevertheless, the Commission is absolutely certain that it has the competence to take cognizance of complaints of this nature on a case-by-case basis, whatever degree of responsibility the Colombian Government may bear in each case.

D. FINAL OBSERVATIONS

The Commission must inform the Colombian authorities that it is deeply disturbed by these terrible events and would therefore like to impress upon those authorities, which are undoubtedly aware of these facts, the importance of investigating them and punishing those responsible, and of considering, in each case, the possibility of paying fair compensatory damages to the victims' next-of-kin.

CHAPTER IX

FREEDOM OF THOUGHT AND EXPRESSION

In their meeting with the members of the IACHR's Special Commission, members of the International Federation of Journalists (FIP), the National Association of Colombian Journalists, the Colombian Newspaper Reporters Club and representatives of other news agencies described the scenario in which Colombian journalists have been operating and their problems as follows: the Constitution adopted in 1991 is a sweeping statement of rights that represent the underpinnings and bulwark of democracy and are designed to overcome the existing political and social crisis. This legal framework, which was the product of the deliberations of the Constitutional Assembly, is the means the Colombian people have determined they will use to contend with the troubling human rights violations. As the Attorney General Carlos Gustavo Arrieta Padilla remarked, those violations have brought Colombia to the brink of barbarism and fly in the face of goals and concerns that for three centuries have been morally and politically informed by a belief in man and his values.

A. LEGAL PROVISIONS IN EFFECT IN RESPECT OF FREEDOM OF THOUGHT AND EXPRESSION

| American Convention on Human Rights | |
|--|--|
| <u>Article 13. Freedom of Thought and Expression</u> | <u>Article 14. Right of Reply</u> |
| 1. Everyone has the right to freedom of thought 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 through any medium of one's choice | 1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish. |
| 2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: | 2. The correction or reply shall not in any case remit other legal liabilities that may have been incurred. |
| a. respect for the rights or reputations of others; or | 3. For the effective protection of honor and reputation, every publisher, and every newspaper, motion picture, radio, and television company shall have a person responsible who is not protected by immunities or special privileges. |
| b. the protection of national security, public order, or public health or morals. | Constitution of Colombia |
| | Art. 20. Every individual has the |

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 entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds, including those of race, color, religion, language, or national origin, shall be considered as offenses punishable by law.

right to express and impart his thoughts and opinions, to report and receive truthful and impartial information, and to establish communications media.

These are free and have a social responsibility. The right of reply is, under circumstances of equity, guaranteed. There shall be no censorship.

Art.73. Journalistic activity shall be protected in order to guarantee the professional freedom and independence of journalists.

Art.75. The broadcast ban is a public good subject to State control and management. Equality of opportunity in access to the use of radio frequencies shall be guaranteed, under the terms established by law.

B. HOW HAS THIS RIGHT BEEN VIOLATED

Amid these terrible conflicts, the International Federation of Journalists reported that the Colombian journalist was the target of persistent attack, frequently ending in death. The function of a journalist is to point to and report the most serious problems in the country. Although essential at times like these, that function has been affected by the frequent attacks from drug traffickers, guerrillas, military and paramilitary groups that want to control the media. In general, they all resort to the most extreme practice, i.e., murder.

That being the case, the Commission is disturbed by the Colombian Government's timid and somewhat irresponsible conduct; it shies away from solutions to the problems besieging journalists. Journalists are, in fact, immersed in a conflict. While their function is protected by the right to inform, human rights abusers make them the targets of repeated and disproportionate attacks.

Petitioners say that the foregoing is compounded by the fact that the Colombian State has repeatedly and systematically restricted freedom of the press, expression and thought, thereby making it difficult for the media and journalists to exercise fully their right to report the facts. On November 8, 1992, the Government declared a state of internal disturbance throughout the

national territory, and on November 9 issued Decree 1812 which, *inter alia*, prohibited total or partial broadcast, either by radio or television, of communiques either attributed to or actually coming from guerrilla groups and other criminal organizations associated with drug trafficking and terrorism. It also made it illegal to either identify or interview witnesses to violent episodes and individuals associated with the guerrilla movement, terrorism or drug trafficking. It also prohibited live broadcasts, direct from the scene of the events, of acts of violence.

The Commission is disturbed by these regulations because they effectively curtail the right to inform and to be informed. Journalists are not being allowed to exercise their profession freely. The right that every society has to be informed of the facts is being restricted.

These same bans had been decreed in 1970 through Decree No. 1134; in 1977 through Decree No. 2066, and in 1988 through Decree No. 2204; this shows that the Colombian State has repeatedly pursued a policy of restricting freedom of the press and of expression.

Now the situation has reached crisis proportions. The International Federation of Journalists believed it was vital that the Commission see the reports obtained from the Human Rights Coordination Office of the Regional Office for Latin America so that the Commission might include the specific issue of the human rights of journalists on its agenda during its visit to Colombia.

C. PETITIONS RELATIVE TO THIS RIGHT

The Commission has received information on the following assassinations of journalists in Colombia, notwithstanding the other violations of one's physical integrity that have been committed:

- 1. January 25, 1991:** Journalist **DIANA TURBAY QUINTERO** was killed as she was being rescued by the Police at the "La Bola" farm in the jurisdiction of Copacabana near Medellín, where she was being held hostage. There was a clash between police and drug traffickers and in the exchange of fire the journalist, who was editor of the Magazine "Hoy por Hoy" was shot and mortally wounded. On January 21, 1992, the Office of the Attorney General decided to dismiss two officers with the National Police's elite force, Col. Lino Pinzón Naranjo and Captain Elmer Ezequiel Torres Vela, and to discipline another two members of the Police Force, Major Hugo Eliodoro Aguilar Naranjo and Lt. Iván Díaz Alvarez, for irregular conduct in the rescue. The Attorney General, Dr. Carlos Gustavo Arrieta Padilla, contends that the military did know that the journalist and several other colleagues were present at the site when the police mounted its assault. Journalist Richard Becerra, a witness to the shooting that left Diana Turbay dead, told the media that when he and Diana--who had already been mortally wounded--boarded the Police helicopter, a man who identified himself as José Humberto Vásquez Muñoz told him to take a good look at him, that he didn't have anything to do with the tragedy that had taken place there. According to Becerra, the man said that he was one of the kidnappers but had decided to inform on them. On January 26, Vásquez Muñoz was mysteriously found dead in Girardota, Antioquia, after he had been

released. The Director of the National Police, General Miguel Antonio Gómez Padilla, denied that Vásquez Muñoz even existed and his name does not appear in the police reports. He also said that the Attorney General's office was telling "half truths."

2. February 13, 1991: EZEQUIEL ARIAS LOPEZ, killed in Bogota, according to records of the Administrative Security Department (DAS).

3. March 11, 1991: LUIS FRANCISCO LORA DE PAULA, killed in Bogota according to the records of the Administrative Security Department (DAS).

4. March 18, 1991: CAMPO ELIAS GARCIA PINZON, killed in Socha, Boyacá, according to records of the Administrative Security Department (DAS).

5. April 23, 1991: Journalist **ANTONIO MARIA ORTIZ GOMEZ** with the newspaper "La Opinión de Cúcuta", killed by unidentified gunmen in that city.

6. April 14, 1991: journalists **JULIO DANIEL CHAPARRO** (29) and **JORGE TORRES NAVAS**, editor and reporter with the El Espectador, respectively, were killed by four men using automatic weapons, on La Reina Street, Segovia, Antioquia, as they were finishing up a series of reports on the sources of violence in Colombia (El Espectador, December 5, 1991). They had been with El Espectador for two years. The police said that the killings were the work of drug traffickers in the Medellín cartel. On May 10, DIJIN reported that from its investigations it had determined that the killings were the work of the FARC. On December 5, El Espectador reported (page 12-A) that troops of the XIV Army Brigade captured Ramiro Alfonso Madrid Lezcano (23) and Joaquín Julián Lezcano Ortiz (40), for whom arrest warrants had been issued by the Medellín Public Order Court. The newspaper stated that the two individuals arrested were associated with the "José Antonio Galán" Popular Militia, an urban faction of the National Liberation Army, ELN. The Lezcano cousins, who were minors, denied any involvement in the crime and thus far there has been no official decision on their arrest. In April 1992, the Office of the Attorney General of the Nation concluded that the members of the FARC were the authors of the **CHAPARRO** and **TORRES** killings. The report of the Special Investigations Office discarded "...any involvement by members of the Army, National Police or some other State Security agency in this crime." It maintained that the two journalists were killed accidentally when they were mistaken for paramilitaries. The double assassination was attributed to the IV and XXVII Fronts of the FARC and to the "José Antonio Galán" Popular Bolivarian Militia of the ELN.

7. April 24, 1991: JORGE TORRES NAVAS: See point 6 above.

8. May 20, 1991: JOSE LIBARDO MENDEZ, journalist and liberal leader, and **CARLOS JULIO RODRIGUEZ**, a broadcaster with the "Voz de la Selva", an affiliate of the Caracol Chain, were killed by hired gunmen on a motorcycle in Florencia (Caquetá). **JUDITH ARISTIZABAL, MENDEZ'** wife and a broadcaster with the Voz de la Selva, was wounded in the attack.

9. May 20, 1991: CARLOS JULIO RODRIGUEZ: See No. 8.

10. August 3, 1991: Journalist **HERNAN BLANCO** was killed by an unknown assailant in the Villa Javier neighborhood of southeastern Bogota. The motive for the crime is unknown.

11. August 16, 1991: HERNANDO HERNANDEZ was killed in Arauca (Caldas) by persons unknown.

12. August 25, 1991: JUAN SUAREZ FLORES, a contributing editor and assistant with the newspaper El Tiempo in Berlin (Germany) was killed by a guard in a rural sector of Mosquera, Cundinamarca. The facts in this case are confusing.

