

**INTERNATIONAL
COVENANT
ON CIVIL AND
POLITICAL RIGHTS**



Distr.
GENERAL
CCPR/C/1/Add.50
28 November 1979
ENGLISH
Original: SPANISH

HUMAN RIGHTS COMMITTEE

Ninth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Initial reports of States parties due in 1977

Addendum

COLOMBIA

[14 November 1979]

I. GENERAL CONSIDERATIONS

1. In Colombia, civil and political rights are enunciated in and protected by the National Constitution - more particularly titles II, III, IV and XVII thereof - and by acts and decrees which will be referred to in this report in connexion with each of the articles of parts I, II and III of the Covenant.

2. In the Colombian legal system, the National Constitution is the supreme law and has precedence over other laws enacted by the various organs of government.

The Constitution currently in force was adopted in 1886 and has been revised on various occasions, notably in 1910, 1936, 1945, 1957 and 1968. (The complete text of the Constitution is annexed to this report.) */

The task of upholding the Constitution is entrusted by the Constitution itself to the Supreme Court of Justice, which decides on the validity of: (a) bills opposed by the Government on the grounds that they are unconstitutional; (b) acts and decrees issued by the Government under the powers set out in article 76, paragraphs 11 and 12, and article 80 of the Constitution, if a citizen contends before the Court that such acts or decrees are unconstitutional; and (c) decrees issued by the Government under the powers conferred upon it by articles 121 and 122 of the Constitution, each citizen having the right to defend or contest the constitutionality of such decrees.

Charges of unconstitutionality in connexion with Government decrees other than decrees issued under the powers set out in article 76, paragraphs 11 and 12, and articles 80, 121 and 122 of the Constitution are considered by administrative courts.

*/ The Spanish texts of the annexes to this report can be consulted in the Secretariat's files.

3. In accordance with Act No. 7 of 1944, international treaties and conventions approved under the law of the Republic are incorporated into internal legislation once they have been ratified.

Accordingly, the International Covenant on Civil and Political Rights, approved by Act No. 74 of 1968 and ratified on 29 October 1969, forms part of Colombian internal legislation. The same is true of the Optional Protocol to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, approved by the same Act and ratified on the aforementioned date. The American Convention on Human Rights, approved by Act No. 16 of 1972 and ratified on 31 July 1973, has also been incorporated into internal law.

These international instruments fill any gaps and compensate for any shortcomings in other legislation in respect of the recognition of human rights.

It therefore follows that the provisions of the International Covenant on Civil and Political Rights can be invoked before administrative authorities, judges and courts of law, which must, within the scope of their powers, take the measures necessary to protect rights or restore rights that may have been violated.

4. The exercise of certain rights may be subject to restrictions in the event of foreign war or civil commotion. Under article 121 of the Constitution, "the President may issue a declaration, signed by all ministers, that public order has been disturbed and all or a part of the Republic is in a state of siege". The article states that

"after such a declaration the Government shall have, in addition to its normal legal powers, the powers granted by the Constitution in times of war or disturbance of public order and the powers recognized by the rules of the law of nations during wars between nations".

Once a state of siege has been declared, the President can suspend laws that are incompatible with the state of siege and restrict certain rights or guarantees. Thus, the President can (a) in the event of war and strictly for the purposes of securing public order, decree the expropriation of movable property, with prior or subsequent payment of compensation; (b) in the same circumstances, order temporary occupation of immovable property, either to meet the exigencies of war or to appropriate the property's products for the war effort, as a fine imposed by law on the owners of the property; (c) prohibit the circulation of printed matter by mail; (d) restrict the freedom of the press by means of pre-publication censorship, a ban on certain types of news or similar measures; (e) levy taxes or make disbursements from the public treasury not provided for in the budget; (f) concentrate political or civil authority and judicial or military authority in one or several persons or corporations; (g) adopt the measures authorized by international law in the event of a foreign war.

This means that only certain constitutional rights and guarantees can be suspended. Decrees issued under the powers conferred by article 121 of the Constitution are subject to the following conditions: (a) they must bear the signature of the President and all ministers; (b) they cannot repeal laws and can only suspend laws that are incompatible with the state of siege; (c) their purpose must be to restore public order and they cannot therefore deal with matters

not related to the situation; (d) they are temporary in nature, since they cease to have effect when the state of siege is lifted. In addition, the Supreme Court of Justice keeps a check on the constitutionality of such decrees and the President and ministers are held to be answerable for a declaration that public order has been disturbed in the absence of a foreign war or civil commotion or they have committed any abuse in the exercise of their powers. They are answerable to Congress and can be tried by the Senate if charges are brought by the House of Representatives.

5. . A person whose rights have been violated can apply to the judicial authorities to seek redress. The legal measures that must be used to this end depend on the nature of the act constituting the violation of rights. If the act constitutes a criminal offence, the person must report it and institute civil proceedings in conjunction with the criminal proceedings against the perpetrator in order to obtain compensation for the injury. If the act in question is not covered by criminal law and does not involve illegal acts by the public authorities, he may institute civil proceedings to sue the perpetrator for adequate compensation. If the violation of rights is the result of action by a public official, he may bring his case before an administrative court with a view to obtaining appropriate compensation.

Action to obtain compensation for violations of an individual's rights may be based on the following provisions:

Civil Code "Article 341. Any person who commits a crime or offence or who causes injury to another must pay compensation, without prejudice to the principal penalty imposed by law for the offence or crime committed".

Penal Code "Article 92. In all convictions for offences causing damage to any natural or juridical person, the offenders shall be jointly and severally required to make reparation for all the damages.

Article 93. The appropriate official from the Public Prosecutor's Department shall co-operate with the parties concerned in all procedures to assess and secure reparation for the offence or, in cases where they refrain from engaging in such procedures, shall proceed alone".

Code of Criminal Procedure "Article 9. Any offence under criminal law shall give rise to criminal proceedings and may also give rise to civil proceedings for compensation of the damage caused by the offence.

Article 24. Civil proceedings to obtain compensation for damage caused by an offence under criminal law shall be taken in conjunction with the criminal proceedings by the injured person or persons or by their heirs. Whenever the offence gives rise to civil wrong, the official from the Public Prosecutor's Department shall act in accordance with article 93 of the Penal Code.

Article 27. A judgement handed down in criminal proceedings shall be enforceable by the civil judge for the purposes of payment of compensation for injury. However, if the parties injured by the offence have not taken part in the criminal proceedings and do not agree with the judgement as regards the compensation, they may institute the necessary proceedings before the civil judge, in which case they may not request enforcement of the criminal judgement in respect of compensation".

Administrative Code "Article 67. In the event of violation of a right established or recognized by a civil or administrative regulation, the injured party may request not only that the act be annulled but also that his right be restored. The same right is available to any person who has been a party in the proceedings and has demonstrated his right.

Article 68. A request may also be made for restoration of the right if the violation is caused by an administrative act. In this case, proceedings to seek annulment are not required and claims for compensation or benefits shall be made direct to the administrative authority".

Code of Military Criminal Justice "Article 300. Any offence under military criminal law shall give rise to criminal proceedings. In military jurisdiction, offences under ordinary criminal law may give rise to civil proceedings.

Article 394. The injured parties or their heirs may institute civil proceedings as a civil party in military criminal proceedings for common crimes".

6. All the authorities are responsible for protecting human rights, as can be seen from article 16 of the Constitution, which reads as follows:

"The authorities of the Republic are established to protect the lives, honour and property of all persons resident in Colombia and to ensure fulfilment of the social duties of the State and of individuals" (Legislative Act No. 1 of 1936, article 9).

This protection is provided in accordance with the functions and powers specifically assigned to each authority by law. Prevention is the responsibility principally of the administrative authorities and the National Police. The punishment of violations of human rights and the question of compensation are dealt with mainly by the judicial authorities. These authorities comprise the following: (a) in civil law, the Civil Appeals Chamber of the Supreme Court of Justice, the civil chambers of superior district courts and circuit, municipal, assize and juvenile court judges; (b) in criminal law, the Criminal Appeals Chamber of the Supreme Court of Justice, the criminal chambers of superior district courts, the Superior Customs Law Court, superior court judges, circuit judges, investigating judges, municipal, assize and juvenile court judges, judges qualified to try criminal or both criminal and civil cases and customs law district judges; (c) in labour law, the Labour Law Appeals Chamber of the Supreme Court of Justice, the labour law chambers of superior district courts, labour law circuit judges and municipal court judges; (d) in administrative law, the Council of State and the administrative courts. There is, in addition, a special type of jurisdiction, namely military criminal jurisdiction, which is exercised by the Supreme Court of Justice, the Higher Military Tribunal, judges of first instance for military criminal cases or their alternates in special cases, presidents of oral courts-martial and military criminal investigating judges and officials. Procedural laws determine the competence of the various judges and courts in each case.

II. INFORMATION ON EACH OF THE ARTICLES OF PARTS I, II AND III OF THE COVENANT

Article 1.

In its international relations, Colombia has always abided by the principle of recognition of the right of all peoples to self-determination, which means freedom to determine their political status, to pursue their economic, social and

cultural development and to dispose freely of their natural wealth and resources, as enunciated in article 1 of the Covenant. In its internal law, the Colombian people, acting through its representatives, has established its own political institutions through the National Constitution, the first two articles of which state:

"Article 1. The Colombian Nation is hereby reorganized as a unitary republic.

Article 2. Sovereignty is vested essentially and exclusively in the Nation, the source of all public powers, which shall be exercised within the limits prescribed by this Constitution."

Article 2.

The State respects the rights recognized in the Covenant and ensures that they are enjoyed by all persons in Colombian territory, without any discrimination.

As stated in this report, Colombian legislation contains the provisions necessary to give effect to these rights.

Article 3.

Men and women are now equal in the enjoyment of civil and political rights.

Article 1 of the 1957 Plebiscite provided that: "Women shall have the same political rights as men."

Moreover, Decree No. 2,820 of 1974, issued under the powers conferred on the President of the Republic by Act No. 24 of 1974, amended provisions of the Civil Code that still exhibited traces of discrimination between men and women and established full equality of rights and obligations.

By way of an example, some of the provisions of the decree and the provisions that they replaced are reproduced below.

"Decree No. 2,820 of 1974

"...

"Art. 9. Article 176 of the Civil Code shall read:

Spouses must remain faithful and help and assist each other in all circumstances.

Art. 10. Article 177 of the Civil Code shall read:

The husband and wife shall be jointly responsible for running the household. This responsibility shall fall to one of the spouses when the other cannot assume it or is absent. Any disagreement shall be referred to the judge or official designated by law.

Art. 11. Article 178 of the Civil Code shall read:

Except in cases of just cause, spouses must live together and each is entitled to be received in the other's home.

Art. 12. Article 179 of the Civil Code shall read:

The husband and wife shall determine the place of residence of the household. In the event of the absence, incapacity or deprivation of liberty of one spouse, the place of residence shall be determined by the other. In the event of disagreement, the judge shall determine the place of residence in the light of the interests of the family.

The spouses must provide for ordinary domestic needs in accordance with their abilities.

Art. 13. Article 180 of the Civil Code shall read:

The act of matrimony shall establish community of property between the spouses in accordance with the terms of book IV, title 22 of the Civil Code.

Persons who marry in a foreign country and take up residence in Colombia shall be presumed to be subject to the system of separation of property unless they are subject to a different system in conformity with the laws under which they were married".

The provisions that were replaced had stated:

"Art. 176. Spouses must remain faithful and help and assist each other in all circumstances.

The husband must protect the wife, and the wife must obey the husband.

Art. 177. The husband's authority shall consist of the rights granted by law to the husband over the person and property of the wife.

Art. 176. The husband shall be entitled to oblige his wife to live with him and to follow him whenever he transfers his place of residence. This right ceases to have effect if application thereof entails an immediate threat to the wife's life.

The wife, for her part, shall be entitled to be received in the husband's home.

Art. 179. The husband shall provide the wife with the necessities according to his abilities, and the wife shall be under the same obligation in respect of the husband if the latter has no property.

Art. 180. The act of matrimony shall establish community of property between the spouses, and the husband shall administer the property of the wife in accordance with the terms of book IV, title XXII, concerning Marriage Contracts and Community of Property.

Persons who marry outside a territory and take up residence in that territory shall be regarded as subject to the system of separation of property, provided that community of property has not been established by the laws under which they were married".

Article 4.

The Constitution, in article 121 mentioned above, covers the emergency situations referred to in this provision of the Covenant. As has already been stated, some of the rights set forth in the Covenant may be suspended or restricted under the terms of the article in question.

The country is currently in a state of siege because of events which have disturbed public order. The state of siege was declared in Decree No. 2,131 of 7 October 1976. In order to provide a better illustration of the nature of the measures adopted under the state of siege and to show that they are justified by the circumstances, the decrees which have been issued on the basis of article 121 of the Constitution and relate to matters covered by the Covenant are annexed to this report.

The provisions issued by virtue of article 121 are not inconsistent with other obligations under international law and do not involve discrimination of any kind.

The rights recognized in articles 6, 7, 8, 11, 15, 16 and 18 of the Covenant have not been suspended by these decrees, nor could they be suspended under the constitutional rules in force.

Article 5.

In Colombia, no interpretation of the Covenant has ever been invoked as a reason for authorities or private individuals to "engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized "in the Covenant" or at their limitation to a greater extent than is provided for in the ... Covenant".

Moreover, there have been no administrative rulings or legal provisions which derogate from or restrict fundamental human rights already recognized pursuant to law, conventions, regulations or custom, on the pretext that the Covenant does not recognize such rights or that it recognizes them to a lesser extent.

Article 6, paragraph 1.

Protection of the right to life is expressly provided for in article 16 of the National Constitution, which states:

"The authorities of the Republic are established to protect the lives, honour and property of all persons resident in Colombia and to ensure fulfilment of the social duties of the State and of individuals."

Colombian criminal law penalizes violations of the right to life. Title XV of the Penal Code (articles 362 to 369) deals with offences endangering life and personal integrity and establishes the corresponding penalties. By way of an example, some of the provisions of that section of the Code are reproduced below.

"Art. 362. Anyone who, with intent to kill, causes the death of another shall be liable to rigorous imprisonment for 8 to 14 years.