13. September 13, 1991: ARCENIO HOYOS LOZANO, director of "La

Voz de Ariari" in Granada, was killed by a hired gunman near the broadcast house in Villavicencio. He was shot seven times. **14. September 13, 1991: JULIO SERRATO** died on September 13 in a clinic as a result of bullet wounds received on Wednesday night, September 11, as he was going home in the city of Manizales. Police reported that two unidentified individuals were suspected of killing this 33 year old journalist, who was also an actor and communications professor at the University of Manizales. **15. October 4, 1991: JAVIER RAMOS ACEVEDO**, a bookkeeper and sports broadcaster, was shot in Maracaibo, Tuluá (Valle). **16. October 8, 1991: RODRIGO AHUMADA BADO**, journalist and political leader, died from injuries sustained when he was attacked by four men in the neighborhood of El Pando, Santa Marta, on September 26. **17. October 20, 1991: RAFAEL ANTONIO SOLANO BROCHERO** (51), a Santa Marta journalist, was shot four times by two unknown gunmen who attacked him in front of his house in Las Tablitas, Santa Marta. He was a correspondent for El Tiempo and owned a press and advertising agency in Fundación. The assassins escaped and the motive for the crime is unknown. **18. November 14, 1991: ANTONIO RIOS**, who was abducted on the second weekend in November (between 8 and 10) was found dead on November 14 in the department of Antioquia. Neither the motive nor the authorship of the crime is known. **19. December 28, 1991: NESTOR HENRY ROJAS**, a 14-year correspondent with El Tiempo in the department of Arauca, was killed by a hired gunman as he was entering his home on Avenida Olaya Herrera, at 6:40 p.m., in the presence of his wife and children. The murderer shot him three times. His family went to his aid, but he died in the San Vicente Hospital. The mother of Rojas Monje claims that the crime was the work of MARCOS AYALA, a political leader and candidate for the Governor's office, about whom El Tiempo had published a report in October to the effect that he made secret agreements with the guerrillas. The Second Army Brigade, garrisoned in Bucaramanga, claimed that the murder was the work of a commando of the Colombian Revolutionary Armed Forces, FARC. "Rojas' colleagues in Arauca said that he was being pressured and threatened because of his intransigent anti-guerrilla posture." The police arrested a suspect, CESAR BASILIO TORRES. On April 13, "El Tiempo" reported that the Office of the Attorney General of the Nation would publish a report implicating some members of the military and certain political leaders, as well as two soldiers who had confessed to being directly involved in the crime. **20. January 21, 1992: CARLOS ALBERTO LLANOS**, murdered at his home in Cali by two men who attacked him with knives, according to reports released by the Police. He was an attorney, a political activist and director of the Noticiero Popular del Circuito Toledar of Colombia. Police sources say that the crime was a case of personal revenge, because LLANOS had entered his apartment in the company of the two men who, they surmise, were Llanos' friends; the police hypothesize that these two men killed him and then fled in the victim's car. **21. February 1, 1992: JORGE ALBERTO BERMUDEZ ZAMBRANO** was killed in Bogota at the intersection of Highway 12 and 5th street when five individuals, intent on robbing him, stabbed him as he was walking with a friend. Fortunately, the friend ran and was able to save himself. He was a newspaper reporter, a former photographer for the Office of the President of the Republic and was at the time

working in Los Angeles, in the United States. He was 42 years old and was vacationing in his native Colombia. **22. February 14, 1992: FREDDY MARIO ERAZO** was 29 years old and a sports commentator for the program "El Combo Deportivo de Radio Super". He was found dead by members of the National Police, having been shot forty times in the Envigado Amphitheater near Medellín. Curiously, he had not slept at home the night before and the theory was that he was first abducted and then murdered. It is also believed that the crime was the work of organized crime. The authorities are launching an investigation. He was married and had a nine-year old daughter. **23. March 27, 1992: JOSE MIGUEL AMAYA ESPINOSA**, 38, was murdered by two men who shot him, apparently during an assault at a soda fountain in downtown Cartago. **24. May 6, 1992: ISMAEL JAIMES**, 35, director of the newspaper "La Opinión", was murdered at 7:30 a.m. in Barrancabermeja, Magdalena Medio. Witnesses say that hired gunmen shot him just as he was dropping off his two children at school. This incident occurred fifteen minutes before the members of the Inter-American Commission on Human Rights of the Organization of American States arrived in Barrancabermeja. The authors of this murder are believed to be paramilitary. Through the newspaper "La Opinión", JAIMES had been critical of the conduct of paramilitary, military, guerrilla and drug-trafficking groups. His murder was interpreted as part of a campaign of terror launched against journalists in Magdalena Medio by all of the sectors involved in the armed conflict.

Even though the Commission has the competence to take cognizance of any type of complaint against a State party to the Convention, regardless of the degree of responsibility that State might have in situations as complex as the one presented in this complaint, from the practical standpoint it would be impossible--whether as individual cases or a collective case, as requested--to process the facts that the complaint reports. Each case involves a violation of the right to life where members of this Colombian trade union died for practicing their journalistic profession. Cases like this one cannot be processed in accordance with the procedures established in articles 48 to 51 of the American Convention and point up the fact that the events occurring in Colombia exceed anything that the mechanisms provided for in the American Convention, or the Commission's Statute and Regulations were meant to handle.

The Commission is including this petition in this Special Report on the Situation of Human Rights in Colombia. It was delivered personally and collectively by the widows, children and other relatives of the victims and by the representatives of the journalists associations mentioned earlier. The Commission finds these cases deeply disturbing. While it knows the Government is aware of these cases, it must impress upon the Colombian authorities how important it is that these cases be investigated and the guilty parties punished. It would ask the Government to consider how the relatives of the murdered journalists might be compensated, since they, too, are innocent victims of the endlessly spiralling violence in Colombia.

D. FINAL OBSERVATIONS

The Colombian people are so defenseless that journalists are at the mercy of those who resort to the cowardly practice of assassination to intimidate them, repress them and coerce

them. The figures of the Administrative Security Department (DAS) show that 82 journalists were killed between 1977 and May 1991. Another 14 journalists were killed between May 1991 and April 1992, bringing the total number of journalists killed to 96. This figure testifies to the constant aggression to which Colombian journalists are subjected. According to the International Federation of Journalists, there have been more journalists killed in Colombia in the last 15 years than in any other Latin American country.

DAS statistics show that during the "war" on journalists declared by drug trafficking groups, a total of 44 journalists were killed. Research by the Centro de Investigación Popular, CINEP, shows that among professional groups, journalists account for the third largest number of victims of political and presumably political violence, with 7 murders, 9 kidnappings, 6 wounded and 1 threat in 1991. According to Alfredo Vázquez Carrizosa, former Foreign Minister and Chairman of the Permanent Human Rights Defense Committee, this situation "means that journalists are utterly unprotected; there is no one to protect them." The Office of the Special Adviser for Human Rights of the President of the Republic lists journalists, along with peasants and union leaders, as one of the most vulnerable sectors.

CHAPTER X

HOW THE ACTIVITIES OF IRREGULAR ARMED GROUPS AFFECT HUMAN RIGHTS IN COLOMBIA

When it met in regular session in Chile in 1991 and The Bahamas in 1992, the OAS General Assembly passed resolutions recommending that when reporting on the human rights situation in the member states of the inter-American system **the Commission should also make reference to how the activities of irregular armed groups affect human rights**. Therefore this report, like earlier reports on other countries, recounts the activities of such groups in Colombia and describes how the magnitude and severity of the activities of such groups have impaired the exercise of human rights in that country.

A. BACKGROUND FOR THE PRESENTATION OF THIS SUBJECT

The Commission has often made observations on the kind of violent scenario in which human rights abuses occur, on terrorism and, in particular, on how the activities of irregular armed groups affect the observance of human rights in the countries of the inter-American system. In a number of its reports, the Commission has discussed these problems. The Commission raised this problem with the General Assembly of the OAS in its Annual Report for 1990-1991, citing by way of example the fact that in its reports on the situation of human rights in El Salvador (1978), Argentina (1980), Colombia (1981), Guatemala (1981 and 1983), on the Miskito Indians in Nicaragua (1983) and in the updates to these reports, reference was made to the violence in the country in question and the activities of armed irregular groups were described.[\[1\]](#)

Particular reference should be made to the Commission's discussion of these issues and of terrorism in the aforementioned report on the human rights situation in Argentina, which was the result of its on-site visit there in 1979. In its 1990-1991 report to the General Assembly of the OAS, the Commission discussed this problem at length in an effort to establish the parameters within which it must operate.[\[2\]](#)

One particularly important precedent was in 1970, when the Commission decided to include the following topic within its general work program: Political and ideologically motivated terrorism as a source of human rights violations. In effect, on April 16, 1970, during its 23rd session, the Commission approved resolution OEA/Ser.L/V/II.23, doc.19 rev. 1, whereby it condemned terrorist and guerrilla activities as follows: "THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, CONSIDERING; That its duty is to defend human rights in the member states of the OAS, devoting particular attention to the observance of the rights mentioned in articles 1, 2, 3, 4, 18, 25 and 26 of the American Declaration of the Rights and Duties on Man and to make recommendations to the governments, in order to make the observance of those rights more effective; that repeated violations of human rights have occurred in the American hemisphere, under the label of political terrorism or urban or rural guerrilla activities,

"RESOLVES: I. To condemn acts of political terrorism and urban or rural guerrilla terrorism, as they cause serious violations of the rights to life, personal security and physical

freedom, freedom of thought, opinion and expression, and the right to protection, upheld in the American Declaration and in other international instruments. II. To declare that the political or ideological objectives cited as the reason for such acts do not alter the fact that they are serious violations of human rights and fundamental freedoms, nor does it exonerate the authors of such acts of their responsibility for the commission of those violations. III. To include the topic 'Political and ideological terrorism as a cause of human rights violations' on the Commission's general work program, so that the internal measures and international cooperation warranted by the seriousness of the problem may be studied. IV. To transmit the text of this resolution to the General Assembly of the Organization at its next regular session."

Another much more recent precedent of a not infrequent practice in the Commission's day-to-day business is the note wherein the Executive Secretary of the Commission, as a matter of routine business, conveyed the Commission's condemnation of a terrorist act that occurred amid the violence in a member country of the Organization. The note reads as follows:

June 15, 1989

His Excellency
Ambassador Mauricio Granillo Barrera
Permanent Representative of El Salvador
to the Organization of American States
Washington, D.C.

Excellency:

I have the honor to respond to your communication of June 9 of this year, where on behalf of the Government of El Salvador, Your Excellency informs this Commission of the assassination of Dr. José Antonio Rodríguez Porth, Minister of the Office of the President, in an attack that also claimed the lives of two members of his security guard and, as Your Excellency reports, was perpetrated by urban commandos of the Farabundo Martí National Liberation Front.

I agree with Your Excellency that this terrorist act violates the most elementary right, which is the right to life, and that it was a cowardly, premeditated and cold-blooded act.

The facts to which your communication refers will be brought to the attention of the Inter-American Commission on Human Rights. The foregoing notwithstanding, I am in a position to inform you that **the Commission**, like Your Excellency's Government, **vigorously condemns this act of terrorism** and that it has taken note of the Salvadoran Government's determination to bring these terrorists to justice and apply to them the full force of the law.

Accept, Excellency, the renewed assurances of my highest consideration.

Edmundo Vargas Carreño
Executive Secretary

B. LIMITATIONS NOTWITHSTANDING

As an international organization, the IACHR is subject to certain customary limitations whereby it is to confine itself to monitoring the observance of international human rights laws by States of the Organization of American States. Nevertheless, on its own and without overstepping its authority, it has also discussed how the activities of irregular armed groups help create the scenario of violence and affect the exercise of human rights. It has also expressly condemned such activities. While this report also discusses the Colombian Government's compliance or failure to comply with its obligations in the area of human rights, this chapter is devoted to examining how the atrocities committed by irregular armed groups in Colombia that work for drug cartels, the guerrilla groups still at arms and paramilitary bands are detrimental to the exercise of the most important human rights, in particular the right to life, the right to humane treatment and personal security, the right to personal liberty and the right to a fair trial. The systematic destruction of the country's basic infrastructure is an outrageous violation of the economic and social rights of Colombian citizens.

Equally abhorrent are the kidnappings, torture and murders committed day after day in Colombia, as acts of revenge or reprisal. Generally, these are committed by hired killers. The reprehensible murders committed every day in Colombia, allegedly as a form of social cleansing and attributed to paramilitary groups, are also violations of human rights and constitute an affront to the conscience of mankind. Even though this is widespread violence, growing in alarming proportions, the Commission has never discussed it because it regards kidnapping, assault and assassination as common crimes.

Since the Commission's reports are of particular interest to the average citizen and the relatives of the victims, who as a rule are not experts in international law, there is one point that needs to be clarified: the expression human rights, as used by the Commission, does not always have the same meaning it has in common parlance. In colloquial jargon, human rights would be any crime committed against an individual because one cannot conceive of rights that are not human. But this is not the definition used by the Inter-American Commission on Human Rights, an international organization created by the American States. For the Commission, the concept of human rights is much narrower, and are specifically those enumerated and defined in the American Declaration and in the American Convention on Human Rights. The provisions of those two instruments only classify as human rights violations those acts that are the exclusive responsibility, be it direct or indirect, of the member states of the inter-American system and do not give the Commission competence to take cognizance of, investigate or condemn any other acts.

These limitations and functions of the Commission mirror what was then the current thinking in international law. But international law is in constant evolution. Therefore, on its own initiative and without neglecting its most paramount duty, i.e., to be the watchdog of, defend and protect the human rights of citizens against abusive conduct by States, the Commission has been determined to move forward, operating within the framework of these constraints. It believes that the General Assembly resolutions mentioned earlier support, recognize and encourage its work.

C. SOURCES FOR THE PRESENT CHAPTER

When preparing this chapter the Commission relied on news reports put out by foreign and national news agencies; reports supplied by the government and by nongovernmental human rights organizations, and even certain petitions from individuals or associations of individuals directly affected by the activities of such groups. Some of those petitions are based on the fact that their claims and cases were mishandled or neglected by the Colombian domestic courts; invoking the principle of a State's international responsibility, those petitions accuse the State of failing to comply with its obligation to afford them proper protection and to defend their human rights from the brutal, relentless attacks of which they are victims. They blame the State and hold it accountable, mainly for negligence and for not bringing to trial and punishing the authors of these actions. Many of those authors, according to the petitioners, have been indiscriminately and improperly exempted from any form of trial or punishment and have been relieved of their obligation to pay their debt for their direct or indirect participation in atrocious crimes against humanity. This was done by enacting amnesty laws whose legality and fairness are challenged to the extent that they impair and deny the petitioners their rights.

D. PRINCIPAL WAYS THAT THE ACTIVITIES OF IRREGULAR ARMED GROUPS AFFECT THE EXERCISE OF HUMAN RIGHTS IN COLOMBIA

International standards of human rights, as contained in international treaties and conventions, are violated by the activities of irregular armed groups by the following:

1. Impairing the population's exercise of its human rights by forcing the Colombian Government, in response, to exercise clause 27 of the American Convention on Human Rights, which authorizes states parties like Colombia to establish temporary states of emergency and to suspend exercise of some of those rights and guarantees because of the serious danger and national emergency created by the activities of these irregular armed groups;
2. Provoking, by their activities, reactions from the Armed Forces or their agents; because of involuntary zeal or because of uncontrolled use of force or State terrorism to fight the terrorism of armed irregular groups, these reactions can generate human rights violations for which the Colombian State is responsible;
3. Provoking, by their actions, reactions from economically productive individuals and institutions; when the public authorities are unable to afford them adequate protection, these individuals and institutions have organized to defend themselves on their own, creating self-defense units (private armies); or they have entrusted their protection to security organizations. The underlying principle is to combat violence with violence. Some of these groups have ultimately become uncontrolled paramilitary groups that, in some cases, work in league with members of the military forces; in others cases they work with drug trafficking organizations. But in the process, they commit atrocities, sometimes acting on their own or even with official support.

E. RESPONSIBILITIES

The international responsibility of the State for what happens to individuals within its territory is a creation of modern public international law, since originally States, under the principle of sovereignty, did not recognize any type of international accountability of this nature. Today, the international responsibility of a State for violations of human rights of individuals living within its territory--be they nationals or aliens--is recognized in a number of international declarations and treaties on the subject, binding upon any contracting state.

When examining the issue of state responsibility for human rights violations, there are many and sometimes conflicting criteria for assessing that responsibility. In countries where agents of public forces have committed serious, massive violations of human rights, some government spokesmen contend that the State is not responsible; that such stories are the product of international misinformation campaigns calculated to discredit the government. The only violations they acknowledge are those attributed to "terrorist subversives". In cases where it is impossible to hide the fact that the violations were the work of public forces, they attempt to justify them by arguing that these violations occurred amid an armed confrontation; that it is a question of legitimate self defense or that it was a fortuitous circumstance triggered by some form of aggression. Still others argue that terrorists do not have human rights because they do not respect the human rights of others; that they must be eliminated wherever they are and that this is not a violation of human rights. None of these typical responses, cited here as examples of what the Commission has heard over and over again, is true of the Colombian Government.

A state may be responsible for a human rights violation committed within its territory in very different ways. Based on the principle of objective responsibility, States are responsible for any human rights abuse or violation committed by its agents or by its public institutions, just as the owner of an automobile would be responsible for the damages or injuries caused by that vehicle, even though someone else may be at the wheel. Therefore, States are responsible for the direct acts of their agents, even when those actions are not performed on orders from a superior or with the knowledge of that superior. Naturally, that responsibility is all the more serious when the violations or abuses are committed on orders from a superior, even when the author of the violation exceeds his orders. More serious still are violations that are the result of an official, systematic policy of human rights violations steered and directed from the highest levels of government, which is not the case with Colombia.

Although the State is not answerable for all human conduct, it is responsible when in emergency situations it puts its agents in special situations where there is a real possibility they will overstep their authority. The risk that the State runs increases even more when in times of war it trains its soldiers especially to react with extreme violence.

F. THE INTERNATIONAL RESPONSIBILITY OF THE STATE FOR THE ACTIONS OF IRREGULAR ARMED GROUPS

Apart from the responsibility that the State bears for actions committed directly by its agents, there is also the State's international responsibility for the actions of irregular armed groups, although there is no single criterion to establish the type and degree of that State

responsibility. Here again it is objective responsibility vis-à-vis the terrorist phenomenon. This responsibility is in respect of all its inhabitants, whether national or foreign, under the laws and jurisprudence governing aggravating circumstances such as improvidence, negligence, criminal complicity, impunity, etc., and by the mitigating circumstances of "necessary diligence", unforeseeability, the surprise factor, a lack of proportion that could not have been anticipated, etc. These circumstances also need to be weighed in each case: terrorist crime has some peculiar characteristics; it often involves unthinkably ferocious and barbaric methods. In still other cases, the responsibility may be mitigated somewhat by such factors as the victim's own shared responsibility, when that victim has, either voluntarily or involuntarily, provoked the crime.

As a report supplied by the Office of the Presidential Adviser on Human Rights on this subject puts it, the State of Colombia is obliged to protect residents in the country from violations of their rights by criminals, regardless of the motive for the crime and regardless of whether it is the work of armed groups or individuals. To provide that protection, the State organs that prevent and punish crime and the State's law enforcement agencies must be functioning properly. This obligation is recognized in the new Constitution. Several court rulings have elaborated upon it. For example, the Council of State has ruled that victims of the actions of State agencies and the victims of guerrilla warfare, drug trafficking or criminal activities are entitled to receive compensatory damages, provided it is reasonably established that the government did not provide the victim with proper attention (and without requiring, for example, that any threats to the victim be reported to the State and even if the victim had mechanisms available to protect himself), was negligent in its actions or failed in some way to perform its fundamental obligations. This responsibility exists regardless of whether it can be shown that either there was intent on the part of the State or its agents to harm the individual, that its officials were somehow to blame, or that they can be identified. The responsibility is established within a real context that considers the availability of State resources to compensate for the actions of the criminal groups directly responsible for the acts.

G. HOW HUMAN RIGHTS IN COLOMBIA ARE AFFECTED BY THE ACTIVITIES OF GUERRILLA GROUPS

For some years now, Colombia's civilian population has been the victim of indiscriminate, constant criminal aggression by Colombian guerrillas. The latter have claimed thousands and thousands of innocent victims nationwide: in streets, city squares, shopping centers, churches, buses, high schools, hospitals, etc. But this brand of indiscriminate, irresponsible violence that can claim anyone as its victim, is compounded by the selective, targeted actions of guerrilla groups. They kill political leaders of the traditional parties; local authorities such as mayors, governors, etc.; honorable but defenseless magistrates; journalists who will not be silenced by fear; humble peasants merely suspected of collaborating with the Army or who refuse to give tribute, food or lodging to guerrillas, to join their ranks or to allow their sons and daughters to join the armed struggle. They even kill those who refuse to continue to be part of the armed struggle and former guerrillas. For example, members of the EPL have been executed by the "Caraballo", an EPL dissident faction, or by other groups trying to prevent the EPL's political legitimization. The guerrilla movement has claimed that some of these incidents have been "mistakes", as in the case of the seven children who were killed in Algeciras, Huila, in September 1990, while in the company of policemen.

Between 1989 and 1992, the period to which this report refers, Colombian guerrillas stepped up their activities calculated to intimidate the civilian population. Summary executions or even executions of members of the group as punishment for having availed themselves of the amnesties increased. The terrorist acts and threats against civilians have mainly been designed to achieve a political effect, while their kidnapping and extortion are a means to raise funds to bankroll their subversive activities.

Another method used has been to use the civilian population as a hostage in combat situations. This happened in at least two recent attacks on municipal authorities in 1991 (Charta, Santander and Morales, Bolivar) where guerrillas kidnapped the families of policemen and took them to the main square, threatening to kill them as a means to pressure the police into surrendering, which is what happened.

As for the threats, extortion, kidnapping and summary executions when one refuses to pay ransom, in Colombia the practice whereby private citizens or small, medium or large businesses are required to pay sums periodically is called "**vacuna**" [vaccination] and is used by the guerrilla movement and openly and expressly defended by it. In exchange for those payments, the guerrilla group offers various forms of "security", even taking action against cattle rustlers and other types of common criminals. Many of the murders of peasants where neither author nor motives can be established and are reported as political murders, are in fact executions of persons of this type. Colombian investigatory agencies calculate that in 1991 the FARC collected close to 6 billion pesos from payments of this kind, not including the sums collected for coca crops. Extortion in the gold mines is estimated to be in excess of 8 billion pesos. Research agencies estimate the "gramaje" charge for coca crops, a charge similar to the "vacuna" along with a percentage of the profits of coca processing and shipment, at between 20 and 25 billion pesos. Estimates are that in 1991 the two main guerrilla movements received at least 80 billion from kidnappings, extortion, bank robberies and other illegal activities.

The same government source reports that kidnapping as practiced by the guerrilla groups is very political (hostage taking to negotiate to have reports and communiques made public, the abduction and holding of police agents and soldiers, the abduction of political and social leaders to negotiate the State decisions that they want or to encourage concessions in the negotiations) or other forms of extortion whose primary goal is to get the victims to pay large sums of money. Although used sporadically by the guerrilla movement since 1964, kidnapping has increased alarmingly in recent years, especially kidnapping for ransom. Although initially a guerrilla group will disclaim any responsibility for the kidnapping, it will later acknowledge that it was the author, or in the process of negotiating for the victim's release, relatives will obtain unmistakable evidence of the fact that guerrilla groups are responsible.