Art. 363. Homicide is termed murder and the penalty shall be rigorous imprisonment for 15 to 24 years, if the act referred to in the preceding article is committed:

1. Against a legitimate or illegitimate ascendant or descendant, spouse, brother or sister, mother, father or adopted child or a relative by affinity in the first degree;
2. With premeditation, accompanied by ignoble or base motives;
3. To prepare, facilitate or commit another offence;
4. To conceal, protect the outcome or suppress the evidence of another crime or to ensure the impunity of the offenders;
5. In any other circumstances which render the victim defenceless or inferior, such as artifice, ambush, treachery or poison;
6. By the use of minors, mental defectives or the insane or by abuse of the personal inferiority of the victim;
7. With extreme cruelty;
8. By means of fire, flood, railway disaster or any of the other offences enumerated in title VIII of this book;
9. For a consideration or promise of remuneration.

Art. 364. If the motive for the homicide is mercy, in order to accelerate an imminent death or to put an end to grave suffering or bodily injury deemed to be incurable, the penalty may, as an exceptional measure, be mitigated and long- or short-term imprisonment be substituted for rigorous imprisonment or a judicial pardon may even be granted".

Article 6, paragraphs 2 to 6.

The death penalty does not exist in Colombia and its adoption in criminal law is expressly prohibited by article 29 of the National Constitution, which reads:

"The lawmaker may in no case prescribe the death penalty".

Article 7.

In connexion with this article, reference may be made to the provisions set out below.

National Police Code (Decree No. 1,355 of 1970).

"Art. 4. The police may in no case use methods that are incompatible with humanitarian principles".

Penal Code

...

"Art. 171. In cases not specifically classed as crimes, a public official or employee who, in the performance of his duties or exceeding his authority in such performance, commits or causes the commission of an arbitrary or unjust act against a person or against property, shall be deprived of his office and incur a fine of 10 to 500 pesos.

Art. 371. Anyone who, without intent to kill, causes injury to the body or the health of another or mental disturbance, shall be liable to the penalties specified in the following articles.

Art. 372. If the injury causes an illness or incapacity for work for not more than 15 days, the penalty shall be imprisonment for two to ten months and a fine of 10 to 500 pesos.

If the illness or incapacity exceeds 15 but not 30 days, the penalty shall be imprisonment for six months to two years and a fine of 50 to 1,000 pesos.

If the illness or incapacity exceeds 30 days, the penalty shall be imprisonment for six months to four years and a fine of 100 to 2,000 pesos.

Art. 373. If the injury causes facial disfiguration, curable physical deformity or temporary mental disturbance, the penalty shall be imprisonment for six months to five years and a fine of 100 to 2,000 pesos.

If the disfiguration or deformity is permanent, the penalty shall be imprisonment for one to six years and a fine of 100 to 4,000 pesos.

Art. 374. If the injury causes temporary functional impairment of an organ or limb, the penalty shall be rigorous imprisonment for two to five years and a fine of 200 to 4,000 pesos. If the functional or psychological impairment is permanent, the penalty shall be rigorous imprisonment for two to six years and a fine of 200 to 5,000 pesos.

Art. 375. If the injury causes the loss of an organ or limb, the penalty shall be rigorous imprisonment for three to nine years and a fine of 500 to 5,000 pesos.

Art. 376. If a pregnant woman is injured and a premature birth ensues with harmful consequences to the health of the victim or of the foetus, the penalty shall be rigorous imprisonment for two to four years.

If a miscarriage results, the penalty shall be rigorous imprisonment for two to seven years.

In cases covered by the two preceding paragraphs, a fine of 100 to 2,000 pesos shall also be imposed.

Art. 377. If, in addition to illness or incapacity, the injuries give rise to one or more of the consequences referred to in the preceding articles, the most serious penalty alone shall be imposed".

Code of Criminal Procedure

"Art. 305. Prohibitions and sanctions. It shall be strictly prohibited for the criminal police or judges to offer inducements, use coercion or threats with a view to obtaining confessions from persons under arrest or distorting the statements of witnesses, ask captious or leading questions or generally engage in any act or procedure liable to infringe individual freedom. Any public official who contravenes this prohibition shall be liable to dismissal, without prejudice to any legal action.

The criminal police may not record the finger prints of persons under arrest, unless it is necessary for the purpose of identification, or make their photographs available for publication.

The judicial or police authorities shall order the preparation of reports on the criminal record of an accused person only pursuant to an order for him to be held in custody pending trial. Where it is necessary to know the record beforehand, the appropriate request shall be made for the purpose of information. In either case, the reason for the report must be specified.

Art. 308. Inadmissible methods of investigation. It shall be strictly prohibited, not only to offer inducements or to use coercion or threats, but also to ask captious or leading questions in order to prevail upon an accused person to tell the truth".

Article 8.

Article 22 of the Constitution, which has been in effect since 1886, prohibits slavery. This article states:

"There shall be no slaves in Colombia. Any person entering the territory of the Republic as a slave shall be freed".

Slavery was abolished in Colombia on 1 January 1852, in accordance with the provisions of the act of 21 May 1851.

Furthermore, servitude and institutions and practices similar to slavery, as described in the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, do not exist in Colombia, nor are they authorized by Colombian legislation.

Similarly, there is no forced or compulsory labour, as referred to in article 8. Colombia is a party to ILO Convention No. 29, concerning Forced or Compulsory Labour, which calls for the abolition of such labour in all its forms. This Convention was adopted by Act No. 23 of 1967 and ratified on 4 March 1969, since which time it has been incorporated into internal law.

It should be added that freedom to work is established as a constitutional principle in article 39 of the National Constitution.

Article 9.

Colombian legislation contains a number of provisions relating to the right to liberty and the guarantee against arbitrary arrest or detention and to remedies in the event of arrest or detention. The principal provisions relating to the points dealt with in article 9 of the Covenant are set out below.

National Constitution

"Art. 23. No person or member of his family shall be molested, imprisoned, arrested or have his domicile searched, except upon a warrant issued by the competent authority in accordance with all legal formalities and on grounds previously defined by law.

In no case shall detention or imprisonment be ordered for debts or purely civil obligations, except for the purposes of attachment.

Art. 24. Anyone caught in flagrante delicto may be arrested and taken before the judge by any person. If the agents of authority pursue him and he takes refuge in his own dwelling, they may enter it for the purpose of arresting him and if he seeks asylum in the dwelling of another person, the consent of the owner or tenant thereof shall be previously obtained.

Art. 28. No person may, even in time of war, be punished ex post facto except under a law, order, or decree in which the act has been previously prohibited and the penalty for its commission established.

The foregoing provision notwithstanding, if there are serious reasons to fear a disturbance of public order in time of peace, persons suspected with good reason of attempting to disturb the public peace may be arrested and held by order of the Government, on the advice of the ministers.

If the persons detained have not been released within ten days following the arrest, the Government shall order their release or shall make them available to the competent judges, together with the relevant evidence, so that a ruling may be made in accordance with the law (Legislative Act No. 1 of 1968, part. 5)".

Code of Criminal Procedure

"Art. 417. Remedy. Any person deprived of his freedom for more than 48 hours may, if he considers that a breach of the law has taken place, apply to a municipal, criminal or combined criminal/civil court judge for habeas corpus, which shall be dealt with in accordance with the procedure set out below.

Art. 418. Formulation. The application may be drawn up by the aggrieved person himself or on his behalf and shall describe the facts relating to the deprivation of liberty, the place at which the person is being held and, if possible, identify the official who ordered the arrest.

The application may also be submitted by the Public Prosecutor's Department, or at the request of an interested party.

The application shall be considered immediately and shall not be subject to allocation, but shall be dealt with exclusively by the judge to whom it is submitted.

Art. 419. Reports concerning arrest. If the application appears to be admissible, the judge shall immediately request the appropriate authorities to report in writing within 24 hours, specifying the date of the arrest and the grounds on which it was based. If he deems it necessary, he may also question the aggrieved party in person.

Art. 420. Immediate release. If, on the basis of the reports referred to in the preceding article or by any other means, it is established that the person in question has been arrested or imprisoned without completion of the legal formalities, the judge shall order his immediate release and shall institute the appropriate criminal investigation.

Art. 421. Inadmissibility. An application for habeas corpus shall not be admissible when it is apparent that the applicant has been deprived of his freedom as the result of a warrant or by an order of the competent authority or, in the event of arrest, when the time-limits indicated in this Code have not expired.

If the application is inadmissible, the judge shall so declare and shall so inform the person concerned.

Art. 422. Incontestability of the ruling. The ruling on the application for habeas corpus shall not be open to appeal.

Art. 423. Application to a circuit judge. If the criminal or combined criminal/civil court judge in the locality has been responsible for ordering the arrest, the application for habeas corpus shall be submitted to the circuit judge having jurisdiction in the municipality in question.

Art. 424. Penalties. Any official who impedes the consideration of an application for habeas corpus or fails to deal with it immediately or to act within the time-limits established in this chapter shall, by virtue of that act alone, be held responsible for arbitrary arrest, without prejudice to a penalty of dismissal to be imposed on him by his superior in accordance with the procedure established for disciplinary measures.

Art. 425. Exception. The provisions of this chapter shall not be applicable to the cases referred to in article 28, paragraph 2, of the National Constitution, unless the period of detention referred to in paragraph 3 of that article has expired.

Art. 426. Optional arrest or summons for investigation. In proceedings for offences punishable by imprisonment, a warrant may be issued for the arrest of the suspect for the purpose of obtaining a statement, if, in the opinion of the investigating official, it would be advantageous to receive it in accordance with the provisions of article 381 of this Code.

If arrest is not deemed necessary, or if the offence calls for short-term imprisonment or a penalty not involving deprivation of liberty, the accused shall be summoned; however, if he fails to appear in order to make a statement, he shall be apprehended to enable this procedure to be carried out.

If the offence in question is punishable by short-term imprisonment or a penalty not involving deprivation of liberty, the accused, having made his statement, shall be released in cases where he had been arrested.

Art. 427. Arrest by the criminal police. The powers of arrest exercised by the criminal police shall be subject solely to the limitations set out in article 289, but in a case of strong circumstantial evidence, the person shall be arrested only when the offence involved is punishable by long-term imprisonment.

Art. 428. Publicly requested arrest. Any individual may apprehend a person whose arrest has been requested publicly by the competent authority, to which such person must be handed over immediately.

Art. 429. Immediate release for unlawful arrest. In cases other than those provided for in the foregoing articles, the person under arrest shall be released immediately. Any official who fails to do so shall be held responsible for arbitrary arrest and shall be liable to dismissal.

Art. 430. Mandatory disclosure of reasons for arrest. Any person under arrest shall, at the time of the arrest, be informed of the reasons for it and shall be notified without delay of the charges against him.

Art. 431. Right to legal assistance following arrest. The official before whom the person under arrest is brought shall immediately inform him of his right to appoint an attorney to assist him throughout the subsequent proceedings and the procedure shall be recorded in writing. If the person is unwilling or unable to appoint an attorney, the investigating official shall appoint one. Immediately upon his appointment, the attorney shall assume his duties from the time when the accused makes his statement and may take part in the proceedings, without prejudice to the provisions of article 434, concerning detention incommunicado.

Art. 432. Formalization of arrest. When an arrest has been made in the circumstances referred to in articles 426 or 427, the investigating official before whom the person under arrest is brought shall immediately issue a written order to the warden of the relevant detention establishment for the person to be held in custody at that establishment. The order shall explain the reason for the arrest, indicate whether the prisoner is to be held incommunicado and specify the date on which the arrest took place and the date on which detention incommunicado is to be terminated.

If the warden of the detention establishment does not receive from the judge the written order referred to in the preceding paragraph within twelve hours following the admission of the person under arrest, he shall request such order within the following twelve hours and if, at the end of a further twelve hours, he has not received the order, he shall proceed to release the person on the responsibility of the official who should have issued such order.

The person who made the arrest and the warden of the prison or his deputy shall prepare a written report on the arrest and the reasons for it, a copy of which shall be immediately transmitted by the warden of the establishment to the investigating official.

No person shall be detained in any prison establishment unless these procedures are strictly observed. Any infringement of these provisions shall entail responsibility for arbitrary detention on the part of the governor or warden of the establishment.

Art. 438. Formalization of remand in custody pending trial. If, following receipt by the governor or warden of the prison of the order to hold an individual in custody in accordance with the provisions of article 432 and

upon expiry of a period of eight days following the date of the arrest, the order for release or remand in custody has not been received, it shall be requested from the official responsible for determining the legal status of the accused person. This period shall be doubled where more than two persons are detained in connexion with the same proceedings and the arrest has taken place on the same date.

If the order for remand in custody indicating the date of the decision and the offence involved, does not arrive within twelve hours thereafter, the detainee shall be released on the responsibility of the official who has failed to issue the order. Failure to follow this procedure shall entail responsibility for arbitrary detention.

Art. 441. Requirements concerning custody pending trial. No person may be held in custody pending trial except by order of a competent official specifying:

1. The act being investigated in the proceedings;
2. The evidence produced to substantiate the existence of the act;
3. Its legal classification and the relevant penalty; and
4. The evidence produced in connexion with the proceedings against the person for whom remand in custody is ordered.

Art. 453. Amended by Act No. 17 of 1975, art. 7. Cases of provisional release. Except in cases dealt with under special provisions, the accused shall have the right to be released on bail in order to ensure that he appears at the proceedings and, where applicable, for the purposes of execution of the judgement:

- (1) In cases of offences punishable by short-term imprisonment;
- (2) In cases of theft, false pretences and breach of trust, where the circumstances conform to those referred to in article 429 of the Penal Code;
- (3) In the circumstances referred to in article 3, paragraph 2, of Decree No. 1,858 of 1951, superseding articles 151 and 152 of the Penal Code, where the items misappropriated have been fully restored, regardless of the time at which restitution has taken place, or when the misappropriation has ceased;
- (4) In proceedings for culpable offences, including that of homicide committed with a passenger or transport vehicle when, in the latter case, the conditions for the imposition of a conditional sentence are fulfilled;
- (5) When, upon assessment of the results of the investigation, it appears that a conditional sentence or a judicial pardon is applicable under the law;
- (6) When, at any stage of the proceedings, the accused has been held in custody for a period equivalent to the term of imprisonment that he would have received for the offence with which he is charged, due regard being paid to the classification of the offence.