The principal victims of extortive kidnapping are large- and medium-size rural landowners, urban businessmen and foreign executives with the large oil companies. It has taken a serious toll on economic and rural activity; rural employment is down dramatically as more and more people from rural sectors move to the cities, swelling urban neighborhoods with migrants and displaced persons. In what would be properly classified as violations of humanitarian law, one might cite the multiple cases of executions of soldiers and policemen. In some cases, the guerrilla movements have executed soldiers and agents off the field of combat;

these acts are accompanied by torture or cruelty calculated to make the people or the agents afraid. Agent Luis Alfonso Mape had his hands amputated and was then executed in the presence of the family. The director of the Tolima Anti-narcotic Police was murdered in 1991 after being captured as he was making arrangements to have a poppy crop destroyed.

As for which weapons take the largest toll among the civilian population, the guerrillas continue to rely more and more on mines and "caza-bobos" bombs. While this is especially true in the Department of Santander in general, the municipality of El Carmen has been hardest hit. Its peasant population is accused of supporting paramilitary groups. More than 30 people have been injured as a result of this strategy. In some incidents, civilians have been the victims of bombs planted in public facilities or intended to destroy vehicles in which members of the armed forces and civilians were traveling.

H. WAYS IN WHICH THE ACTIVITIES OF VIGILANTE GROUPS HAVE AFFECTED THE EXERCISE OF HUMAN RIGHTS IN COLOMBIA

Between 1985 and 1989, dozens of vigilante groups were formed. Called paramilitaries, they worked for drug traffickers and for large rural landowners in guerrilla-embattled areas. At the same time, a few "self-defense" groups were formed in accordance with the laws allowing the establishment of such groups. These were gradually assimilated into the vigilante groups, which terrorized the civilian population, executed alleged sympathizers and agents of the guerrilla movement, and settled private scores as well. Although the self-defense groups were formed in accordance with the law, there was evidence that members of the public force had either supported or tolerated unlawful and violent acts committed by these groups, even after 1989 when self-defense groups became illegal. As recently as 1992, two army officers were retired because they were suspected of supporting self-defense groups.

Although the groups blamed for the large massacres in 1988 and 1989 are not nearly as active today, they are still responsible for assassinations and other criminal acts in certain areas of the country. Apart from the massacres and murders in rural areas, these groups have been particularly virulent against members of the judiciary and other agents of the State.

I. VICTIMS OF THE GUERRILLA WAR IN COLOMBIA

At its 84th session, the Commission discussed the predicament of the victims of the guerrilla war in Colombia and the problems with which the National Committee of Victims of the Guerrilla War (Comité Nacional de Víctimas de la Guerrilla - VIDA) is contending. This nongovernmental group presented the Commission with an updated report on this dramatic problem. Some of that report is summarized below:

One among many such episodes happened near Florián in the department of Santander on May 20, 1993. Guerrillas from FARC's 11th Front stopped a truck driven by Mr. Rodrigo Piraquive Triviño, a civilian driver in the employ of Sucre Battalion. Though the victim was utterly defenseless, they tortured him by taking out his eyes, cutting off his tongue and ears and castrating him. His wife and three small children have been left without any means of support.

Guerrillas with the EPL and FARC's 35th Front abducted an elderly priest, Father Javier Cirujano Arjona, the parish priest in San Jacinto in the department of Bolivar. Because he disapproved of the extortion and terror tactics that the subversives use against the civilian population, he was abducted and brutally murdered. When his body was found, he had been castrated and had been beaten on the head. His left leg had been cut with a machete. There were other signs of torture, such as burns and bruises. The public was outraged by this crime.

The fate of this martyr of the church also befell the Bishop of the department of Arauca, Monsignor Jesús Emilio Jaramillo, who had energetically condemned the guerrilla attacks on oil pipelines. He was tortured and murdered in October 1989. ELN guerrillas publicly claimed responsibility for the crime.

Another recent episode that left the public shaken was the murder of soldiers Abaunza Hernández and Benedo Avendaño Díaz on April 29, 1993, in the town of Nazareth in the department of Cundinamarca. They had been wounded in a guerrilla ambush and were being rushed to the hospital in a Red Cross ambulance. The ambulance was attacked by members of the "Juan de la Cruz Varela" and "Jaime Pardo Leal" subversive fronts. With the soldiers defenseless, unarmed and wounded, the guerrillas dynamited the ambulance. While the soldiers were still alive, the guerrillas disconnected them from the surgical equipment, took them out of the ambulance and shot them outright, in violation of every principle of the humanitarian law that they demand the Army observe vis-a-vis them.

Later, two of many assassinations that occurred in the suburbs of that municipality were those of Conservative Party leader don Florio Alvarez and of the liberal councilmen don Benigno Briñez, on June 21, 1993. Then there are the civilians who have been killed by the guerrillas, as the deceased leader don Eduardo Romero reported. Guerrilla terrorism has reached such an extreme that in the department of Cesar terrorist harassment triggered a massive exodus in Curumani on August 4, 1993, that threatened to leave the town completely abandoned.

Compounding this are the scandalous figures on extortive kidnappings. There were nearly 3,000 in the past year: 80% were the work of subversives and 20% were the work of common criminals. This inflicted a terrible toll on society, not to speak of the dampening effect it had on investment.

Nothing has come from all our efforts to put together a state program to help the immediate victims of the guerrilla war. This sector of Colombian society, consisting of some 500,000 people, remains completely abandoned, left alone to deal with their psychological trauma and without any humanitarian assistance.

Contrary to Article 13 of the Constitution and even the most elementary standards of humanitarianism, the State has failed to mount any plan for social and economic rehabilitation of the dozens of young people who have lost legs or arms to mines planted by subversives in the fields of the Colombian countryside.

After so many years of violence, the number of human rights violations committed by the guerrillas in Colombia continues to be ignored. Today, the subversive movement pursues a purely financial objective, indiscriminately and mechanically annihilating anything and anyone who is not with it. Using Vietnamese tactics and others like those used against the people of Afghanistan, it plants explosives where it chooses, explosives that end up taking innocent lives. In Orito, in the department of Putumayo, this criminal practice claimed the lives of small children were killed on August 12, 1993.^[3]

In the last three years, the Guerrilla Steering Group has dynamited oil pipelines 445 times. The country has lost millions as a result; enormous ecological damage has been done, since the petroleum spills contaminate streams, water sources and rivers; once arable land becomes sterile and millions of species of plants and animals die. The immediate result is that thousands of farm families living in contaminated areas are ruined because of the irreversible damage done to the ecosystem.

In this three-year period, the Simón Bolívar Guerrilla Steering Group has carried out 1,352 acts of indiscriminate terrorism and has killed 1,560 civilians. These are the reported murders; the figure should be increased by at least 80% since many crimes are reported as "common crimes" because relatives are afraid and do not believe the authors will ever be punished.

The Government pays so little heed to these matters that there are no statistics on the number of civilians wounded, tortured or mutilated by guerrillas, which is just further proof of how the victims of subversion have been abandoned.

Given the serious problems with which the victims of the guerrilla war in Colombia must contend, some of which are described in the VIDA report, the Commission has asked the Colombian Government for a report on the measures it is taking to protect and assist the victims of the guerrilla war. It has also asked that steps be taken to protect the life of the president of VIDA, who has received repeated death threats. The following is the text of the note that the Chairman of the Commission, Dr. Oscar Luján Fappiano, sent to the Minister of Foreign Affairs:

At its 84th session, the Inter-American Commission on Human Rights devoted special consideration to a request from the National Committee of Victims of the Guerrilla War, to the dramatic situation that the individuals directly victimized by the activities of Colombian guerrillas are experiencing...

Based on these considerations, the Commission is asking that Your Excellency provide whatever information you deem appropriate on the steps the Colombian Government is taking to deal with this very serious problem, which affects this large segment of the Colombian population. These people have been unjustly attacked by the various guerrilla groups operating in the country.

Further, given the threats of imminent death being made against the President of the National Committee of Victims of the Guerrilla War, the Commission would request that

the Government take the measures it deems appropriate to protect the life and safety of Dr. Fernando Antonio Vargas.

Accept, Excellency, the renewed assurances of my highest consideration.

Although the Commission has not yet received any official reply from the Government on this matter, from statements that the Minister of Defense made to the press, the Commission was pleased to learn that the Colombian authorities have reacted favorably. The Minister said that the Government had received the note with satisfaction and would be providing the requested information as soon as possible.

**J. MEASURES REPORTED BY THE COLOMBIAN GOVERNMENT TO
CONTROL SELF-DEFENSE ACTIVITIES AND COMBAT PARAMILITARY
GROUPS**

- Decrees 1199 and 1034, of 1987, orders that rewards be given to those who supply the authorities with information leading to the arrest of individuals for whom warrants have been issued or who present evidence suitable for building a case of criminal liability.
- Decree 1437, of July 30, 1987, establishes imprisonment as the penalty for the unlawful use and marketing of military apparel.
- Decree 1631, of August 27, 1987, establishing public order courts to investigate and try punishable offenses that have caused serious social disturbance.
- Decree 180, of January 27, 1988, adds provisions to the penal code and the code of criminal procedure, to combat terrorist acts and attacks on individual freedom, economic holdings and public security and tranquility.
- Decree 181 of January 27, 1988, amended by Decree No. 474 of March 16, 1988, creates the Superior Public Order Tribunal, which has its seat in Bogota and jurisdiction nationwide.
- Decree 678 of 1988 declares the region of Urabá (Antioquia) an emergency zone and an area of military operations because of the genocidal acts committed by anti-social groups in the municipalities of Turbo and Apartadó.
- Decree 261 of February 6, 1988, amends Article 29 of Decree 180 of 1988, to create the crime of homicide for terrorist purposes.
- Decree 2490, November 30, 1988, exempts from punishment those who, after having been either the author of a crime that is within the jurisdiction of the public order courts or an accomplice to its commission, cooperates with the authorities to shed light on the facts and ascertain the identity of those who participated.

- Decrees 813, 814 and 815, of April 19, 1989, are to combat vigilante groups and bands of hired killers; these decrees establish regulations for bearing arms and create the elite corps of the national police and an advisory and steering committee for operations against groups of hired killers.
- Decree 2047, September 5, 1990, creates mechanisms to prosecute the trial of those who have committed crimes related to disrupting public order. This decree was supplemented by Decree 2147 of September 14, 1990, to the effect that once the Attorney Delegate for Human Rights has received a report from the judge who took the confession from the individuals to which Decree 2047 refers, said Attorney Delegate is to assign an official to take the measures necessary to guarantee full respect for the rights of the accused and to see that those who have made statements confessing to their crimes are properly protected.
- Decree 2790, of 1990, issues the Statute for the Defense of the Judiciary: the public order courts and the specialized courts are combined to form a single jurisdiction; legal mechanisms are instituted to protect the judges and others participating in criminal proceedings in that jurisdiction. A national office of the deputy director for public order courts and sectional bureaus were created to provide the operational support needed to enable these courts to perform their functions and to strengthen the auxiliary organs of justice.
- Decree 3030, December 14, 1990, establishes the requirements that must be met to reduce penalties in exchange for confessing crimes committed up to September 5, 1990.
- Decree 303 of January 29, 1991, amends Decree 3030 of 1990 to reduce penalties and establish non-extradition without requiring confession.
- Decree 99 of 1991 amends and introduces additions to the Statute for the Defense of the Judiciary, contained in Legislative Decree No. 2790 of 1990.
- The trial decrees became permanent law through Decree 2265, adopted by the Special Legislative Committee on October 4, 1991. The measures the government has adopted to deal with self-defense and paramilitary groups have varied in nature. The entire criminal justice apparatus has been strengthened, better enabling investigators to perform their functions. Judges have been given increased personal security services; agencies with specific responsibilities vis-à-vis the problem have modernized the entire administrative and operational apparatus to combat foci of violence.