Any person held in custody for the time necessary to be granted conditional release shall be considered to have completed his sentence, provided that all other necessary conditions have been fulfilled.

Release, as referred to in this paragraph, shall be granted by the authority dealing with the proceedings at the time of submission of the grounds provided for herein.

Reductions of penalties granted under Act No. 40 of 1967 shall be taken into account by the judge in implementing this paragraph;

(7) When the court of first instance hands down a decision of dismissal, the decision referred to in article 163 of this Code, or a verdict of acquittal, or when a temporary stay of proceedings is ordered in first or second instance;

(8) When a verdict of acquittal is reached by a jury, unless it is declared contrary to the weight of evidence by the higher court within eight working days, or when the court revokes a ruling declaring the verdict to be contrary to the evidence of the facts.

When the second jury reaches a verdict of acquittal, the release of the accused shall be ordered, with the sole proviso that he should be present in person for the subsequent purposes of the proceedings;

(9) When the accused has been deprived of his liberty for a period of 180 days and the results of the investigation have not been assessed. This period shall be extended to 270 days, when the order for remand in custody relates to three or more accused persons or when the proceedings relate to three or more offences.

If, in considering such a request, the judge finds grounds for ruling that the case should be brought to trial, he shall deny release, order the investigation closed, and assess it within eight days of the completion of the period for notification of the parties. If he fails to assess it within this period, he shall immediately order release; and

(10) In respect of offences punishable by long-term imprisonment, when the accused is over 16 but under 18 years of age, or when he is over 70 years of age, provided that his character, the reasons for the commission of the offence and the circumstances in which it has been committed make release advisable;

(11) When the offence has been committed in the circumstances referred to in article 27 of the Penal Code; and

(12) Without prejudice to the provisions of paragraph 2 of this article, in proceedings for offences against property which falls within the jurisdiction of the police authorities, provided that the accused has no previous judicial or police record, that there is no indication that he is of a dangerous character, that, in carrying out the act, he has not committed any physical or moral violence against persons or objects, and that he has caused no serious damage to the victim in the light of the victim's financial situation.

Art. 454. Time of release. Release shall be granted by the authorities, or on request by one of the parties, at any time during the proceedings, except in the case referred to in paragraph (5) of the preceding article.

Art. 455. Release and revocation of the order for remand in custody: procedure. A copy of the request for release or for revocation of the order for remand in custody shall be transmitted to the office of the Public Prosecutor's Department for a period of two days so that a decision may be reached as to its admissibility. Upon receipt of an answer, the matter shall be dealt with within two days.

Art. 456. Sanctions for failure to comply with time-limits. Any official who, without just cause, fails to deal with a request for release or for revocation of an order for remand in custody within the legal time-limits shall, on the first occasion, be suspended from his post for up to two months, and, in the event of a second occasion, shall be dismissed, without prejudice to the consequent criminal liability. Such sanctions shall be imposed rapidly and summarily by the appropriate superior official.

Art. 457. Granting of release by the superior official. When the superior official, in dealing with an appeal, revokes an order for remand in custody or grants provisional release on bail, he shall himself issue the order for the measure in respect of the detainee or detainees, without waiting for a writ of execution.

Art. 458. Amount of bail. In the same order granting release, the official shall set the amount of bail to be put up, taking into account the gravity of the offence, the financial situation of the accused, his character and previous record".

Penal Code

"Art. 295. A public official or employee who, by abuse of his office, deprives anyone of his liberty shall be liable to imprisonment for six months to two years.

Art. 296. A public official or employee who prolongs unnecessarily the detention of a person shall be placed in custody for one month to one year.

Art. 297. A warden of a penitentiary, gaol or similar establishment who admits anyone as a prisoner or detainee without an order from the competent authority, fails to comply with or delays an order of release, shall be placed in custody for one month to one year".

National Police Code

"Art. 56. No person may be deprived of his liberty except:

(a) On the written order of the competent authority; or

(b) In the case of flagrant or quasi-flagrant commission of a criminal or police offence.

Art. 57. Any warrant for arrest must be based on the law or on police regulations.

Art. 58. Any person may be arrested by the police and temporarily deprived of his freedom while he is being taken before the authority which has summoned him to appear.

Art. 59. A request for arrest may be carried out only with prior written authorization in the form of a decision, order or sentence.

Art. 66. An individual who is caught in flagrante delicto in connexion with a criminal offence may be arrested by any person.

If the person carrying out the arrest is not a member of the forces of law and order, the police shall provide him with assistance in completing the arrest and conducting the person under arrest to the appropriate authority.

Art. 68. Every person under arrest shall be entitled to be allowed to inform his relatives immediately of his whereabouts and, if he so requests, to be visited by his doctor and to receive food, bedding, personal toilet articles, clothing and reading matter".

Article 10.

1. The provisions in effect with regard to the prison and penitentiary system contain rules designed to ensure that persons deprived of their liberty are treated with humanity. A new prison code, which will improve these regulations, is currently in preparation.

Some of the provisions of Decree No. 1,817 of 1964 currently in force are quoted by way of example.

"Art. 14. All detained or convicted persons shall be provided, at the expense of the State or, where appropriate, of the municipality, with accommodation, bed and board, and shall be given facilities for education and work in keeping with their dignity as human beings. Convicted persons shall also be entitled to clothing and footwear.

Art. 15. Dormitories or cells must meet the basic requirements of cleanliness, hygiene, ventilation, light and space, as indicated or stipulated by the medical personnel.

In dormitories, each convicted or detained person must have at least four cubic metres of air.

Art. 16. All prison establishments shall have properly secured courtyards or open areas in which detained or convicted persons may enjoy the freedom of movement and exercise necessary for their health or recreation.

Art. 17. A daily bath shall be mandatory for all detained or convicted persons.

To this end, each prison establishment must maintain a sufficient number of showers in working order.

Art. 18. Diet shall be determined by the prison administration. The quality and quantity of the food shall be such as to ensure adequate nourishment of detained or convicted persons and shall be provided under proper conditions of hygiene and cleanliness.

In all cases, detained or convicted persons shall be seated at a properly laid table.

At the discretion of the warden, detained persons may forgo prison food and supply themselves at their own expense. In such cases, such detained persons shall be separated from the others at regular meal times.

Art. 19. The warden shall, on behalf of the administration, organize the sale of foodstuffs, non-alcoholic beverages and other useful and inoffensive objects for the personal use of detained or convicted persons, with a profit of not more than 10 per cent on such sales, the proceeds of which shall be deposited in the Special Fund of the establishment.

In no circumstances may the prisoners themselves or employees conduct such sales on their own account.

Art. 22. In all prison establishments throughout the country, a system shall be established to provide prisoners with daily information or news concerning the most important events in national or international affairs, either by bulletins prepared by the administration, the use of loud-speakers or any other means carefully chosen so as not to present any risk to discipline.

Art. 155. Detained and convicted persons shall receive full medical, health, dental, pharmaceutical and hospital care.

Art. 156. Every prison establishment shall have an infirmary equipped with the basic necessities, in accordance with the standard specifications for all such establishments, as stipulated by the Medical Services and Health Section of the Directorate-General for Prisons.

Art. 157. Such infirmaries shall contain wards for persons suffering from contagious diseases and, in women's prisons, shall have special units for the treatment of pregnant detainees, together with a nursery and day-care centre.

Art. 158. If the doctor of the prison establishment determines that a prisoner is pregnant, he shall inform the warden, so that the proper care may be provided.

Art. 168. When a detainee is dangerously ill, the warden shall notify the relatives and persons named by the patient, who may, in such cases, be visited more easily. He shall also be provided with such religious services as he may request, in accordance with his beliefs".

2. Owing to a lack of sufficient financial resources, it has not been possible to achieve the ideal of setting up the necessary detention establishments exclusively for accused persons. Nevertheless, the competent authorities must comply with the provision contained in article 24 of Decree No. 1,817 of 1964, which states:

"In all establishments to which this Decree relates, men and women, juveniles and adults, and accused and convicted persons must be completely segregated if no separate establishments exist for that purpose".

Accused persons and those awaiting sentence are subject to treatment different from that applicable to persons convicted of an offence.

3. The provisions governing proceedings before juveniles courts provide that accused juvenile persons and those awaiting sentence shall be separated from adults. A number of articles of the Code of Criminal Procedure are reproduced below in this connexion.

"Art. 447. Place of detention of juveniles. Juveniles between 16 and 18 years of age shall be held in custody in special establishments or blocks, due regard being paid to the nature of the offence and the record and the personal circumstances of the accused.

Art. 627. Presentation of juveniles to the court. Investigation. Where a juvenile under 16 years of age is caught in flagrante delicto, or where the corpus delicti appears to be proved beyond all doubt and there exists at least one statement by a witness offering sound reasons for credibility, in accordance with the rules for the assessment of testimony or where there is strong circumstantial evidence that the juvenile is the perpetrator of or an accomplice to the act under investigation, he shall be brought before the judge of the juvenile court as speedily as possible if the act has occurred in the municipality in which the said official resides.

If the act has taken place in another municipality or in another district, the competent police official shall immediately initiate an investigation of the offence. In such cases, the official shall:

- (1) Immediately inform the juvenile court, by telegraph, or if there is none, by mail, that the investigation procedures have been initiated;
- (2) Attach to the papers a copy of the birth certificate;
- (3) Ensure the appearance of the juvenile, who shall at no time be held in a common prison but shall be placed on bail in the custody of his parents or relatives or other persons willing to accept him; or,
- (4) If bail does not prove possible, find suitable accommodation in a secure place separate from a common prison.

Art. 629. Place of detention. Prohibitions. It shall be prohibited to hold a juvenile under 16 years of age in places other than those mentioned in article 627 or special establishments for juveniles. Any breach of this prohibition shall render the official issuing the order for remand in custody and the warden or head of the establishment concerned liable to dismissal and to disqualification from public office and the exercise of public rights for a period of one year; such penalty shall be imposed summarily by the appropriate superior official, simply on presentation of proof that the breach has been committed.

It shall be prohibited to handcuff, bind or mistreat juveniles, as referred to in this chapter. Any breach of this prohibition shall disqualify the offender from public office for a period of one year; such penalty shall be imposed summarily by the appropriate superior official, in accordance with the provisions of the preceding paragraph.

Art. 634. Medical examination or referral to a remand home. After interviewing him in person, the judge shall, in each case, determine whether the juvenile should undergo a mental examination, or whether he should be referred to a remand home. However, the latter course may be followed only in the case of a juvenile who has been abandoned or is in moral or physical danger or a juvenile who is accused of a criminal offence and against whom there exists at least one statement by a witness offering sound reasons for credibility, in accordance with the rules for the assessment of testimony, or there is strong circumstantial evidence that the juvenile is the perpetrator of or an accomplice to the offence. In no circumstances may the judge of the juvenile court allow criminals to be brought into contact with juveniles who are simply being afforded protection.

Art. 635. Examination of juveniles in a remand home. Each juvenile court shall have at its disposal a remand home, the purpose being not to punish but to examine the juvenile; the home shall operate independently of children's homes, industrial schools or special reformatories.

At the remand home, a full study shall be made of the juvenile's physiological, mental and moral characteristics and his individual and social reactions over a period of not more than ninety days and the observations shall be entered in a file which shall conclude with an opinion as to the appropriate medical and educational treatment."

In addition, Decree No. 1,818 of 1964 contains the following provisions:

"Art. 7. When an investigation is being conducted into acts classified as criminal offences and the accused is a juvenile between twelve (12) and eighteen (18) years of age, he shall be held at the remand home for a period not exceeding ninety (90) days.

Before the expiry of the above-mentioned period, the judge of the juvenile court shall decide as to the placement of the juvenile. If the judge decides to commit the juvenile to one of the rehabilitation or re-education establishments described in Act No. 83 of 1946, the duration of such committal shall be not less than one year. Once the ruling of the judge has been delivered, the juvenile shall be subject to the jurisdiction of the Juveniles Division or of the appropriate departmental committee".

Juveniles who, in accordance with the ruling of the judge, are to be imprisoned as a result of a criminal offence must also be kept segregated from adults, in accordance with the following provision of the Code of Criminal Procedure:

"Art. 651. Measures which may be adopted in the ruling. The ruling of the judge of the juveniles court may consist of the following measures:

- (1) Full acquittal, when the criminal act has not been proved;
- (2) A caution, when the offence has been unintentional and the juvenile has a sound family environment suitable for his upbringing. In such cases, a period of custody shall not be ordered or the period of custody shall be as brief as possible, with a view to preserving the child's sense of honour;
- (3) Probation;
- (4) Placement of the juvenile in the care of a suitable person or institution, subject to certain conditions, with a view to completing his education;
- (5) Confinement of the juvenile in a public or private industrial school or a special public or private farm for juveniles;
- (6) Confinement of the juvenile in a special reformatory for an indefinite period, until his rehabilitation is complete or he develops a sense of morality".

In addition, Decree No. 1,817 of 1964 contains the following provision:

"Art. 36. In towns or cities with no institutions for rehabilitation or industrial schools intended for the confinement of juveniles, the competent judges may, in cases where they deem it appropriate, decide that such measures will be carried out not in public establishments but in private voluntary or welfare institutions, or even under the guidance of a family, subject to appropriate precautions".

4. Article 55 of Decree No. 1,817 of 1964 is reproduced below in connexion with the treatment referred to in article 10, paragraph 3.

"Art. 55. Wardens shall take all legal measures to ensure that detention and penalties involving deprivation of liberty shall, in all cases, provide accused and convicted persons with an opportunity for moral regeneration and social rehabilitation and shall subordinate the entire operation of the establishments in their charge to this objective".

Article 11.

The second paragraph of article 23 of the National Constitution reads: "In no case shall detention or imprisonment be ordered for debts or purely civil obligations, except for the purposes of attachment". (The provision relating to attachment was abolished by the 1931 Code of Civil Procedure).

The Code of Criminal Procedure also includes this provision in the following terms:

"Article 4. Civil obligations. In no case shall detention, imprisonment or any criminal investigations be ordered for debts or purely civil obligations".

Article 12.

Everyone lawfully within Colombian territory has the right to liberty of movement and freedom to choose his residence without any restrictions other than those specified by criminal law in respect of persons against whom legal proceedings have been instituted for an offence. Everyone is equally free to leave and re-enter the country, the sole requirements being those which are customary in most parts of the world. The main regulations are given below:

National Police Code

"Art. 96. No permit is required to move within national territory.

Art. 97. Amended by Decree No. 522 of 1971, art. 117. Colombians and aliens may leave and re-enter the country, the sole requirement being possession of an international identity document or passport, without prejudice to the provisions of special laws such as tax and criminal laws.

Art. 98. The police shall protect freedom of movement and the passage of vehicles.

Art. 99. No regulations may impose restrictions on liberty of movement by pedestrians and land vehicles, except for the purpose of protecting public safety and health.

Art. 100. Regulations governing air, sea and river traffic, if not laid down in law, may be adopted only by the national government.

Land traffic may be subject to national and local regulations.

Art. 101. The choice of a place of permanent or temporary residence shall be unrestricted for all inhabitants of national territory.

A prohibition on residence in a particular place and banishment may be imposed only as a penalty or correctional measure in cases specified by law and shall not affect compliance with laws or regulations for the protection of public safety, order and health".

Article 13.

The provisions in force with regard to expulsion of aliens are set out below.

National Police Code

"Art. 174. A penalty of expulsion from the country may be carried out only after five days have elapsed from the date on which the judgement or decision imposing it becomes final.

Art. 175. A penalty of expulsion from the country may be imposed only as a court judgement in respect of a criminal offence for which it is the authorized penalty. It may also be imposed by a substantiated ruling by the legally competent police authority, but only in cases where political rights have been exercised unlawfully or the conditions of the entry permit have been breached, provided such conditions have been set out in writing, although not necessarily in the passport, and there is written evidence that they have been duly notified to the holder of the permit.

Art. 176. Administrative appeals may be lodged with the Council of State against decisions by the police authorities imposing a penalty of expulsion from the country. Such an appeal may be lodged within five days following the date of service the order imposing the penalty.

Art. 177. Any judge or public official who imposes or executes a penalty of expulsion without complying with the requirements of the foregoing articles shall be guilty of the offence of abuse of authority".

Article 14.

1. The equality of all persons is a basic principle of Colombian law as a whole. Everyone has access under equal conditions to the courts for the purpose of asserting his rights.

2. Judgements are public except in criminal cases which come before the juvenile courts. The provisions with regard to the ban on publicizing such cases are given below.

Code of Criminal Procedure

"Art. 641. Proceedings held in camera. All proceedings involving juveniles in the juvenile courts shall be held in camera and the publication of information about such proceedings is forbidden.

Art. 642. Prohibition of publication of information. If a juvenile under 16 years of age is charged with being the perpetrator of, accomplice to, or victim of an offence, no information concerning the name of the juvenile or any particulars whereby he could be identified by the public may be issued by the press, the radio or any other means.

Art. 643. Penalties. Infringements of the provisions of the two foregoing articles shall be summarily punished by the juvenile court on production of proof that they have occurred; a fine of 100 to 1,000 pesos shall be imposed for each offence and may be converted into imprisonment amounting to one day for every five pesos.

No remedy other than an appeal to set aside the court order shall be available against decisions made by the judge in virtue of this article.

Such decisions shall be notified to the administrator of the appropriate treasury department, who shall implement them and send the court the appropriate receipt.

Art. 644. Prohibition of the issue of certified copies of records. Exception. Certified copies of the record of the steps taken by juvenile courts in proceedings relating to juveniles shall not be issued; however, civil courts may request copies of the pertinent part of a judgement of the juvenile court in which a juvenile is stated to be the perpetrator of or accomplice to a criminal offence, but only for the purposes of a related civil suit.

Art. 645. Prohibition of civil proceedings. Civil proceedings may not be instituted in the juvenile court, but the parties concerned may make a written request to the judges of such courts, either on their own account or through their lawyers, for the purpose of submitting evidence".

3. The presumption that a person charged with an offence is innocent until proved guilty is a basic principle of Colombian criminal law. The relevant provisions are set out below.

Code of Criminal Procedure

"Art. 215. Requirements for conviction. No one shall be convicted on a criminal charge unless, during the proceedings, full and complete proof has been produced in due legal form that the offence for which the person has been brought to trial has been committed and that he is responsible for committing it.

Art. 216. Weighing of evidence. In dubio pro reo. In criminal proceedings, evidence shall be weighed in accordance with the rules of evidence. Any doubtful matter which cannot be resolved shall be decided in favour of the accused".

4. The law on criminal procedure contains the provisions necessary to afford all accused persons the minimum guarantees referred to in article 14, paragraph 3, of the Covenant. In connexion with the guarantee referred to in subparagraph (a), reference may be made to articles 430, 179, 180 and 181 of the Code of Criminal Procedure; in connexion with the guarantees referred to in subparagraphs (b) and (d), mainly articles 116, 117, 118, 119, 122, 123, 124, 219, 393, 394, 500 and 511 of the Code; with regard to the guarantee referred to in subparagraph (c), the provisions fixing the delays for various stages in the proceedings, including articles 189, 290, 317, 434, 437, 438, 439, 472 and 500 of the Code; in connexion with the guarantee referred to in subparagraph (e), articles 219, 253, 116 and 500 of the Code; with regard to the guarantee referred to in subparagraph (f), articles 151 and 279 of the Code and lastly, with regard to the guarantee referred to in subparagraph (g), articles 13 and 239 of the Code of Criminal Procedure and article 25 of the National Constitution.

The text of these provisions is given below, with the exception of those which have already been quoted in the present report.

Code of Criminal Procedure

"Art. 179. Orders which must be served. The following orders must be served: an order closing an investigation; an order opening the period for requesting evidence, an order relating to the submission of evidence at the proceedings; an order appointing a date for the selection of jurors; an order appointing a day and time for the hearing, interlocutory orders and judgements.

All court orders not listed in the preceding paragraph shall be complied with immediately and no appeal shall be admissible.

Art. 180. Method of service. Orders to persons in custody awaiting trial and to the Public Prosecutor's Department shall be served in person.

Persons awaiting trial who are not in custody and attorneys and defence counsels shall be served in person if they present themselves to the clerk of the court within two days following the date of the order; otherwise, upon expiry of that period, judgements shall be served by public notice and orders shall be served by publication at court.

Art. 181. Form of service. Personal service shall consist in reading out the full text of the order or judgement to the person concerned.

Service by public notice or publication at court shall be carried out in the form specified in the Code of Civil Procedure.

Art. 116. Rights of defendants in respect of their defence. Defendants in criminal proceedings may, without need of an attorney, request the submission of evidence, lodge or withdraw appeals, apply for full or conditional release, participate in the proceedings and intervene directly in all circumstances authorized by law.

Art. 117. Obligation to act as defence counsel. Persons officially appointed by the investigating official or judge as an attorney or defence counsel must accept the appointment. The appointee shall therefore be obliged to accept and discharge his duties unless he is excused on the grounds of serious or chronic illness or serious prejudice to his interests or because he is a public official, is disqualified by reason of age, being over 60 or under 21, or is already acting as a court-appointed defence counsel in two or more cases.

Any court-appointed attorney or counsel or person who has agreed to act at the request of the defendant and fails, without just cause, to fulfil the duties incumbent upon him in that capacity shall be required by the judge to discharge or perform such duties, on pain of successive fines of up to 500 pesos in the event of refusal, the fines to be imposed by the judge or official, without prejudice to other penalties prescribed by law.

Art. 118. Assumption of duties. The attorney or defence counsel shall assume his duties by swearing before the investigating official or judge and his clerk to discharge the duties incumbent upon him, shall assist the defendant in proceeding at which the defendant's presence is required by law and shall represent him in all other proceedings.

Art. 119. Single defence and incompatibility. Each defendant shall be represented by only one attorney or defence counsel.

The same person may act as attorney or defence counsel for more than one defendant at the same proceedings, provided there is no conflict of interests.

Art. 122. Representation at hearings. The defendant has the right to appoint a representative when he does not wish to speak in person, but such representative may act only at the public hearing.

Art. 123. Persons qualified to act for the defence. If no registered lawyer is available to attend the taking of a statement from the accused, the duties of an attorney may be entrusted to any citizen of good repute, provided he is not a public official.

Law students attached to law firms are entitled to act in criminal proceedings under the conditions set out in the statute governing the legal profession.

Art. 124. Registered lawyer. Except as provided for in the preceding article and in special regulations, only registered lawyers may act as an attorney, defence counsel or representative.

Art. 219. Persons entitled to require submission of evidence. The defendant, his counsel, the representative of the civil party and the official from the Public Prosecutor's Department may request the submission of evidence and the official concerned shall rule that it must be produced as soon as possible.

The same persons shall have the right to participate in the submission of all evidence during the preliminary investigation and the trial. To enable them to exercise this right, the official or judge shall summon them in due time, if possible before the evidence concerned is submitted.

Art. 393. Prohibition of inquiries without the presence of an attorney. Exceptions. No defendant shall be required to make a statement in the absence of his attorney, except in the following cases:

1. When his statement is urgently required in order to arrange a confrontation between the defendant and another person who is in danger of dying; or

2. When the defendant himself is in danger of dying and it is necessary to question him in order to discover the truth of the matter under investigation.

Art. 394. Reading of the statement. Penalties for omission. When the accused has made his statement, he is entitled to read it over for himself and the official concerned must inform him of this right. If he does not do it himself or through his attorney, the clerk shall read out the full text, such reading to be expressly recorded at the foot of the statement.

Failure to read out the statement shall render the official liable to a fine of up to 200 pesos, to be imposed by his superiors through disciplinary channels.

When the questioning of the accused is completed and before the statement is signed, the accused shall indicate whether he agrees with its contents or whether anything should be added or amended. Everything must be recorded in the statement.

Art. 500. Requests for evidence. When the committal decision takes effect, the persons concerned in the case may, during a period of three days, request such evidence as they deem relevant. On expiry of that period, the judge shall order the submission of any pertinent evidence requested and any other evidence he deems necessary. The evidence specified must be submitted within a period of 15 days.

Art. 511. The hearing. At the appointed time for the hearing, the indictment shall be read out, together with other documents requested by the parties to the proceedings. Immediately afterwards, the judge shall personally question the accused with regard to the offence, his personal history, his station in life and in general everything that may help to reveal his character. He shall forthwith grant the right to speak to: the official from the Public Prosecutor's Department, the civil party, the defendant or his representative, and the defence counsel, in that order. In trials by jury, the right to speak shall be granted twice, in the same order, and in other cases shall be granted only once.

At the conclusion of a hearing without a jury, the parties shall submit a written summary of their testimony.

Art. 189. Extensions. Legal or judicial periods may be extended only on serious grounds, upon request by one of the parties before the period has expired.

The judge may, at his discretion, grant one extension, which shall in no circumstances be more than twice the normal period.

The period fixed in orders not subject to service shall run from the day following the date of the order. If the period is a matter of hours, the judge shall state in the order the time from which it shall take effect.

Art. 290. Appointed period. The period appointed for the criminal police to undertake on its own initiative the inquiries referred to in the preceding article shall be eight days reckoned from the date on which it has been informed of the commission of an offence, in cases where no one has been arrested for the offence. If an arrest has been made, the person under arrest, together with the relevant legal orders and report, shall be put at the disposal of the judge forthwith, or at the latest within the subsequent 24 hours, at the local prison; the period may be extended to take account of distance if there is no municipal judge or investigating judge in the place at which the offence has been committed.

If it has not been possible to identify the perpetrator of the offence, the criminal police shall pursue its inquiries for up to 60 days.

Art. 317. Appointed period for the preliminary investigation. The period for the execution and completion of the preliminary investigation shall be 30 days, or 60 days in the case of inquiries into associated offences or offences involving two or more accused persons.

Art. 434. Period of detention incommunicado and taking of statement. The statement must be taken as soon as possible within three days following that on which the person under arrest has been brought before the judge, during which period he may be kept incommunicado. This period shall be increased to six days if more than two persons under arrest are involved in the same proceedings and they have been taken into custody on the same date.

In no circumstances and on no grounds may detention incommunicado be extended beyond the limit set in this article.

Art. 437. Definition of the legal status of the person under arrest. When the statement has been taken or the period fixed in article 434 has expired, the position of the person under arrest must be decided within five days, either keeping him in custody if there is evidence justifying such a course, or ordering him to be released forthwith. In the latter case, no bail may be required unless there is some circumstantial evidence against the person concerned, in which case the judge may order him to report at regular intervals at his chambers or at the office of an officer of the court or a police station at his place of residence, on pain of a fine of up to 5,000 pesos, determined on a sliding scale according to his financial means.

Persons awaiting trial shall not be required to report for a period of more than two months and, where possible, reporting days and times should be arranged so as to interfere as little as possible with the work of the persons concerned.

Art. 439. Requirements for the issue of an order for remand in custody. If the penalty for the offence in respect of which proceedings have been instituted is long-term imprisonment, the person awaiting trial shall be held in custody if there exists at least one statement by a witness offering sound reasons for credibility, in accordance with article 236 of the present Code, or strong circumstantial evidence that he is criminally responsible as the perpetrator of or accomplice to the act under investigation.

If the penalty for the offence is short-term imprisonment and the accused qualifies for release on bail he shall be allowed four days from the date on which he is served the order for remand in custody so as to find the surety required for him to remain at liberty. If he does not provide the surety, the order for remand in custody shall take effect until he has complied with such requirements.

A warrant for arrest may be issued for the purpose of serving the order, if the person awaiting trial proves reluctant to appear.

Art. 472. Closure or extension of the investigation. When the period fixed in article 307 has expired and the investigation is complete, the competent judge shall close the investigation by issuing an order against which an application to set aside shall alone be admissible. In the same order, the judge shall rule that the papers be kept in the office of the clerk of the court for eight days to enable parties to submit their pleas.

This period may be extended for a further eight days if there are more than two accused persons or, in the case of associated offences, if any of the parties so request.

If, in his view, the investigation is incomplete, the judge shall order any further inquiries he considers necessary and shall, for that purpose, fix a period of not more than 15 days, with any necessary allowance for travel time in the case of a person awaiting trial who is being held in custody. Otherwise, the previous period shall be extended to thirty days.

The order for closure or extension of the investigation shall be issued within 10 days following the date on which the papers concerning the preliminary investigation are received in the judge's chambers.