Situations in which various officials have been assassinated

In this regard the Government has informed the Commission the following:

The assassinations of a number of Colombian officials have something in common: they were all subjected to barbaric cruelty by various forces in the self-styled "Simón Bolívar

Guerrilla Steering Group" while held captive in various regions of the departments of Casanare, Cesar, Huila, Norte de Santander, Putumayo and Santander.

These are but a sample of the *modus operandi* used by the guerrilla movement to commit crimes of all sorts, against any person or institution that opposes its ends. There are no limits to the violence it inflicts upon its victims, to the point that it has terrorized and created fear in the surrounding community, especially in those areas in which it is an established presence.

In a communication of November 1992, the government describes the heinous murders and other brutal acts committed by various elements of the Simon Bolivar Guerrilla Steering Group against civil servants of humble origin. These were young people "with spotless records, who had discharged their functions according to the highest standards of ethics and professionalism, being loyal, courageous and honorable. They were guided by moral principles and custom and respected the Constitution and the laws for the welfare of society and their families."

In communications of December 1 and December 16, 1992, the Colombian Government continued to provide quite extensive and detailed statistical data on the damage caused in that country by irregular armed groups. The information shows that between January and November 1992, there were 39 ELN assaults on oil pipelines and refineries; the dates and places of these assaults are given as is a description of events wherein Colombian public officials were killed. Many died after being tortured by subversives and hired killers working for drug traffickers. The Government of Colombia is requesting that this information, which describes cruel and barbaric crimes, be supplied to the members of the Commission to be taken into account when preparing the report on the situation of human rights in Colombia, pursuant to the provisions of General Assembly resolution AG/RES. 1043 of 1990.

Assassinations of reincorporated former guerrillas by groups affiliated with the Guerrilla Steering Group

On March 23, 1993, the Commission received another communication from the Colombian Government which transcribed a note received from parliamentarians in the Esperanza, Paz and Libertad movement. That note described how those who had laid down their arms and entered politics in Colombia were being killed. It stated the following:

In 1990 and 1991, several rebel movements concluded peace agreements with the Colombian Government: the M-19, the Revolutionary Labour Party and the Quintín Lame Armed Movement. In March 1991, the EPL (Ejército Popular de Liberación) signed agreements that led to the demobilization of 2,000 guerrillas. We made this decision conscious of the changes at work in the nation and the world, without forsaking the ideals of social justice and democracy and after an in-depth internal discussion democratically conducted for all the country to see. Signing the demobilization agreements on behalf of the International Socialist was Dr. Manuel Medina, a prominent member of the European Parliament; the Catholic Church was represented by Monsignor Gerardo Vera Bustamante.

Having moved into the arena of institutionalized politics, we and other sectors joined together to form the M-19 Democratic Alliance. Our agenda has always been clear and we have participated actively in the democratization of the country, in the political renewal, in the process of shaping alternatives, and in the nation's development.

But this action has been affected by those who refuse to accept that peaceful means might achieve change. This was shown by the murder of 165 members of the EPL, the majority committed in Urabá by the Simón Bolívar Guerrilla Steering Group. Members of other demobilized organizations have also been killed by groups from the extreme right. Compounding the problem is the fact that in Colombia armed intimidation is being used in large areas of the country to prevent any legally established political parties from freely engaging in political activities.

[1] Annual Report of the IACHR to the General Assembly, 1990-91, p. 507.

[2] *Idem*, pp. 504-514.

[3] SINEP had already reported this tragedy to the Commission on August 17, 1993, as follows: At around 8:30 in the morning, Olga Yami González Rengifo, age 8, was playing in her usual place when she found a grenade along the road from the town of Orito to the villages of Lucinaria and Churuyaco. She called to her sister and cousins to share her discovery; the children were fascinated by the object, which they called "la copita" (the little cup), and took it to their house, some 15 meters from the place where it was found abandoned. Roger Mario Yela Rengifo, the eldest in the group, immediately took the lead in this deadly game and got pincers to try to take the object apart. The grenade exploded immediately and the six children, who were all members of the same family, were killed instantly. The victims were: 1. Roger Mario Yela Rengifo, age 15; 2. Waimen Antonio Yela Rengifo, age 14; 3. Jhon Keni Yela Rengifo, 8; 4. Yelma Lucía Yela Rengifo, 6; 5. Olga Yami González Rengifo, 8; and 6. Yasmin González Rengifo, 6. Humberto Yela Rengifo, 12, was injured.

CHAPTER XI

THE RIGHTS OF INDIGENOUS PEOPLE IN COLOMBIA

According to official figures, there are nearly 600,000 indigenous people whom the Colombian State regards as an invaluable part of the nation and a cultural and social treasure. They are organized into 81 groups, speak 75 different languages and inhabit 25% of the national territory.[\[1\]](#)

A. THE RIGHTS OF INDIGENOUS PEOPLES UNDER THE NEW CONSTITUTION

The new Constitution approved in 1991 recognizes a number of rights that specifically pertain to indigenous communities:

- The State recognizes and protects the ethnic and cultural diversity of the Colombian nation (Article 7); it is the obligation of the State to protect cultural assets (Article 8).
- The languages and dialects of the ethnic groups are also official languages within their territories; in communities with their own linguistic tradition, education shall be bilingual (Article 10). Instruction shall respect and develop their cultural identity (Article 68).
- The communal lands of ethnic groups and reservation lands cannot be taken away or attached (Article 63).
- Ethnic groups settled in areas of archeological treasures have special rights over that cultural heritage, which rights must be regulated by law (Article 72).
- Indigenous persons who share border territories are recognized as Colombian nationals, provided the recognition is mutual (Article 96).
- The new Constitution creates senatorial posts and as many as five representatives to be elected by indigenous communities in a special national election (Article 176).
- The new Constitution provides that the indigenous peoples' authorities may exercise jurisdictional functions within their territory and in accordance with their own laws and procedures, provided they are not contrary to the Constitution and the laws (Article 246).

According to the Minister of Government, the entire State policy toward indigenous communities is based not only on the provisions of the new Constitution, but also on Law 21, of 1991, which ratified ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries and made it the law in Colombia.[\[2\]](#)

B. RIGHTS OF POLITICAL PARTICIPATION

These rights are exercised vis-a-vis national government and local self-government. At the national level, there are two senatorial positions and as many as five representatives to the National Congress reserved, under the Constitution, for representatives of indigenous peoples. In the election for the most recent Constitutional Assembly, two indigenous leaders were elected by popular vote. At the national level, the Office of the Presidential Adviser for Human Rights has a Committee on Indigenous Policy, on which indigenous people are well represented.

At the local level, indigenous persons serve on the municipal rehabilitation councils and the "indigenous town councils." Decree 2001, of 1988, recognized that the indigenous town councils were special public bodies charged with governing indigenous affairs and administering their territories.

The 1991 Constitution develops the concept of indigenous territories, which it regards as territorial entities on a par with departments, districts and municipalities. The indigenous territories are another regional configuration and may lie within the jurisdiction of one or several departments (Article 329). Their relations with the department--and especially with the municipalities that overlap the respective indigenous territories--are not defined in the Constitution. That relationship is to be defined in the respective law.

However, under the Constitution indigenous territories are autonomous for purposes of managing their interests. They may have their own authorities to govern them; they may administer their own resources, levy taxes and have a share of the national revenues (Article 287). The indigenous territories are to be governed by councils that, using their own customs and practices, shall be responsible for seeing that the laws are observed, for designing economic and social development policies, plans and programs within their territory, promoting and overseeing public investments, receiving and distributing revenues from those investments, overseeing natural resources, coordinating programs and projects, and helping to maintain law and order (Article 330).

Some believe that these functions give them the authority to control, cooperate, promote and coordinate, but not direct executive authority; by extension, therefore, the councils would be something that the municipalities or departments could use to carry out their own business.^[3]

Some indigenous organizations have three levels: ONIC (National Indigenous Organization of Colombia) is the federation of regional councils (the most important regional councils are the CRIT in Tolima and the CRIC in Cauca); under these councils come the *cabildos*, which most closely approximate the local communities and their traditional structure of authority. The regional councils are the bodies through which the indigenous communities can function as groups with a legal personality and interact with other indigenous organizations.

Although it can be traced back to the Spanish colonial institution of the same name, the *cabildo*--an institution of Colombian public law--is a representative body and enables the community to preserve established community principles and collective decision-making

procedures. It was law 89, in 1890, that officially adopted the *cabildo* as the organizational structure of indigenous people. It was a compromise between, on the one hand, self government and indigenous administrative autonomy, and on the other the unified political and legal system of the Colombian state.

The members of each *cabildo* (the number varies between 5 and 12) are elected by each community to one-year terms; they receive no pay and enjoy no privileges. The members of the *cabildo* elect a governor. Although Law 89 gives them broad authorities as regards internal administrative, executive and police affairs, their authority over the community is not binding; instead, it is a kind of moral authority. While this reinforces their democratic commitment, it weakens them vis-à-vis challenges or attacks from other State institutions with overlapping or parallel authority. The result is that the authority of the *cabildos* is systematically disregarded or dismissed by State institutions, even the courts, the police and municipal institutions.

This conflict of parallel authorities also occurs between the *cabildos* and municipal political authorities. The latter are also popularly elected officials, but in general through a party structure controlled locally by the political elites that operate by buying votes through the so-called community action boards. This source of conflict and of frequent human rights violations could be reduced--according to some authors--if, within the new territorial division, the municipalities were to be configured to coincide with the communities or to be contiguous.^[4]

Because the *cabildos* are weak and do not have the regulations and statutes they need for real self-governance, the governors of each *cabildo* sometimes exercise authoritarian practices and take over too much power. This is detrimental to the communities, whose general reaction is civil disobedience.

Article 246 of the Constitution of Colombia provides that the authorities of the indigenous peoples may exercise jurisdictional functions within their territories, in accordance with their own standards and procedures, provided they do not conflict with the Constitution and laws of the Republic. This provides an important opportunity to develop the independence and autonomy of the ethnic minorities, as it could obviate the difficulties that occur when members of the indigenous communities are tried by authorities who do not take into consideration the minorities' cultural values.

Those who know this subject well, however, worry that future rules and regulations will restrict that jurisdictional autonomy, making it impossible for the indigenous communities to achieve full juridical development.