Art. 253. Persons entitled to examine witnesses. The judge, the investigating official, the defendant, his attorney or defence counsel, the attorney of the civil party and any other persons entitled to participate in the proceedings may question witnesses when they take the stand and cross-examine them as they wish in order to establish the facts; everything said by the parties shall be faithfully recorded in the account of the proceedings.

Art. 151. Obligatory use of Spanish. The proceedings shall be conducted in Spanish. Any person unacquainted with that language shall be heard through an interpreter.

Art. 279. Appointment of interpreter. The investigating official or the judge shall appoint an interpreter or interpreters in the following cases:

1. If one of the defendants, witnesses or experts does not understand Spanish or cannot make himself understood in that language and it is necessary to question him;

2. If one of the witnesses is deaf and dumb and cannot write; and

3. If a written document or paper is submitted in a language other than Spanish and has to be translated.

Art. 13. Exemption from the duty to lay information. No one shall be compelled to lay an information against himself, against his spouse or against his relatives within the fourth civil degree of consanguinity, the second degree of affinity or the first civil degree, nor may he be compelled to lay an information about offences which have come to his knowledge by reason, or in the course, of the exercise of activities which legally impose professional secrecy on him.

Art. 239. Exemption from the duty to testify. No one shall be compelled in criminal, correctional or police proceedings to testify against himself, against his spouse or against his relatives within the fourth civil degree of consanguinity, the second degree of affinity or the first civil degree.

The official concerned shall inform all accused persons of their right before their statements are taken and everyone who is about to give evidence".

National Constitution

"Art. 25. No one shall be compelled in criminal, correctional or police proceedings to testify against himself or against his relatives within the fourth civil degree of consanguinity or the second degree of affinity".

5. In criminal cases, juveniles under 16 years of age are subject to a special procedure in which account is taken of their youth and the need to safeguard their social rehabilitation.

The main provisions concerning proceedings in the juvenile courts are given below.

Code of Criminal Procedure

Articles 627, 629, 634, 635 and 651 are quoted above in connexion with article 10 of the Covenant.

"Art. 632. Purposes of the investigation. In investigations of criminal offences committed by juveniles under 16 years of age, inquiries shall be made into everything connected with the matter under investigation, and in particular:

- (1) Whether an offence under criminal law has actually occurred;
- (2) The perpetrators of or accomplices to the offence;
- (3) The main motives and other factors which have led to the violation of criminal law;
- (4) The present psychological and physical state of the juvenile and his past record in that connexion, together with that of his parents and siblings;
- (5) The previous conduct of the young person at school, at home, at work, etc.;
- (6) The living conditions of the juvenile at home and in the community, his job and that of his parents or persons with whom he is living or has lived and worked;
- (7) The economic circumstances of the juvenile or of his parents or relatives or persons on whom he is or should be legally dependant;
- (8) Material or moral damage caused by the offence; and
- (9) Whether or not the juvenile has been morally neglected or is exposed to moral or physical danger.

Art. 633. Investigation of personal and family history. The juvenile court judge is an investigating official. Investigation of the facts concerning the juvenile, his family or the environment in which he acted may be made either by the judge himself or through probation officers.

Art. 636. Hearing. When the investigation regarding proof of responsibility of the juvenile and the inquiries concerning the juvenile himself, his parents or persons on whom he is dependant and his environment are completed and any reports from the remand home are available, the judge shall appoint a time and date for the hearing to consider the juvenile's future.

The hearing shall be held in private and shall be attended by the doctor attached to the court, the juvenile defence counsel, the person responsible for conducting the inquiries concerning the juvenile, his parents, or if appropriate his closest relatives, and other persons concerned with the protection of juveniles, at the discretion of the judge. The head of the remand home may also attend.

The juvenile shall not attend the hearing of his case.

Art. 640. Content of the judgement. In his judgement, the judge shall establish briefly and in plain language:

- (1) The facts which have been proved;
- (2) The points of law which he deems relevant to the case, particularly with regard to the legal category of the offence;
- (3) The conclusions to be drawn from the studies made on the personality of the juvenile;
- (4) The order for referral to the ordinary courts of any matters arising against adults; and
- (5) The measures to be adopted for rehabilitation of the juvenile.

Art. 652. Alteration, substitution or discontinuance of the measures ordered. The judge may at any time alter, substitute or discontinue measures applied in respect of a juvenile but in order to do so he must, in cases where the juvenile is attending an educational establishment, receive a favourable report from the director thereof, or from the disciplinary body of the establishment in the case of an approved school.

Art. 653. Probation. A juvenile put on probation shall be entrusted to his own family or to an outsider of good character or to an industrial or agricultural establishment under conditions specified by the judge, against adequate surety if he deems it necessary, the probationer shall be under the supervision of the judge or of the probation officer.

Art. 654. Tactful and prudent supervision. Supervision of a juvenile shall be conducted tactfully and prudently so that it does not prejudice his chances or alienate his trust.

Art. 656. Acquittal. If, for lack of evidence, a juvenile court judge is obliged to acquit a juvenile whom the proceedings have shown to be neglected or exposed to moral or physical danger, he shall take all the necessary steps to safeguard the juvenile".

6. Colombian law provides three ordinary remedies against legal decisions in criminal cases. These are applications to set aside, appeals on law and appeals on facts; furthermore, some court decisions are regarded as ex-officio reviews: such is the case when an appeal has not been lodged. There are also, for certain cases, two extraordinary remedies, namely appeals to vacate a judgement and appeals for review.

A person found guilty of an offence has the right to have the verdict and the penalty imposed on him reviewed by a superior judge or court; that is, he has access to an appellate court by lodging an appeal. The relevant provisions of the Code of Criminal Procedure are as given below:

"Art. 197. Appeal of sentence. An appeal may be made to suspend the effect of a judgement of lower court, either orally at the time of service to the person concerned, or it may be made in writing within five days.

Art. 197 bis. Reformatio in pejus. An appeal entitles the appellate judge or tribunal to consider the relevant decision without any restrictions whatsoever".

7. In certain circumstances a sentence which has been enforced may be reversed on appeal for review; in that case, persons whose conviction is subsequently quashed, have the right to claim compensation. The main provisions are set out below.

Code of Criminal Procedure

"Art. 584. Grounds for review. In criminal cases, an appeal for review of a sentence which has been enforced is admissible in the following cases:

(1) If, by reason of conflicting decisions, two or more persons are serving sentences for an offence which could have been committed only by one of them or by a smaller number than those convicted;

(2) If a person is serving a term of imprisonment as the perpetrator of or accomplice to the murder of a person who, after the conviction, is proved to be still alive;

(3) If a person is serving a sentence and it is proved that some false testimony, expert opinion, document or evidence of any other kind may have decided the judgement in question;

(4) If, in the view of the Supreme Court, conviction was based on some document or other undisclosed evidence which was not produced in the proceedings; and

(5) If, after the conviction, new facts come to light or evidence not available at the time of the proceedings establishes the innocence or absence of responsibility on the part of the convicted person or persons or creates at least strong presumption of such innocence or absence of responsibility.

Art. 587. Transmittal and decision. When the period for collection of evidence has expired, the clerk of the court shall draw up a report and the court which has examined the case shall order the proceeding to be referred to the Attorney General and to the appellant for 15 days, so that they may each submit their comments in writing. When this period has elapsed, the court shall rule on the admissibility of the appeal within the next 30 days.

If the appeal is allowed, the Supreme Court, in ordering a review of the case, will designate an appropriate court, which shall be different from the court that initially examined the appeal, and all the records shall be sent to it.

If review of the case is disallowed, the file shall be returned to the appropriate court and a copy of the decision shall be retained in the Supreme Court.

Art. 591. Award of damages to persons wrongfully convicted. Persons whose conviction is reversed by a review of the case, or their heirs, shall be entitled to require from the judges, witnesses or experts who were responsible for their conviction, compensation for the damage they have suffered. The appropriate suit shall be brought before the competent judges in the civil courts".

Article 15.

The following constitutional and legislative provisions correspond to the principles set out in this article:

National Constitution

"Art. 26. A person may be tried only by a competent court, in conformity with laws in existence before the act with which he is charged and in accordance with the due forms for each case.

In criminal matters, law favourable to the defendant, even if enacted at a later date, shall be applied in preference to restrictive or unfavourable law".

Article 28, which has been quoted above.

Act No. 153 of 1887

"Art. 43. In criminal matters, law in existence before the commission of the offence shall be preferred to law enacted ex post facto. No one may be tried or punished except by law in existence before the act giving rise to the trial. This rule refers only to laws which define and penalize offences and not to laws which establish courts and determine procedure, which shall be applied in accordance with article 40.

Art. 44. In criminal matters, law favourable to the defendant shall be preferred in legal proceedings to odious or restrictive law, even if it has been enacted after the commission of the offence.

This rule shall favour convicted persons who are serving their sentence.

Art. 45. The preceding provision shall be applied as follows:

A new law which explicitly or implicitly removes the criminal nature of an act which formerly constituted an offence shall signify a pardon and reinstatement;

If a new law reduces by a fixed amount what was previously a fixed sentence, the sentence shall be reduced accordingly;

If a new law reduces the maximum sentence and increases the minimum sentence, the law invoked by the convicted person shall be applied;

If a new law reduces a sentence of imprisonment and increases a fine, it shall have precedence over the earlier law;

In cases of doubt the more favourable interpretation shall be applied.

Art. 46. A decision which, in accordance with a new law, suspends or reduces the penalty for persons serving a sentence shall be administrative and not judicial.

Art. 47. Any entitlement by a convicted person to obtain by right, but not by pardon, a remission of sentence in accordance with the law in force at the time sentence is passed shall be maintained under a new law with regard to the moral requirements determining that right and the part of the sentence to which the right relates, but the new law shall apply in respect of the authorities charged with granting the remission and of the formalities to be observed in requesting it."

Article 16.

Colombian law recognizes everyone as a "person", i.e. as someone who has rights and obligations.

Article 17.

Every person resident in Colombia is entitled to protection against arbitrary or unlawful interference with his privacy, family, home or correspondence and against unlawful attacks on his honour and reputation, as stated in this article. In this respect the following provisions may be cited:

National Constitution

Articles 16 and 23, which have been quoted above.

"Art. 38. Correspondence by telegraph and mail shall be inviolable. Letters and private papers may be intercepted or examined only by the authorities, by order of a competent official in the instances and with observance of the formalities established by the law, for the sole purpose of securing legal evidence.

For the assessment of taxes and for cases of auditing by the State, the presentation of accounts and related papers may be required.

The circulation of printed matter by post shall be taxable, but may never be prohibited in time of peace. (Legislative Act No. 1 of 1945, art. 5)".

Penal Code

Article 295, which has been quoted above.

"Art. 188. Anyone who reports a person to the authorities as guilty of a criminal offence, knowing him to be innocent, and anyone who presents false evidence against such person shall be liable to imprisonment for one to five years, unless in the latter case, the act constitutes a graver offence.

Art. 293. Amended by Act No. 21 of 1973, art. 4. Article 293 of the Penal Code shall read as follows:

Anyone who abducts a person for the purposes of unlawful gain to himself or another shall be liable to rigorous imprisonment for six to 12 years.

If the person abducted is spontaneously released without any unlawful gain having been obtained, and in the absence of the aggravating circumstances referred to in article 6, paragraphs 3, 6 and 7, of this Act, the offender shall be liable to rigorous imprisonment for four to eight years.

Art. 294. Amended by Act No. 21 of 1973, art. 5. Article 294 of the Penal Code shall read as follows:

Anyone who unlawfully deprives a person of his liberty other than in the case referred to in the preceding article shall be liable to rigorous imprisonment for three to six years.

Art. 298. Anyone who, by violence or threats, unlawfully compels another person to do, tolerate, or refrain from doing something shall be liable to imprisonment for one month to one year.

Art. 302. Anyone who, in an arbitrary, deceitful or clandestine manner, enters the residence of another person against the will of the occupant shall be liable to imprisonment for six months to one year.

Art. 303. Any public official or employee who abuses his position to enter or search a residence shall be liable to imprisonment for six months to two years.

If the abuse consists in entering such place without observing the requirements prescribed by law, the penalty referred to in the preceding paragraph shall be reduced to one half.

Art. 304. Anyone who suppresses, diverts, destroys or intercepts any postal, telegraphic or telephonic communication to another person or improperly acquaints himself of the contents thereof shall be liable to imprisonment for 15 days to one year, unless such act constitutes a graver offence.

If the offender divulges the contents of the correspondence and injury results therefrom, the penalty shall be imprisonment for one month to two years and a fine of 5 to 500 pesos.

Art. 305. If the acts enumerated in the preceding article are committed by the employee in charge of such services, the penalties prescribed shall be increased by up to one half and disqualification from public office and the exercise of public rights for a like term shall also be imposed.

Art. 306. Anyone who has improperly obtained knowledge of the contents of a document which is to be kept secret and, other than in the cases referred to in article 304, divulges it without just cause to the detriment of another person or to the benefit of the offender or a third party shall be liable to imprisonment for three months to one year and a fine of 20 to 1,000 pesos.

Art. 307. Anyone who, by reason of his profession, trade or occupation has knowledge of a secret and divulges it without just cause shall be liable to imprisonment for three months to one year and shall be disqualified from exercising such profession, trade or occupation for a like term.

Art. 406. Anyone who, by threats or violence or false pretence of public authority or an order from a public authority, compels another person to deliver, send, deposit or place at his disposal, for the purposes of unlawful gain to himself or a third party, things, money or documents which may produce legal effects shall be liable to imprisonment for eight months to five years.

The same penalty shall be imposed on anyone who, by the same means, compels another person to sign or destroy credit instruments.

Art. 407. Anyone who, by threats or accusations against honour or disclosure of secrets, commits any of the acts enumerated in the preceding article shall be liable to imprisonment for one to four years.

Art. 333. Anyone who, by an effective means for communication of thought, falsely accuses another person of a particular personal act which constitutes an offence or, by reason of its ignominious or immoral nature, is likely to expose him to public animosity or contempt shall be liable to imprisonment for six months to three years and a fine of 100 to 2,000 pesos.

Art. 334. If the false accusation is made through the press or in widely exhibited or distributed publications or manuscripts, or at a public meeting or assembly, or by cinematograph or radio broadcasting, penalty shall be increased by up to one half.

Art. 335. Anyone who proves that his accusations are true shall be exempt from the penalties prescribed in the foregoing articles.

Nevertheless, in no case shall evidence be admitted concerning:

(1) An accusation of any punishable act which has been the subject of an acquittal or dismissal in Colombia or abroad;

(2) An accusation of acts relating to conjugal or family life, or to an offence against good morals, when investigation thereof is dependent on private initiative.

Art. 336. If the false accusation is made in writing and addressed exclusively to the offended party or in his presence alone, the penalty shall be reduced by up to one half.

Art. 337. Anyone who, by an effective means for communication of thought, attacks the honour, reputation or dignity of any person, or his purely private or domestic defects or vices shall be liable to imprisonment for three to 18 months and a fine of 50 to 1,000 pesos.

The same penalty shall be imposed on anyone who, with intent to cause insult to another, calls attention to or divulges criminal acts committed by his spouse or relatives within the fourth civil degree of consanguinity or the second degree of affinity.

Art. 338. If the insult is proffered in public in the presence of the offended party or is made by the means enumerated in article 334, the penalty shall be increased by up to one fourth.

Art. 344. Defamation or insult also occur when the constituent acts thereof are committed against juridical persons or corporations recognized by law.

Art. 345. Anyone who, by any means, publishes, reproduces or reiterates insults or defamation by other persons shall be punishable as the author thereof.

Art. 346. If the person responsible retracts the defamation or insult before or while he is being served a writ of prosecution, he shall not be liable to a penalty.

In such cases, the offended party has the right to demand that the retraction be published in a local newspaper at the expense of the offender."

National Police Code

"Art. 72. The police shall at all times protect the inviolability of the place of residence and of any place not open to the public, for the purposes of guaranteeing the occupants protection of the privacy to which they are entitled.

Art. 73. Access to the place of residence or a private place where family work or recreation takes place shall require the consent of the owner or the occupant.

Art. 74. For the purposes of this statute, place of residence means educational establishments, social and sports clubs, meeting places of private corporations, offices, workshops and other places of work, those parts of shops and places open to the public which are reserved for living or office accommodation; rented hotel rooms, houses, and apartment buildings, regardless of whether they are divided by passages.

Art. 75. Public places, places open to the public and communal areas in apartment buildings and hotels, such as passages, corridors and lobbies, shall not be considered as places of residence.

Art. 76. Places open to the public shall include taverns, restaurants, dance halls and places of entertainment, even though entry thereto requires observance of the conditions laid down by the management.

However, where a working or dwelling area is established within a place open to the public, such area shall be considered to be a private place.

Upon completion of the entertainment or of the working day in a place open to the public, such place shall become private.

Art. 77. When, by notice or by special intention, entry to a place is subject to conditions, anyone violating such conditions may be immediately expelled by the police at the request of the occupants.

Art. 78. The police and other public officials expressly authorized by law to force an entry into places of residence or closed places where private activities are carried out may do so only by virtue of a warrant issued by the competent authority in accordance with the legal formalities and on the grounds prescribed by law.

Art. 79. Authorization to search a place of residence or place not open to the public shall be issued by a warrant specifying with maximum precision the place to be searched, the grounds for the search, the day and time of the search, and the right to force an entry in the event of resistance.

Art. 80. The police shall normally carry out a search during working hours. Should circumstances so require, a search may be carried out at any time of the day or night. The occupant must be requested to permit entry before force may be used.

Art. 81. Amended by Decree No. 522 of 1971, art. 111. If a person is surprised in flagrante delicto and, upon being pursued by the police, takes refuge in his place of residence, public officials may enter it immediately for the purpose of apprehending him.

If the person takes shelter in the residence of a third party, the police may enter it and use force if necessary, without producing a warrant or first obtaining permission from the occupant. Should the occupant oppose police entry, he may be arrested and taken before the competent authority for the purposes of instituting a criminal investigation.

Art. 82. Chiefs of police may issue a warrant to search places of residence or places open to the public for the following purposes:

- (a) To arrest a person against whom an order depriving him of liberty has been issued by a competent public official;
- (b) To apprehend a dangerous person who is mentally ill or a person suffering from a contagious disease;
- (c) To inspect a place on grounds of public health;
- (d) To obtain evidence of the existence of gambling houses or of establishments operating contrary to the law or regulations;
- (e) Where necessary, to investigate fraudulent acts in connexion with equipment for water and electricity supply, telephones and other public services;
- (f) To carry out a visual examination ordered in a police case;
- (g) To examine electrical and gas equipment, chimneys, ovens, stoves, boilers, motors and machinery in general, and the storage of inflammable or explosive substances for the purpose of preventing accidents or disasters.

Art. 83. The police may enter private residences without a warrant in cases of urgent need in order to:

1. Come to the aid of a person who in any way requests assistance;
2. Extinguish a fire or prevent it spreading, stop flooding, or prevent any similarly dangerous situation;
3. Pursue a rabid or ferocious animal;
4. Protect the property of persons who are absent when it is discovered that a third party has by force or by any other means entered the residence of the owners of such property;

5. Where an act of violence is committed from inside a house or other building against a person or property situated outside it".

Decree No. 522 of 1971

"Art. 46. Anyone who, without lawful authorization, investigates acts in the intimate or private life of another person shall be liable to a fine of 50 to 5,000 pesos.

If such activity is carried out by means of recordings, photography or any other surreptitious device, the fine shall be increased by up to one half.

Art. 47. Anyone who discloses the acts referred to in the preceding article, shall be liable to a fine of 50 to 5,000 pesos.

If such disclosure leads to personal gain, the fine shall be increased to up to one half.

In the event of recidivism, the penalty shall be imprisonment for one to six months.

Art. 48. Anyone who, having knowledge of an act in the private life of another person, divulges it without just cause shall be liable to a fine of 50 to 2,000 pesos.

If he divulges the act and obtains personal gain, the fine shall be increased by up to one half".

Article 18.

The freedoms enunciated in this article are referred to in the following provision of the Constitution:

"Art. 53. The State guarantees freedom of conscience.

No one shall be molested by reason of his religious opinions or compelled to profess beliefs or observe practices contrary to his conscience.

Freedom of all religious cults not contrary to Christian morality or to the law is guaranteed. Acts contrary to Christian morality or prejudicial to public order carried out in connexion with or under pretext of religious worship are subject to ordinary law.

The Government may conclude, subject to later approval by Congress, agreements with the Holy See to regulate, on the basis of reciprocal deference and mutual respect, the relations between the State and the Catholic Church".

In addition, the Penal Code contains the following provisions protecting freedom of religion:

"Art. 312. Anyone who, by physical or moral violence compels another person, to perform specific religious acts or to attend the rites of any religious cult shall be liable to imprisonment for one to three months and a fine of 10 to 200 pesos.

The same penalty shall be incurred by any person who, by the means stated in the preceding paragraph, hinders another person from performing specific religious acts or from attending the rites of any religious cult.

If the offender is a public official, the above penalties shall be increased by up to one half.

Art. 313. Anyone who, by threats, outrages or demonstrations of disrespect or vilification, hinders or disturbs the celebration of religious rites or functions of any religious cult permitted in the nation shall be liable to imprisonment for one to six months and a fine of 20 to 200 pesos.

Art. 314. Anyone who, for motives of disrespect or vilification, destroys, tears down or in any manner publicly outrages objects intended for religious worship or the symbols of any religion permitted in Colombia and any person who for such purpose insults or affronts a minister of such religion, in his capacity as such, shall be liable to imprisonment for two months to one year and to a fine of 20 to 500 pesos".

Article 19.

Colombians enjoy freedom of expression, with no restrictions other than those mentioned in this article of the Covenant, that is, those necessary "for respect of the rights or reputations of others" and "the protection of national security or of public order (ordre public) or of public health or morals".

In relation to this article, the following legal provisions may be cited:

National Constitution

"Art. 42. The press shall be free in time of peace but shall incur liability in accordance with the laws, for attacks against personal honour, the social order or the public peace.

No enterprise publishing periodicals may, without permission of the Government, receive subsidies from other Governments or from foreign companies".

Act No. 29 of 1944

"Art. 7. The police authorities shall prevent the posting of bills, notices and placards or the distribution of handbills containing an incitement to commit any offence or violation of the law and shall remove and seize any which have been posted up or are being distributed.

Persons responsible for the acts mentioned in this article shall be liable to a fine of 25 to 200 pesos, convertible into imprisonment, to be imposed by the competent judicial authority.

Art. 9. Anyone printing, posting, causing to be posted or in any manner contributing to the posting in any public place or place exposed to the public, or engaging in the distribution of, notices or printed matter, the title or contents whereof are obscene or contain defamatory or injurious remarks, accusations or expressions against any person or entity, shall be liable to a fine of 100 to 500 pesos and a pecuniary penalty of the same amount to be paid to the defamed or injured person or entity, without prejudice to the legal penalty to be imposed for publication itself.

Art. 10. The competent judicial authority shall impose a fine of 500 to 2,000 pesos, convertible into imprisonment, on anyone who, by means of written or printed papers sold, distributed or displayed to the public or in a public place, assists, incites or co-operates in the commission or execution of an act which is a legal offence, even though such assistance, incitement or co-operation may not have produced results. If the offence or offences have been committed or miscarried, the penalty shall be doubled.

Art. 19. An editor of a periodical shall insert, free of charge and within three days of receipt in the case of a daily newspaper or in the next issue in all other cases, rectification or clarification addressed to him by individuals, public officials, corporations or entities, regarding false accounts of their acts, or by anyone who has been offended in injurious terms in the periodical concerned, when such rectification is not of an injurious nature.

The rectification may not take up more than one column, except in cases where the nature of the matter warrants a greater amount of space.

The rectification or clarification shall be published in the same place and type as the text which gave rise to it, and with the same presentation, including headings.

Art. 20. The right to issue rectifications extends to relatives of the injured party within the fourth degree of consanguinity and the second degree of affinity if the injured party is absent or unable to issue the rectification himself, and the injured party shall not thereby lose his right to issue rectification under his own signature for one time only.

Art. 21. If the editor of the periodical fails to insert the rectification or clarification within the period of time specified by law, the offended party may appear before the competent circuit judge, who shall hear the parties not more than 48 hours after the complaint has been filed, shall issue a firm ruling on the matter within not more than 24 hours and shall, where appropriate, order publication of the rectification or clarification and impose a pecuniary penalty of 100 to 1,000 pesos to be paid by the editor of the periodical to the person or entity entitled to demand rectification.

Art. 27. It shall be understood that when defamation or an insult is published impersonally or by the use of "it is said", "it is reported", "the rumour is", or a similar phrase, the defamation or insult shall for legal purposes, be considered to be published personally by the editor of the periodical and any other party responsible for the publication in question.

Similarly, there shall be no exemption from liability in the case of defamation or insult by indirect expressions or means if the constituent elements of the offence are involved and the publication refers unequivocally to the offended party.

Art. 28. Anyone who, by means of written or printed matter sold, distributed or displayed to the public, engages in incitement to disaffection among the armed forces or disregard of the authorities or in any way attempts to prevent or disturb the exercise of their lawful duties shall be liable to imprisonment for three months to three years and a fine of 50 to 5,000 pesos.

Art. 29. The penalty established in the preceding article shall be imprisonment for six months to six years, in addition to the fine, in cases which lead to disaffection among the armed forces or disregard of the authorities. In such cases, the person on trial shall not benefit from release pending trial.

Art. 31. Anyone who knowingly publishes or reproduces false reports or falsified papers or documents in order to attribute them to another person shall be liable to a fine of 100 to 1,000 pesos.

Art. 32. Any act contrary to due obedience to the law or to respect for the rights embodied therein and any advocacy of acts defined as offences under criminal law shall be punishable by a fine of 100 to 1,000 pesos.

The provisions of this article shall not cover legitimate censure of laws or a demonstration of their unsuitability, provided they do not disregard the binding nature of the laws or encourage disobedience to them.

Art. 39. Anyone who, by means of flattery, promises, gifts, offers of money or other means, threats, intimidation or any other kind of violence, seeks to compel or induce an editor of a periodical or a journalist to publish anything of a defamatory or insulting nature against any person or entity shall be liable to a fine of 500 to 2,000 pesos, convertible into imprisonment in the ordinary form.

Art. 40. An editor of a periodical or a journalist who, by threatening to publish anything of the kind referred to in the preceding article, attempts to compel or induce any person or entity to do or to refrain from doing something shall be liable to a fine of 500 to 4,000 pesos, convertible into imprisonment, in the ordinary form, in addition to any imprisonment applicable under the terms of article 407 of the Penal Code.

Art. 41. Criminal liability for the offences referred to in this Act shall be determined and fixed according to the general rules of criminal law, but the editor of a periodical and the author of a text, and the publishers of a publication in cases other than that of a periodical, shall in any event be considered as the perpetrators of the criminal act.

Art. 55. Regardless of the criminal liability referred to in the preceding articles, anyone who by any effective means for communication of thought, in print, by radio broadcasting or cinematography, causes injury to another person shall be required to make compensation, except where he proves that he has not been at fault".

Penal Code

"Art. 149. Anyone who, on a public rostrum or by means of a published text, formally and directly instigates rebellion or sedition or communicates instructions or proposes the means for such purposes, even though rebellion or sedition does not occur, shall be liable to banishment or imprisonment for two months to one year and a fine of 100 to 1,000 pesos.

Art. 311. Anyone who, by means of violence, threats or deceit, prevents or obstructs the publication and free circulation of any periodical shall be liable to imprisonment for one to six months and a fine of 20 to 500 pesos.

Art. 209. Anyone who publicly and directly incites another person or persons to commit a particular offence shall be liable to imprisonment for two months to one year and a fine of 50 to 1,000 pesos, unless such act constitutes a graver offence under another provision of law.

Art. 210. Anyone who publicly and directly advocates the commission of an offence or kinds of offences shall be liable to imprisonment for one to six months and a fine of 20 to 500 pesos.

Art. 279. Anyone who, in Colombia or abroad, publishes or in any manner divulges false, exaggerated or tendentious reports which imperil the national economy or public credit shall be liable to imprisonment for one to six years and a fine of 100 to 2,000 pesos.