C. THE RIGHT TO INDIGENOUS PROPERTY AND TERRITORIES

The Government is instituting a system of national indigenous parks and reservations, in order to "recognize the claim that indigenous communities have to the territories they have traditionally occupied; to adopt programs to manage, preserve, replace and exploit natural resources; to obtain clear title to the reservations by purchasing the improvements from third parties within those reservations and awarding them free of charge to the indigenous communities; to give land to indigenous communities that have none, while expanding colonial

reservations by purchasing new lands." This system is most prevalent in the area of the Amazon Basin.

There are presently 302 reservations, involving a total of 26 million hectares of land and inhabited by 310,000 indigenous persons. Some 63 of those reservations, which account for approximately half of the 26 million hectares and benefit 28,000 persons, were formed by INCORA (Colombian Agrarian Reform Institute) between 1986 and 1989. Another 19 indigenous reservations are for 1,535 families.

The legislation regarding reservations basically consists of Law 135 of 1961, Law 31 of 1967 (which approved the 1957 ILO Convention) and the new Agrarian Reform Law.

Colombian law guarantees indigenous communities their right to exploit the renewable natural resources on those lands. With the participation and agreement of each community, since 1987 indigenous inspectors have been named to monitor the natural resources on the reservations.

The Government reports that it invested some \$14 million (21 billion Colombian pesos) in economic improvements for indigenous communities in the four years from 1986 to 1990.[\[5\]](#)

D. THE CULTURAL RIGHTS OF INDIGENOUS PERSONS

Various State measures concern respect for indigenous practices and cultures: Public Health Ministry resolution 10,013 (1981) provides that the health care provided must take into account the cultural characteristics of each community; Decree 1141/78, on education, recognizes ethnic pluralism and the indigenous communities' right to receive an education that is tailored to their own socio-cultural and economic characteristics and that strengthens their ability to make collective decisions concerning their own fate.

Decree 2230/86 creates the National Aboriginal Linguistic Committee, to advise the Government on developing policies on the native American languages within Colombian territory.

Some 2% of the slots available in the National University of Colombia are reserved for students of indigenous origin and the "Alvaro Ulcué" Scholarship Fund has been set up to assist them financially with their pre-university studies and undergraduate studies. By law, indigenous persons are exempt from military service.

It is interesting to note that under Colombian law, the indigenous community is regarded as an extended family. For example, in Article 93 of the Minors Code, "only indigenous minors found abandoned outside the community may be put up for adoption" and only after an effort has been made to restore them to their indigenous community.

Article 92.2.c recognizes Colombian nationality via adoption "in the case of members of indigenous peoples who share border territories" thereby recognizing that indigenous peoples who inhabit lands belonging to several States have certain rights because those are their ancestral lands. Under this same article, recognition of nationality by adoption is subject to

execution of such reciprocity treaties as the Amazon Cooperation Agreement with Ecuador (1980), the Amazon Cooperation Treaty with Peru (1979), and the Treaty with Venezuela on integral development of and basic assistance to the Wayuu Indigenous Communities (1990).

E. THE OBSERVANCE OF THE HUMAN RIGHTS OF INDIGENOUS PERSONS IN PRACTICE

The Colombian Government has a number of State agencies whose job is to coordinate with one another to carry out indigenous policy in various areas and to see that the rights of indigenous peoples are respected. These agencies and their responsibilities are as follows:

- The General Bureau of Indian Affairs of the Ministry of Government, responsible for policies and programs;
- The Colombian Agrarian Reform Institute whose function is to recognize the indigenous communities' full ownership to their ancestral lands if they do not have legal title to those lands;
- The Ministry of Education, for ethnic instruction and to see that public education respects indigenous values;
- The Ministry of Health, responsible for establishing health programs designed for indigenous people and for training indigenous health agents;
- The Indigenous Affairs Unit of the Office of the Attorney General, which sees to it that public entities fulfill their responsibilities vis-à-vis indigenous peoples and that indigenous rights are guaranteed;
- The Public Defender's Office, a new institution which, in this particular area, monitors the official conduct of civil servants and endeavors to create tolerance and acceptance of diversity;
- The Colombian Anthropological Institute (ICAN), which studies past and present indigenous cultures and coordinates with the Aboriginal Language Committee;
- The Departmental Indian Affairs Bureaus;
- The Regional Development Corporations, which promote the indigenous communities' productive development;
- The indigenous program under the National Rehabilitation Plan and the Municipal Rehabilitation Councils and Committees of Traditional Authorities, especially in areas that were once embattled and are now being redeveloped, and
- The Municipal Institutional Development Program, which trains administrators with the Indigenous Territorial Agencies.

According to the Office of the Presidential Adviser for Human Rights, some of the chief problems in securing respect for the human rights of indigenous peoples are as follows:[\[6\]](#)

Government officials are, on the whole, ignorant of the laws that protect the rights and territories of indigenous groups. As a result, their lawful authorities are ignored and supplanted by countless State institutions.

In most cases, their titles to the reservations are not recognized by government officials. Some institutions and organs in the regions... do not take kindly to creation of areas and regional organizations with spokesmen for a number of communities... engaged in defending their ethnic rights and their territory.

The right to autonomy... is not recognized by political groups and organizations of all persuasions.

An example of that ignorance--which is just as common among nonindigenous civilian society--and of how it is to overcome it has been the difficulty in negotiating and executing an agreement concerning the salt mines in Guajira. The agreement was negotiated between the Wayuu community--assisted by certain government institutions such as Inderena, the Bureau of Indian Affairs and the Attorney General's office--and the Industrial Development Institute (IFI), representing other State and private institutions. This agreement, signed on July 27, 1991 in Manaure, department of La Guajira, for exploitation of that ecosystem and the regional salt market, respected indigenous peoples's rights and averted a larger confrontation between the indigenous population and other sectors interested in salt mining.[\[7\]](#)

Apart from the dispute over landownership between large landowners and the indigenous communities is the dispute between small farmers and their organizations such as the National Small Farmers Association (ANUC), which want individual ownership of land, and the indigenous communities, which are fighting for communal ownership of those lands.

Communal ownership is viewed by them not only as guaranteeing permanent control as an inalienable right of the communities, but also of preserving their proven agricultural techniques and ensuring the survival of their political, social and cultural structures.

Given the constitutional guarantees to those ancestral lands, Colombian analysts believe that the position taken by some State agencies--among them the Colombian Agrarian Reform Institute - INCORA--that do not wish to recognize indigenous communities as collective and separate entities with legal title to their ancestral lands and organized, in colonial times, under the name of "Resguardos", is unconstitutional.

The Commission has received information to the effect that in their efforts to reclaim their lands, indigenous communities have to contend with opposition from other groups: the death squads working for the landowners and guerrilla groups opposed to indigenous autonomy on the grounds that the class struggle must take precedence over indigenous autonomy. Then, also, indigenous communities must contend with opposition from associations of small landowners or seasonal farm workers.

The information indicates that those who defend the rights of indigenous people are frequently the target of attacks, as in the case of attorneys who work in the region of Guamo-Coyaima in law offices that serve a mostly indigenous clientele. The death squads threatened and harassed them to the point that they were forced to leave the area and to abandon their activities.[\[8\]](#)

As with so many other sides of the human rights situation in Colombia, all these factors make it very difficult for the State to guarantee and promote the human rights of indigenous people. This in no way diminishes the responsibility it has, as the State, to be ever vigilant and to intervene actively to balance the various legitimate interests that come into play. It also has a responsibility to eliminate those violent elements that operate either with the complicity or support of security and judicial forces or against them.

F. PETITIONS RELATIVE TO THESE RIGHTS

One case is typical of the kinds of problems that indigenous peoples in Colombia face:

On December 18, 1991, the Inter-American Commission on Human Rights received a petition concerning a massacre of indigenous peasants that occurred on the property called "El Nilo". The Commission sent the pertinent parts of that petition to the Colombian Government, as follows:

Washington, D.C., December 18, 1991

Her Excellency
Nohemí Sanín Posada
Minister of Foreign Affairs
Bogota, Colombia

The Inter-American Commission on Human Rights has received information regarding the following: background information:

- 1) Since July of this year, the indigenous communities living on the property known as "El Nilo", Huellas reservation, municipality of Caloto, department of El Cauca, have been filing complaints with the mayor of the municipality and the regional prosecutor's office concerning the serious threats, intimidation and violence targeted against them.
- 2) The *cabildo* has put in a request for this property, owned by Mrs. Betty Mora Mejía, with the Colombian Agrarian Reform Institute, INCORA, although thus far no reply has been received.
- 3) On December 7, a group of heavily armed civilians appeared at the El Nilo property. They proceeded to burn the farm houses and to destroy the crops. They also made serious threats. They were accompanied by an attorney by the name of Gilberto Márquez, who said: "If we don't come to some agreement, this'll be war, either open or secret."
- 4) The events of December 16. The community on the "El Nilo" property, on the Huellas reservation, municipality of Caloto, was brutally massacred by a paramilitary group, presumably hired by the neighboring ranchers; the massacre left 20 dead (11 men, 5 women and 4 children). The names of the victims are: JAIRO SCCUE, DOMINGO CALIS, DOMINGO CALIS (WIFE), DANIEL PETE, ADAN MESTIZO, DARIO COICUE, FELICIANO OTELO, CALICIO CHILHUESO, MARIO JULIQUE, EDGAR MESTIZO, JESUS PETE (CHILD), JULIO DAGUA, CAROLINA TOMBE, OFELIA TOMBE, JOSE ELIAS TOMBE, FORESMIRO VISCUE, LEONIDAS CASAMCHIN AND JOSE ELIAS ULCUE.

Aware that Your Excellency's Government has condemned this massacre, the Inter-American Commission on Human Rights would ask that your Government kindly inform the Commission of the investigations being conducted into this case.

Accept, Excellency, renewed assurances of my highest consideration.

Edith Márquez Rodríguez

Executive Secretary

On January 16, 1992, the Government of Colombia replied to the Commission's note and supplied the following information concerning the massacre in question:

I have the honor to address Your Excellency, on behalf of the Colombian Government, in response to your note of December 18, 1991, concerning the massacre that occurred on the "El Nilo" ranch in the municipality of Caloto.

I would like to inform the Commission that Dr. Jorge Alfonso Medina Avella, Departmental Prosecutor for the department of El Cauca, informed this Ministry that neither the indigenous community in question nor any other citizen reported the threats made against the indigenous group to the Departmental Prosecutor's Office in Cauca or to the Provincial Prosecutor's Office for Santander de Quilichao.

As for the criminal investigations, once information of the crime was reported, a committee headed by the Popayán Criminal Investigations Director, department of El Cauca, went to the scene of the events to conduct the first inquiries and proceedings. This Committee was assisted by the Mobile Unit of the Technical Corps of the Popayán Criminal Investigations Police, the Preliminary Investigations Unit of Caloto and the Popayán Investigations Unit.

On December 18, 1991, through Resolution 1339, the case was assigned to a Judicial Investigative Unit, which took cognizance of the investigation that same day.