The penalty shall be increased by one-third if the offence is committed in order to promote foreign interests.

Art. 281. Superseded by Act No. 80 of 1948, art. 1. Article 281 of the Penal Code shall read as follows:

Art. 281. Anyone who, by spreading false reports or using other fraudulent means, causes a rise or fall in wages or the price of foodstuffs, commodities, goods, shares, bonds or currencies on the public market or on stock exchanges shall be liable to imprisonment for six months to three years and a fine of 100 to 2,000 pesos.

A like penalty shall be incurred by anyone who causes such results by obtaining and hoarding securities or goods susceptible of sale or anyone who obtains unlawful gain by taking advantage of momentary economic conditions. It shall be understood that anyone who obtains unlawful gain by infringing the provisions in force with regard to price control or storage of foodstuffs or merchandise shall incur the same penalty.

If the offence is committed by public officials or foreign exchange, stock or commercial brokers, they shall incur loss of office or disqualification from the exercise of their profession for a term amounting to twice that of their sentence".

Articles 333 to 338 and 344, 345 and 346 have been quoted above in connexion with article 17 of the Covenant.

Decree No. 1,188 of 1974 (National Statute on Narcotic Drugs)

"Art. 41. Anyone, who in any way encourages or, without the permission of the competent authority, spreads the use of any drug or substance producing physical or psychological dependence shall be liable to rigorous imprisonment for two to eight years".

Article 20.

Propaganda for war and advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence are not known to occur in Colombia. This explains why they have not attracted the special attention of the legislative bodies and why there are no provisions in the Penal Code covering possible acts of this kind. Nevertheless some provisions of the Penal Code would be applicable in certain cases to any acts of this nature:

"Art. 129. Anyone who, by hostile acts not permitted by the national Government, provokes a rupture of peaceful relations between Colombia and another State causing the imminence of armed conflict or harassment of or reprisals against the persons and the property of Colombians shall be liable to imprisonment for six months to two years and a fine of 100 to 2,000 pesos. If the methods adopted result in war, the penalty shall be rigorous imprisonment for five to ten years.

Art. 132. Anyone who, in disrespect or contempt, destroys, defaces or outrages in public the flag, shield or any other national emblem of a foreign State shall be liable to imprisonment for six months to two years. A complaint must be filed by the government concerned in order for proceedings to be instituted".

In certain cases, articles 209 and 210 of the Penal Code, quoted above in connexion with article 19 of the Covenant, would also be applicable.

Article 21.

The right of assembly is recognized in the National Constitution:

"Art. 46. Any number of people may meet or assemble peacefully. The authorities may disperse any assembly that degenerates into disorder or riot or obstructs public thoroughfares".

In addition, the Penal Code includes the following provision penalizing violation of this right:

"Art. 309. Anyone who materially prevents or hinders a lawful meeting or association or the exercise of rights granted by the law concerning trade unions or strikes or who takes reprisals in connexion with lawful strikes shall be liable to imprisonment for two months to one year and a fine of 50 to 2,000 pesos.

If the act referred to in the preceding paragraph is committed by a public official or employee, he shall also be removed from office".

Moreover, the National Police Code specifies the following:

"Art. 102. Anyone may assemble with other persons or take part in a parade in a public place with the aim of expressing collective ideas and interests of a political, economic, religious or social character or for any other lawful purpose.

Written notice of such intention shall be submitted personally to the highest political authority at the place concerned. Such notice must be signed by not less than three persons.

The notice shall state the day, time and place of the planned meeting and shall be submitted 48 hours in advance. In the case of parades, the planned route shall be indicated.

Paragraph 4. Amended by Decree No. 522 of 1971, art. 118. Within 24 hours following receipt of the notice the authorities may, for reasons of public order and by means of a substantiated ruling, alter the route of the march parade and the date, the place and the time of the event.

If the competent authority makes no comment within this time-limit, it shall be understood that the requirements for holding of the meeting or parade have been fulfilled".

Article 22.

The right of association is guaranteed by the following provision of the Constitution:

National Constitution

"Art. 44. It is permitted to form companies, associations and foundations which are not contrary to morality or the legal system. Associations and foundations may obtain recognition as juridical persons. (Legislative Act No. 1 of 1936, art. 20, para. 1).

Religious associations must, for the purposes of protection by the law, present to the civil authority authorization issued by the higher ecclesiastical body concerned (Constitution of 1886, art. 47, para. 3)".

Furthermore, the Substantive Labour Code includes the provisions set out below:

"Art. 12. The Colombian State guarantees the right of association and the right to strike under the terms prescribed by the National Constitution and by law.

Art. 353. 1. In accordance with article 12, the State guarantees employers, workers and the self-employed the right to freedom of association to defend their interests by forming professional associations or trade unions, which are guaranteed the right to unite or to defend themselves collectively.

2. In exercising their rights and performing their duties, trade unions shall abide by the rules set forth in this title and shall be subject to government inspection and supervision with regard to matters of public order, particularly in the cases specified herein.

Art. 354. 1. Under the terms of article 309 of the Penal Code, no one may prejudice the right to form trade unions.

2. Anyone who, by violence or threats, in any way prejudices the right of free association in a trade union shall be liable to a fine of two hundred to two thousand (200 to 2,000) pesos, to be imposed by the appropriate Ministry of Labour official after full verification of the facts. In the event of a subsequent criminal conviction involving a pecuniary penalty, the fine referred to in this paragraph shall be refunded.

Art. 358. 1. Trade unions are associations which workers are free to join or leave. The statutes shall regulate the conditions and restrictions regarding admission, the reimbursement of dues or contributions to members in the event of voluntary withdrawal or expulsion, and joint participation in mutual benefit institutions which the trade union may have established with its members' contributions.

2. The statutes may restrict the admission of high-ranking employees to local branches of trade unions".

Article 309 of the Penal Code, referred to above, also contains a provision penalizing persons who violate the right of lawful association.

In addition, article 59, paragraph 4, of the Substantive Labour Code prohibits employers from "restricting or bringing pressure to bear upon workers in any way in the exercise of their right of association"; article 379, paragraph (b), also prohibits trade unions from "compelling workers, directly or indirectly, to join or leave a trade union, except in cases of expulsion for or fully proven reasons specified in the statutes".

Article 23.

Colombian legislation provides for the protection of the family as the fundamental group unit of society. The rights and obligations relating to the family are governed by many provisions, contained mainly in the Civil Code.

The right of men and women to marry and to found a family is recognized by law. Marriage requires the free and full consent of the intending spouses. The law also provides for full equality of rights and obligations of spouses during marriage and at its dissolution; in connexion with article 3 of the Covenant, reference was made to the most recent provisions, which have eliminated the previous inequalities between men and women with regard to civil matters.

In addition to the above, the principal articles of the Civil Code connected with the provisions of article 23 of the Covenant are set out below:

"Art. 115. The marriage contract shall be drawn up and formalized by the free and mutual consent of the intending spouses, expressed before the competent official in the manner and in accordance with the formalities and requirements established in this Code and shall have no civil or political effect if it is concluded in contravention of such manner, formalities and requirements.

Art. 116. Amended by Decree No. 2,820 of 1974, art. 2. Persons over 18 years of age shall be free to marry.

Art. 117. Persons under the specified age may not marry without the express written permission of their legitimate or natural parents. If one of the parents has died or is unable to grant such permission, the consent of the other shall suffice; in the event of disagreement, the wishes of the father shall prevail in all cases.

Under the same terms, the consent of the adoptive father and mother shall be required for the marriage of an adopted son under 21 years of age, or an adopted daughter under 18 years of age.

Art. 160. Amended by Act No. 1 of 1976, art. 10. Once a divorce becomes final, the matrimonial ties and conjugal estate shall be dissolved, but the rights and duties of the divorced persons with regard to their children shall remain in effect and, where appropriate, the rights and duties of a spouse to pay alimony shall also remain in effect in accordance with the rules laid down in book 1, title XXI, of the Civil Code.

Art. 257. The cost of bringing up, educating and establishing legitimate children shall be borne by the conjugal estate, in accordance with the rules applicable.

Paragraph 2. Amended by Decree No. 2,820 of 1974, art. 19. If the husband and wife live under the system of separation of property, they shall contribute to such costs in proportion to their ability to do so.

However, if a child has independent assets, the cost of establishing him and, if necessary, the cost of his upbringing and education, may be met from such assets, provided that the capital remains intact so far as is possible.

Art. 264. Amended by Decree No. 2,820 of 1974, art. 23. By common agreement, parents shall orient the education and moral and intellectual training of children under legal age in the way they feel most suited to the children; similarly, they shall co-operate in their upbringing, maintenance and establishment.

Art. 288. Superseded by Act No. 75 of 1968, art. 19. Parental authority is the body of rights that parents are recognized by law to have over their unemancipated children in order to enable them to perform their duties as parents.

Paragraph 2. Amended by Decree No. 2,820 of 1974, art. 24. Parents shall exercise parental authority over their legitimate children jointly. If one of the parents is absent, the other shall exercise such authority.

The unemancipated children of a family are subject to the parental authority of the father or mother of the family".

Article 24.

Paragraph 1. One of the principal aims of the Colombian Institute of Family Welfare, a State body established under Act No. 75 of 1968, is to provide protection for juveniles.

With regard to juveniles, Colombia has extensive legislation containing appropriate protective measures. The main legal provisions in this respect are found in the Civil Code, the Penal Code, the Code of Criminal Procedure, Acts. Nos. 153 of 1887, 45 of 1936, 83 of 1946, 140 of 1960, 75 of 1968 and 1 of 1976 and Decrees Nos. 1,818 of 1964, 2,820 of 1974 and 752 of 1975. Some of the provisions which could be considered fundamental are set out below.

Civil Code

"Art. 253. Personal care for the upbringing and education of their legitimate children shall be the joint duty of the parents, or of the surviving father or mother.

Art. 254. In a case of physical or moral incapacity of both parents, the judge may entrust personal care of the children to another competent person or persons.

In selecting such persons, preference shall be given to the closest relatives and particularly the legitimate ascendants.

Art. 256. A father or mother from whose personal care children have been removed shall not be prohibited from visiting them as frequently and as freely as the judge may deem appropriate.

Art. 257. The cost of bringing up, educating and establishing legitimate children shall be borne by the conjugal estate, in accordance with the rules applicable.

Paragraph 2. Amended by Decree No. 2,820 of 1974, art. 19. If the husband and wife live under the system of separation of property, they shall contribute to such costs in proportion to their ability to do so.

However, if a child has independent assets, the cost of establishing him and, if necessary, the cost of his upbringing and education may be met from such assets, provided that the capital remains intact so far as is possible.

Art. 258. Upon the death of one of the parents, the cost of the upbringing, education and establishment of the children shall fall to the survivor in accordance with the terms of the final paragraph of the preceding article.

Art. 260. The obligation to maintain and educate a child who does not have independent assets shall pass to the legitimate paternal and maternal grandparents jointly if the parents are absent or incapable.

The judge shall decide upon the contribution, taking into consideration the possibilities of the contributors, and may from time to time modify the contribution according to circumstances.

Art. 262. Amended by Decree No. 2,820 of 1974, art. 21. The parents or person responsible for personal care of the children shall be entitled to supervise their conduct, correct them and punish them in moderation.

Art. 263. Amended by Decree No. 2,820 of 1974, art. 22. The rights conferred on the parents in the preceding article shall, in the absence, incapacity or death of one of them, be extended to the other, and in the absence, incapacity or death of both, to the person responsible for the personal care of the juvenile.

Art. 264. Amended by Decree No. 2,820 of 1974, art. 23. By common agreement, parents shall orient the education and moral and intellectual training of children under legal age in the way they feel most suited to the children; similarly, they shall co-operate in their upbringing, maintenance and establishment.

Art. 265. The right granted to the father or mother under the preceding article shall cease to apply with regard to children who are removed from their authority and entrusted to another person as a result of misconduct by the father or mother; the other person shall exercise that right with the consent of the tutor or guardian if he or she is not the tutor or guardian.

Art. 266. The rights conferred on the legitimate parents in the preceding articles may not be claimed over any child whom they have taken to a foundlings' home or otherwise abandoned.

Art. 267. Parents whose misconduct affords grounds for a ruling to separate their children from them shall also be deprived of their rights unless the ruling is subsequently revoked.

Art. 283. The juvenile counsel shall declare the abandonment of a juvenile by completing the procedure referred to in articles 8 and 9 of Decree No. 1,318 of 1964.

Art. 286. (In accordance with Act No. 5 of 1975, art. 1). The Colombian Institute of Family Welfare shall provide personal care for juveniles under the age of 18 who are in need of protection. In fulfilling this function, it may hand them over to public or private establishments which, owing to their organizational methods specialize in providing an upbringing and education for juveniles.

Art. 288. Superseded by Act No. 75 of 1968, art. 19. Parental authority is the body of rights that parents are recognized by law to have over their unemancipated children in order to enable them to perform their duties as parents.

Paragraph 2. Amended by Decree No. 2,820 of 1974, art. 24. Parents shall exercise parental authority over their legitimate children jointly. If one of the parents is absent, the other shall exercise such authority.

The unemancipated children of a family are subject to the parental authority of the father or mother of the family.

Art. 298. Amended by Decree No. 2,820 of 1974, art. 32. In their administration of the child's assets, the parents shall be liable for any loss or deterioration resulting from negligence, whether or not gross negligence, or fraud.

Their liability towards the child extends to the property and to the interest on the assets which they administer but do not hold in usufruct and is limited to the property in the case of assets which they hold in usufruct.

Art. 306. Amended by Decree No. 2,820 of 1974, art. 39. Either of the parents may represent the child legally.

An unemancipated child may take part in court proceedings as a plaintiff only if he is authorized to do so or is represented by one of his parents. If both parents refuse to give the child their consent or are disqualified from giving it or give permission but do not represent him, the rules laid down in the Code of Civil Procedure for the appointment of a guardian for the case shall apply.

In civil actions against an unemancipated child, the plaintiff shall apply to either of the parents to represent the child in the case. If neither is able to represent the child, the rules laid down in the Code of Civil Procedure for the appointment of a guardian for the case shall apply.