The Human Rights Section of the Popayán Criminal Investigations Unit made contact with the officials of the *cabildos* and indigenous organizations in order to locate eyewitnesses to the crime. Also, three indigenous persons were brought before Criminal Examining Magistrates 7 and 20 to make statements in connection with the events; the Judicial Investigative Unit ordered that the foreman of the "El Nilo Hacienda" and two residents from the area where the events occurred be summoned.

With the help of the Investigative Unit, the addresses of three individuals allegedly involved in the massacre were obtained.

On December 19, 1992, the Human Rights Section, with the help of two indigenous leaders and the Investigating Unit of the Technical Corps of the Criminal Investigations Police, succeeded in assembling the survivors of the massacre to name witnesses who might be able to identify the authors of the crime.

Criminal Examining Magistrates 8 and 20 continued the investigation. They took a number of statements, one being from a Congressman and representative of the Indigenous Communities in the region. Accordingly, Popayán Criminal Examining Judge 7 issued a warrant for the arrest of an individual working on one of the farms located in a area adjacent to Caloto.

Criminal Examining Judge 8, located in the community of Caloto, issued a warrant for the arrest of two private citizens suspected of being involved in that monstrous crime.

On December 30, an order was given to turn over the case files to the Public Order Court of the city of Cali, which was done that very day.

On January 8, 1992, the jurisdiction in question began to take cognizance of the investigation, ordering that measures be taken to establish the identity of several people for whom a physical description was available.

On January 9, a group was formed out of the Investigations Unit, composed of people with the Administrative and Security Department (DAS), police and criminal examining magistrates from the city of Popayán, in order to submit the evidence ordered.

At this point the investigation is being conducted by the Cali Public Order Office and no agent of the State has been implicated.

As soon as new information is received on further developments in this criminal investigation, it will be forwarded to the Commission.

The Colombian Agrarian Reform Institute (INCORA) was created in 1962 and is part of the Ministry of Agriculture. Its mandate is to purchase and deliver lands to indigenous and farm communities. It has always stayed abreast of the needs of the indigenous people in the department of El Cauca, as the manager of INCORA explains in the memorandum that he sent to this office on December 26, 1991.

The Institute's Manager states that the "El Nilo" property was being taken over by INCORA in April 1990, in order to give land to the Páez de Huellas indigenous community, which had invaded the upper portion of the property.

As part of the proceedings required in cases of this type, technicians from the Institute visited the property and found that most of the land did not satisfy the requirements stipulated in Rule II of Article 57 of Law 135 (1961); in other words, the land was not suitable for either farming or ranching. Hence, no further steps were taken to determine whether or not the property could be acquired.

In mid 1991, the representative of the Indigenous Community in question informed the INCORA Regional Management Office in El Cauca that they had had talks with the attorney for the corporate owner; the attorney had reported that the owner had volunteered to sell the rural property in question to INCORA. In fact, no such offer had every been made.

It is important to point out that almost nationwide, indigenous or farm communities are taking over or invading rural properties, forcing the owners of those properties to resort to the established legal procedures to reclaim their property or to turn to the Institute to volunteer to sell the property when there is considerable social pressure on the land in the regions concerned. But what happened on the "El Nilo" property in the northern portion of the department of El Cauca was unprecedented.

Despite the land's limited potential for farming, the Huellas Indigenous Community requested that INCORA enter into negotiations for the property in question, based on the principle of indigenous territoriality. Two experts from the Agustín Codazzi Geographic Institute, on orders from INCORA management, are now making an assessment of the "El Nilo" property. The assessment will be submitted to INCORA's Board of Directors at its first session in 1992, to secure its approval of negotiation of the property in question. Should no agreement be reached for voluntary transfer of the property, the Institute shall take the necessary legal measures for expropriation.

The Colombian Agrarian Reform Institute has provided the Huellas Indigenous Community with 2,371 hectares for 169 families; in 1991 it purchased a rural property known as "Nápoles" for that community: its 155 hectares were valued at 38 million Colombian pesos.

At a December 1991 meeting, the Board of Directors authorized purchase of the "La Mancha" farm for the Huellas Indigenous Community. La Mancha was a farm of 205 hectares, valued at 143 million Colombian pesos.

In an agreement concluded last December between the Institute and the Indigenous Regional Council of the Department of El Cauca, it was agreed that over the next three years, 15,000 hectares would be acquired for 9 indigenous communities in that department. The Community that benefits most during those three years will be the very same community rocked by the violence of December 16.

INCORA has distributed another 44,000 hectares, benefitting 4,482 families, to the nine Páez indigenous communities.

Finally, between 1962 when it was created and 1991, INCORA has arranged the following: it has purchased 5,928 properties involving a total of 1,278,622 hectares. Of these, 116,243 hectares, valued at \$41,162,300 pesos, have been for indigenous communities. It has made sanitation improvements over 505 hectares, at a cost of US\$1.4093 million.

There are 245 indigenous *resguardos* in the country, which are home to 30,782 families and involve a total of 24,692,422 hectares. There are another 19 indigenous reservations in the country, covering 1,059,184 hectares and home to 1,535 families.

Finally, the day after the massacre, the President of the Republic, the Honorable César Gaviria Trujillo, and the Minister of National Defense, Dr. Rafael Pardo Rueda, went to the scene of these horrible events and energetically condemned these criminal actions that are so offensive to the Colombian nation. President Gaviria offered the judges in charge of the investigation any logistical support they may require.

As Your Excellency can see, the remedies under domestic law are fully in motion and at no time has the State neglected the Páez de Huellas Indigenous Community, which is an integral part of this nation.

Allow me to take this opportunity to reassure Your Excellency of the Colombian Government's commitment to the human rights cause and to extend renewed assurances of my highest consideration.

Luis Guillermo Grillo Olarte
Director General
Multilateral Political Affairs

According to reports received by the Inter-American Commission on Human Rights, the Special Investigations Unit of the Office of the Attorney General, which is handling the investigation into this case, has uncovered evidence of the involvement of members of the National Police, both before and during the execution of the events leading to the murder of the indigenous people at the El Nilo property.

The attorney defending the indigenous people, Mr. OSCAR ELIAS LOPEZ, was still another victim of a heinous crime. He had been serving as legal advisor to the El Cauca Indigenous Regional Council (CRIC) and was defending the interests of the families of the victims of the Caloto massacre. Attorney OSCAR ELIAS LOPEZ was murdered on May 30, 1992, in the municipality of Santander de Quilichao, Department of El Cauca, by two hired killers riding a motorcycle.

As a consequence of this, the National Indigenous Organization (ONIC) issued a public communique that alludes to the fact that departmental authorities were already aware that paramilitary groups operating in the area were making serious threats against the indigenous people. Nevertheless, ONIC claims, those authorities did not take the measures necessary to avoid what happened.

The IACHR has learned that the judicial investigation into the Caloto massacre being conducted by the Cali (Valle) Regional Prosecutor's office has implicated six individuals as the material authors of the crime. These include National Police Major Jorge Enrique Durán, Captain Fabio Alejandro Castañeda, and four other individuals as intellectual authors.

G. FINAL OBSERVATIONS

The massacre of the indigenous people at Caloto is just one example of a more generalized problem. The department of El Cauca has one of the highest concentrations of indigenous people in the nation, made up of Paez, Yanagona, Coconuco and Guambiano communities which extend as far as the southern reaches of the departments of Valle del Cauca and Huila. Since colonial times, these communities have had to contend with violence from the owners of the *latifundios*; now that violence comes from the agroindustrial sector entrenched in that zone. It is a vast region. The indigenous people there have organized themselves around the Cauca Indigenous Regional Council, CRIC, created in the 1970's to assert the property rights of the indigenous protected areas.

The indigenous people are faced with a very complex dilemma: they face opposition from the traditional owners, from the new agroindustrial owners, and from the State, which by failing to pursue a policy of defending the rights of indigenous people has only made the problem worse. In an effort to cope, the indigenous people themselves formed social and political organizations ranging from civic groups to such armed groups as "Quintin Lame," a guerrilla group that was reassimilated into civilian life with the 1991 agreements signed with the national government.

To squelch the indigenous population, the large landowners have formed paramilitary groups and bands of hired killers who operate independently, although the influence of the public forces is sometimes present. In his 1990 report on his on-site visit to Colombia, the United Nations' Special Rapporteur on Arbitrary Executions observed that in the counterinsurgency struggle, the forces of law and order encouraged the creation of the so-called *campesino* self-defense groups. He added that they had solid support from the forces of law and order, which gave them arms and logistical support.

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[1] Colombia, Information on Human Rights and Fundamental Freedoms of Indigenous Populations presented by the Government (published in UN.E/CN.4/Sub.2/AC.4/1991/4). Colombia, Office of the Presidential Adviser for Human Rights. "Derechos Humanos, Reflexión y Acción 3," Bogota, September 1991.

[2] Law 21 of March 4, 1991. ILO Convention 169. Ministry of Government. Indigenous Affairs, Bogota, Colombia 1992.

[3] Victor Manuel Moncayo. "El Régimen Territorial en la Constitución de 1991" en Política, Universidad Nacional de Colombia, No. 8, December 1991.

[4] Fernando Rojas, "Providing Legal Services to Indigenous Communities. A case study of the Coyaima Clinic" in Beyond Law, Institute of Alternative Legal Services.

[5] Colombia, Información sobre Derechos Humanos y Libertades Fundamentales de la Poblaciones Indígenas presentada por el Gobierno. (Published in UN.E/CN.4/Sub.2/AC.4/1991/4).

[6] Colombia, Office of the Presidential Adviser for Human Rights. "Derechos Humanos, Reflexión y Acción 3," Bogota, September 1991.

[7] Raquel Rojas, "El Palpitar de los Wayuu" in Colombia Hoy Informa, No. 96, Bogota, November 1991.

[8] Fernando Rojas, "Providing Legal Services to Indigenous Communities. A case study of the Coyaima Clinic" in Beyond Law, Institute of Alternative Legal Services.

CONCLUSIONS AND RECOMMENDATIONS

Having followed recent developments in Colombia closely, the Inter-American Commission on Human Rights hopes that the changes that the Constitution and the efforts of all Colombians have succeeded in introducing in the country's political and legal structure will, once the problems pointed out in this report have been corrected, help bring an end to the terrible crisis of violence and human rights violations in Colombia and consolidate peace and democracy in the nation.

From this Report, the Commission draws the following conclusions:

1) With the political and legal system instituted with the 1991 Constitution, significant progress has been made in the law to define and recognize human rights. The progress that the provisions of the Constitution represent, however, was tempered by the specific and generic laws enacted immediately after passage of the new Constitution to regulate those provisions. Those laws stipulate certain restrictions on the exercise of the human rights embodied both in the new Constitution and in the American Convention.

2) These restrictions, which would be excessive even in a normal situation, become that much more excessive when states of emergency are declared during which the remedies to protect one's rights are not available. Moreover, much of the temporary legislation issued under the state of emergency has become permanent law, as in the case of secret or public order courts; their institutionalization goes against Colombian domestic law as well as international human rights agreements binding upon Colombia.[\[1\]](#)

3) The exercise of human rights was restricted as a consequence of this situation and the remedies instituted to protect those rights were debilitated. But this was all possible because the presence of the military courts and the proceedings conducted on the cases remanded to military jurisdiction effectively eroded the authority of the judicial branch. The entire situation has meant a grievous violation of the right to a fair trial.

4) The military tribunals do not guarantee that the right to a fair trial will be observed, since they do not have the independence that is a condition *sine qua non* for that right to be exercised. Moreover, their rulings have frequently been biased and have failed to punish members of the security forces whose involvement in very serious human rights violations has been established.[\[2\]](#)

5) To this violation of the right to a fair trial must be added the serious constraints imposed on due process, particularly in evidence in the handling of petitions filed to protect the various human rights being affected, leaving the individuals concerned defenseless vis-à-vis the measures adopted by the political power.

6) The Commission believes that violations of the right to life have reached alarming proportions in Colombia in recent years. There is a clear political element in these violations of the right to life, since many of the victims have been individuals whose political positions are at

variance with the Government's position or who have stated publicly their disagreement with the Government. These violations of the right to life have involved enforced disappearance, individual and collective summary executions and other atrocities discussed in this report.[\[3\]](#)

7) The evidence compiled by the IACHR and explained in the chapter on the right to personal safety and humane treatment points to the fact that torture, as a practice, has not been sufficiently investigated or punished. This is confirmed by the fact that virtually no public officials have been punished for their participation in torture.

8) The Commission believes that the right to personal liberty is seriously imperiled, particularly during states of emergency when almost all the remedies that protect human rights cannot be invoked.

9) The violations of the right to personal liberty frequently involve a failure to observe the legal formalities required when making arrests; arresting agents often do not identify themselves, do not have a valid arrest warrant or fail to show it. Compounding this are the physical restraints imposed upon many individuals taken into custody, in order to prevent them from identifying the place to which they are being taken or certain detention facilities.

10) The Commission has observed a marked increase in violations of union rights with enforcement of laws that are clearly at odds with the international instruments in force in Colombia on this subject. The right to strike, the right to associate for union purposes and the right to collective bargaining have been violated. Most serious of all is how the violations of the right to life are affecting the activities of union members.

11) It should also be noted that in Colombia the union movement has been one of the sectors hardest hit by the arbitrary arrests, enforced disappearances and assassinations.

12) The Commission has established that the agencies that defend human rights function under particularly adverse circumstances, because their activities are considered to be politically motivated or are viewed as a cover for subversive groups.

13) In addition to condemning all the excesses of State agents that are the cause of the serious human rights violations to which this report refers, the Commission is just as emphatic in its condemnation of the terrible aggression perpetrated against the Colombian people by irregular armed groups. The Commission considers the use of terrorism, whatever its form, to be utterly reprehensible, as are blackmail, extortion, kidnapping, torture and assassination as political weapons. Just as serious and indefensible is the destruction of the social infrastructure and the pollution of the environment. No one has the right to wrong the people of his country in this manner, much less those who profess to be the champions and defenders of their social causes. Repeated acts that seriously violate human rights corrupt and delegitimize the work of any human group, however noble its ideal; the right to social justice or to any other right does not justify the breach of the preeminent values of the human person.

Based on the foregoing conclusions, the IACHR is making the following recommendations to the Colombian Government:

1. Under the previous constitution, the State too often declared a state of emergency. This opinion was one widely shared by those who testified before the Commission. For more than forty years, Colombians have been subjected to measures allowed only if a state of emergency has been declared. The new Constitution has curbed the Executive's authority to decree states of emergency. It would therefore be best for the Chief Executive henceforth to declare states of emergency only in truly exceptional, extremely grave cases where the life of the Nation is imperiled, and thus avoid the tendency to continue to live under exceptional laws on a permanent basis.

2. However necessary they may have been, the Commission is disturbed by the two declarations of states of internal disturbance recently ordered by the Colombian Government. In July 1992, the Government ordered a state of internal disturbance when a group of prisoners requested release; it also restricted habeas corpus. Again, by Decree 1793 of November 1992, a state of internal disturbance was instituted and, on that basis, exceptional measures were ordered. One such measure was that the criminal-investigation functions of the courts were assigned to the military. The Inter-American Commission on Human Rights would therefore recommend to the Colombian Government that henceforth it do everything possible to take the routine administrative measures when events occur of the kind that prompted the declarations of internal disturbance. States of emergency are to be reserved for only the most serious matters.

3. As Commander-in-Chief of the Armed Forces, in exercise of the power conferred upon him by the Constitution (Article 189, paragraph 3) and the authorities given to him under decrees 095 and 096 of 1989, the President has the authority to retire, at his discretion, members of the Armed Forces who have been seriously implicated in human rights violations. The Government of Colombia has used this constitutional and legal authority in cases of functional or administrative inefficiency. In cases of serious and obvious violations of basic human rights by members of the armed forces and to continue measures to protect those rights, it would be best if the Colombian Government would retire from active service anyone that an administrative investigation by the Office of the Attorney General finds to be patently involved or associated with serious cases of fundamental human rights violations, independently of the court decisions that may eventually be handed down.

4. The Commission is concerned that under the new Constitution, military jurisdiction continues to cover members of the Colombian Police. The risks that military jurisdiction involves can be minimized by establishing a proper set of rules to curb any abuse. Therefore, it is recommended that the regulations governing the use of that jurisdiction explicitly exclude acts of torture, extrajudicial execution and enforced disappearance, and that they specify that such crimes shall be judged by the ordinary courts. This could be helpful in dealing with the impunity problem that the military courts in Colombia have thus far posed.

5. The human rights instruction that, under the Constitution, all members of the police and military are to receive is of the utmost importance. Given the gravity of the human rights situation in Colombia, the Commission is recommending, as a matter of priority, strict compliance with that constitutional mandate.

6. The existence of judges "with no faces" and of secret proceedings to introduce and take testimony from witnesses, to offer and introduce evidence and expert reports, etc., is contrary to the principles of the American Convention. Any form of secret justice in Colombia should be eliminated in favor of an across-the-board strengthening of the justice system, particularly the fundamental guarantees.

7. The democratic organs for judicial inquiry and trial need to be strengthened in Colombia. A court system that has the proper infrastructure to perform its function would not need the constant series of judicial reforms that have been instituted. Creating, even for reasons that the Colombian Government believes justified, special mechanisms, procedures and structures to try such crimes as drug trafficking or terrorism has indirectly served to weaken the regular courts and has eroded public confidence in the courts. Therefore, it would be better for the Colombian State to try other alternatives. It must strengthen the courts and set in motion suitable mechanisms to settle the day-to-day conflicts that arise. The benefit would be twofold: it would discourage the spread of vigilantism and restore the confidence that Colombians should have in their system of justice.

8. The newly created Public Defender's Office and the role it plays as guardian of the people should be strengthened, as these are real guarantees that human rights will be exercised and defended in Colombia.

9. A new type of examining judge, called a fiscal, was recently added to the legal system and has an important role to play in investigating crime. Although judges of this type have the help of the Criminal Investigations Police, it is also important to establish a very modern police corps. Its members must have a solid background in law and civil rights to ensure that they are mindful and respectful of human rights when conducting criminal investigations. Members of military and police intelligence should not be members of this police corps, as they have so often been accused of abusing private citizens and violating fundamental rights.

10. Decisions that affect the fundamental guarantees of individuals accused of crimes should be taken only after consulting with the judge hearing the case. Under the new criminal procedure system in Colombia, the *fiscal* can make certain decisions about releasing defendants without consulting the judge. This system should be changed to ensure that the Colombian State is in compliance with the principles of the American Convention.

11. In criminal proceedings, it is important that the victims of the violence or human rights violations have the opportunity to participate actively, from the start of the investigations. The existing provisions of the code of criminal procedure are similar to the previous code and do not allow victims to participate in the inquiries conducted by the public prosecutor's office until an indictment or arrest warrant is handed down. But no indictment or arrest warrant can be issued until the identity of the individual accused of violating the criminal law is established. So, because the victims (those most likely to be able to identify their assailants) are not permitted to participate, individuals guilty of violating basic rights often go unpunished. Therefore, the codes of criminal procedure and military criminal justice should be amended to allow the victims to participate from the start of the investigations.

12. The existing criminal laws do not classify enforced disappearance as a crime. Therefore, to elaborate upon the provisions of the new Constitution, Article 12 of which provides for and prohibits enforced disappearance, a law must be enacted to make it a criminal offense and stipulate punishment.

13. As for the protection of personal liberty, the necessary mechanisms must be implemented to keep a national record of detainees in order to make certain that the civil rights and judicial guarantees of every individual detained are respected.

14. The Colombian State must take all necessary measures to guarantee its citizens' right to life. The Commission would especially urge that paramilitary and self-defense groups be dismantled once and for all and that the serious violence and human rights violations perpetrated by such groups be investigated and punished.

15. Because the rights of workers to form and join unions and to associate for lawful purposes are being violated, the IACHR is recommending to the Colombian Government that it give the members of labor unions and union officials effective guarantees of their rights to form and join unions, their freedom of association, and their right to life, personal safety and humane treatment.

16. Another issue that is of great concern to the IACHR concerns the limitations on freedom of information and expression in Colombia. The Commission would particularly like to draw the Government's attention to Decree 1812, of 1992, which allows censorship of the press under certain circumstances. It would be best if freedom of information in Colombia were not restricted by exceptional rules that are themselves contrary to the American Convention.

17. As to the open warfare between the armed forces and guerrilla groups, which has claimed countless innocent victims among the civilian population, the IACHR believes it is imperative that the rules of international humanitarian law be observed, particularly Article 3 of all the 1949 Geneva Conventions; it also believes that consideration should be given to acceding to the Additional Protocol II of the Geneva Conventions, which concerns the protection of victims in armed conflicts that are not international in nature.

18. Respect for ethnic and minority groups is a right recognized in the new Constitution of Colombia. It is essential that the necessary measures be taken to enable such groups to survive and develop, and that their ethnic and cultural diversity be acknowledged.

19. The important work that nongovernmental human rights organizations are doing to protect, defend and promote the rights of citizens must be supported and guaranteed by the Colombian Government.

20. Thus far, the IACHR has produced Reports 24/87 (Case 9620), 1/92 (Case 10,235), 32/91 (Case 10,454), 33/91 (Case 10,581), 22/93 (case 9477), case 23/93 (case 10,456) and 24/93 (case 10,537) wherein it recommends to the Colombian Government that it investigate those cases until it establishes the identity of those responsible and punishes them for the violations to which each case refers; that it compensate the victims' next-of-kin and provide

effective protection to witnesses who have risked their lives to help ascertain the facts. The Commission is deeply disturbed by the Colombian Government's failure to heed those recommendations and is, therefore, again urging compliance.

[1] According to a report supplied by the Government, discussed in the pertinent part of this report, some of the restrictions to which this conclusion refers have been declared unconstitutional.

[2] The Second Report of the Office of the Attorney General of the Nation, cited in Chapter IV in the discussion of military justice, makes reference to the reasons for this problem.

[3] "The number of Government-associated victims is as high as the number of victims among the opposition; there are areas in the grips of local civil wars and the victims are on both sides." **Observations and comments of the Government of Colombia on the Report of the IACHR.**