Art. 307. Amended by Decree No. 2,820 of 1974, art. 40. The right to administration of the assets, legal usufruct and extra-judicial representation of an unemancipated child shall be exercised jointly by the father and the mother. The foregoing shall not prevent one of the parents from delegating in writing all or part of such administration or representation to the other.

If one of the parents is absent, the right in question shall fall to the other.

If the persons having authority in respect of exercise of the rights referred to in the first paragraph of this article do not agree or if one of them does not agree to the way in which the other conducts the legal representation of the child, application shall be made to the judge or the official designated by law to settle the dispute in accordance with the appropriate rules of procedure.

Art. 2,346. Juveniles under 10 years of age and the insane are not capable of committing an offence or act of negligence; however, damage caused by them shall be deemed the liability of the persons responsible for such juveniles or individuals in cases where such persons can be accused of negligence".

Act No. 153 of 1887

"Art. 61. A father or mother who has recognized natural children shall be obliged to take care of them personally, in accordance with article 253 of the Code.

However, a married person may not have a natural child in his or her home without the consent of his or her spouse.

Art. 62. A father or mother who has recognized a natural child shall be responsible for the cost of his upbringing and education.

The latter shall include at least primary education and apprenticeship to a profession or trade.

If both of the parents have recognized a natural child, the judge shall, where necessary, decide, according to their ability and circumstances, what each of them shall contribute to the child's upbringing and education.

Paragraph 2 of article 257 of the Code shall be applicable to the assets of natural children.

The provisions of articles 253, 259 and 261 to 268 inclusive of the Code shall also be applicable to natural parents or children".

Act No. 45 of 1936

"Art. 5. Notorious possession of natural child status may also be accredited in relation to the mother.

Art. 6. Notorious possession of natural child status is demonstrated by the fact that the father or mother has treated the son or daughter as such, providing for his or her subsistence, education and establishment, and that his or her relatives and friends or the neighbours in general consider him or her to be the son or daughter of the said father or mother by virtue of the treatment he or she receives.

Art. 26. If the parents have neglected their duties towards their children, the children shall, upon the order of a judge and at the expense of the parents, be placed in an appropriate home or establishment. The same judge shall rule upon the contribution to be made, taking into account the financial situation of each of the parents".

Act No. 83 of 1946

"Art. 1. A male or female under 18 years of age who commits a criminal offence or has been abandoned or is in moral or physical danger shall form the subject of the measures of assistance and protection prescribed in this Act.

Art. 2. In each departmental capital, a legal officer known as the juvenile court judge shall preside exclusively and in sole instance over proceedings arising out of criminal offences committed by persons under 18 years of age in the region and in the areas covered by intendants' offices and police districts specified by the Government, as well as cases of abandonment or moral or physical danger affecting persons of the same age.

Until the juvenile court judges are appointed for certain departments, their duties shall be performed in implementation of this Act by circuit criminal judges from the capitals of the departments.

Art. 6. The duties of a psychiatrist are to give the juveniles sent to him by the judge a general medical and psychiatric examination and suggest to the judge the action he deems most appropriate for their mental and physical health, such as referral to a remand home, admission to a hospital or welfare centre, separation from the family, etc., and carry out the medical examinations of the members of the juveniles' families requested by the juvenile judge.

The doctor shall work for the court for at least two hours every morning and two hours every afternoon.

Art. 7. The juvenile counsel shall defend the interests of the juvenile in all juvenile court proceedings, providing evidence of his or her innocence or guilt and suggesting the most appropriate rehabilitation measures.

Art. 9. Probation officers shall be guided by the juvenile judge in supervising and studying juveniles who appear before the court, particularly those who have been subject to supervised freedom.

They shall examine the environment in which the juvenile lives, his tendencies, conduct and family and personal history; they shall remain in contact with the juvenile's family or with the family or institution to which he has been entrusted; they shall report to the judge at least once a month and when they consider it appropriate, on the material and moral status of the juveniles under their supervision and shall suggest to the judge the measures they consider most advantageous.

Probation officers shall be selected from persons of either sex who are of exemplary moral conduct and have carried out specialized social studies or have a marked social vocation for the protection of young children and studied in a private or public institution.

Art. 69. Every child is entitled by law to enjoy the conditions he or she needs for his or her physical development, moral and intellectual education and social well-being.

Consequently, parents are obliged to support their children.

If they do not fulfil those obligations they shall be compelled to do so in accordance with the provisions of this Act.

Art. 70. If the father refuses to maintain a juvenile under 18 years of age, the juvenile's mother or closest relative or the juvenile may apply to the juvenile court judge, orally or in writing, submitting a request that the father be obliged to do his duty.

If the documents substantiating the right invoked are not submitted, the interested parties shall be given a hearing in which they can provide the data required to obtain such documents.

Issue of the documents shall be requested by the judge forthwith and the persons responsible for issuing them shall receive no emolument and shall send them on unstamped paper.

Art. 85. Every child has the right to know who his or her parents are.

Art. 86. A paternity suit may be brought before the juvenile court judge.

The mother may initiate proceedings as of the fifth month of pregnancy and until the son or daughter is 21 years of age.

Art. 109. Persons under 18 years of age are prohibited from doing any work that is harmful to their health, life or morals, or is excessively tiring or overtaxes their strength.

Additional clause. A regulatory decree shall specify which kinds of work are unhealthy or harmful to the physical and moral well-being of the child.

Art. 111. Whatever his or her occupation, a child of school age shall be prohibited from working if the work notably restricts his or her study time or necessary physical rest.

A regulatory decree shall list the exceptions.

Art. 113. Persons under the age of 18 are prohibited from entering gaming houses, establishments where alcoholic beverages are sold, bawdy or disorderly houses, dance halls or similar places and, in general, any establishment which may be harmful to them in any way.

Art. 116. The sale of alcoholic beverages and tobacco to persons under 18 years of age is prohibited.

An exception shall be made where it is proved that the purchase is made on behalf of an adult third part".

Decree No. 1,818 of 1964

"Art. 8. If persons under 18 years of age have been abandoned or are in moral or physical danger, as described in Act No. 83 of 1946, the Juveniles Division shall be responsible for taking appropriate measures. To that end, the following action shall be taken:

Whenever the Division is informed officially or by a complaint that a juvenile has been morally or physically abandoned or is in danger, it shall immediately open an investigation, ascertaining the juvenile's circumstances, the moral environment in which he or she lives, his or her means of subsistence and the entire personal and family background. The Division shall gather all the information it deems necessary to complete the file required for a juvenile.

Art. 9. Once the investigation has been carried out, the juvenile's parents or the persons upon whom he or she is dependent shall be summoned and, in their presence, the judge's order shall be announced orally, by brief and summary procedure, but the order shall be recorded in the form of a written summary.

Art. 10. The judge's order may consist of:

(1) A warning to the parents or the persons upon whom the juvenile is dependent for them to fulfil their obligations towards the juvenile with regard to education, assistance, maintenance and supervision;

(2) A fine of 100 to 1,000 pesos, convertible into imprisonment amounting to one day for every 10 pesos, for the failure of such persons to fulfil their obligations;

(3) Forfeiture of parental authority, guardianship or personal care of the juvenile, in which case a request shall be submitted to the competent official for appropriate action;

(4) A ruling that the juvenile be boarded out and made responsible for himself;

(5) A request for adoption of the juvenile through the procedure established in Act No. 140 of 1960;

(6) An order that the juvenile be placed in a welfare institution.

Where appropriate, action shall be taken to determine the monthly contribution to be paid by the parents or persons responsible for the juvenile's maintenance and education.

Art. 11. The Juveniles Division shall bring to the attention of the court any absues and offences committed against persons under 18 years of age".

Act No. 75 of 1968

"Art.1. Article 2 of Act No. 45 of 1936 shall read as follows:

Recognition of natural children shall be irrevocable and may be effected:

(1) On the birth certificate, by the signature of the person recognizing the child; the registrar who issues the birth certificate of a natural child shall ascertain the first name, surname, identity and residence of the father and the mother and shall record as such the persons indicated by the deponent, upon presentation of evidence and a statement that the information is accurate. The father's name shall be entered in a special book for that purpose and copies shall be issued only to the persons referred to in the second part of paragraph 4 of this article and to judicial and police authorities that request them.

Within 30 days following the registration, the registrar who has authorized it shall personally notify the presumed father if the father has not signed the birth certificate. As soon as he receives notification, the person notified shall indicate at the bottom of the document whether he accepts or rejects the status of father attributed to him; if he denies that the child is his, the registrar shall proceed to inform the juvenile counsel of the fact so that he can initiate an investigation to determine the paternity.

The same procedure shall be followed if the person cannot be notified within the specified time-limit or if the deponent does not indicate the name of the father or mother.

If the person notified does not accept the status attributed to him or the birth certificate is not amended in accordance with a ruling by the competent authority, the name of the father shall not appear on any copies of the birth certificate.

(2) By a document drawn up before a notary;

(3) By a Will, revocation of which does not imply revocation of recognition of the child;

(4) By a specific statement made directly to a judge, even though recognition of the child may not be the exclusive or principal object of the statement.

The child, his relations within the fourth degree of consanguinity, any person who has been responsible for the upbringing of the juvenile, his legal guardian, the juvenile counsel or the Public Prosecutor's Department may request that the presumed father and mother be personally summoned before a judge to state under oath whether they believe themselves to be the father or mother. If the person summoned does not appear but is able to do so, and if a summons stating the object is reissued once, paternity shall be deemed to be recognized, after completion of the formalities concerning the submission of evidence. The court's declaration may be reviewed under the terms of article 18 of this Act".

Art. 2. Paternity may be recognized before the birth of the child, under the procedure referred to in Article 1, paragraphs 2,3 and 4, of this Act.

Art. 6. Article 4 of Act No. 45 of 1936 shall read as follows:

"Natural paternity shall be presumed and may be declared by a court:

(1) In the case of abduction or rape, if the act coincides with the time of conception;

(2) In the case of seduction by fraud, abuse of authority or promise of matrimony;

(3) If a letter or any other written document containing an unequivocal confession of paternity by the presumed father exists;

(4) If sexual relations existed between the presumed father and the mother at the time when, according to the terms of article 92 of the Civil Code, conception could have taken place;

Such relations shall be inferred from the personal and social relationship between the mother and the presumed father, evaluated in the light of the circumstances at the time of the relationship and the background information, and taking into account the nature, intimacy and duration of the relationship.

In this case, a declaration shall not be made if the defendant proves that it was physically impossible for him to have fathered the child during the period when conception could have taken place or if he proves, under the terms of the preceding paragraph, that during that same period the mother had relations of the same kind with another man or men, unless it is proved that he took positive steps to accept the child as his own.

(5) If the nature of the personal and social relationship between the presumed father and the mother during the pregnancy and birth reliably indicates paternity, in which case the exceptions provided for in the final paragraph of the preceding article shall be applicable;

(6) When notorious possession of the status of natural son or daughter is proved".

Art. 9. Article 398 of the Civil Code shall read as follows:

In order for notorious possession of civil status to be accepted as proof of such status, it must have existed for at least five consecutive years.

Additional clause. The period prior to entry into force of this Act may be included in the five-year period but shall not affect the legal and procedural relationship between parties to proceedings now before the courts.

Art. 11. Article 86 of Act No. 83 of 1946 shall read as follows:

The juvenile court judge shall hear affiliation proceedings concerning a juvenile. However, if the presumed father or the child has died, proceedings may only be brought before the appropriate civil judge through the usual channels.

Art. 12. A juvenile counsel who receives reports of a child of an unknown father or mother, either by the notice referred to in article 1 of this Act or by other means, shall immediately initiate the appropriate investigation to gather all the data and summary evidence for any subsequent affiliation proceedings.

During her pregnancy, the mother-to-be and the juvenile counsel, if she so requests, may initiate an investigation by the juvenile court into the paternity of the child.

Art. 40. Anyone who, without just cause, evades the legal obligations concerning moral assistance to or maintenance of ascendants, descendants, brothers, sisters or adopted children or spouse, including a party to a divorce who is innocent or has not committed adultery, shall be liable to imprisonment for six months to two years and a fine of 1,000 to 50,000 pesos.

Additional clause. Penal action shall apply only to the relative directly responsible if legitimate ascendants or descendants are not involved.

Failure to provide moral assistance exists in the event of intentional failure to fulfil the obligations concerning mutual help and the education and care of the offspring, particularly in the cases referred to under articles 42 and 43 of Act No. 83 of 1946, if the state of abandonment or danger is the result of acts or omissions of the person under an obligation.

If the obligor claims to be a natural son or daughter, he or she must first prove such status.

Art. 41. Anyone who misappropriates or squanders the assets administered by him or her in the exercise of parental authority, guardianship or trusteeship, or assets of the spouse in any way entrusted to him or her for administration, shall be liable to imprisonment for six months to two years and a fine of 1,000 to 50,000 pesos".

Penal Code

"Art. 316. Anyone who subjects another person to sexual intercourse, without that person's consent and with the use of physical or moral coercion, shall be liable to imprisonment for two to eight years.

Anyone who has sexual intercourse with a person under 14 years of age or with a person whom he has by any means rendered unconscious shall be liable to the same penalty.

Art. 325. Anyone who corrupts a person under 16 years of age by engaging in lewd acts other than sexual intercourse in the presence or with the assistance of that person or in any way initiates that person into abnormal sexual practices shall be liable to imprisonment for six months to four years.

Anyone who initiates or instructs a person under 14 years of age in any lewd act shall be liable to the same penalty.

The penalty laid down in this article shall be increased by up to one-fourth in the case covered by article 317, paragraph 3, and in the case of communication of venereal disease.

Art. 326. Amended by Decree No. 522 of 1971, art. 1. Anyone who corrupts a female over 14 but under 16 years of age by means of sexual intercourse with her consent shall be liable to imprisonment for one to six years.

This penalty shall be increased by up to one-fourth in any of the cases covered by article 317.

Art. 327. Anyone who, for the purposes of gain and to satisfy the desires of another person, induces a chaste person to engage in sexual intercourse or prostitution shall be liable to the following:

Imprisonment for six months to two years if the person induced to engage in prostitution is over 18 years of age;

Imprisonment for eight months to three years in the case of a person over 14 but under 18 years of age;

Imprisonment for 10 months to four years in the case of a person under 14 years of age.

A fine of 50 to 1,000 pesos shall also be imposed in all cases covered by this article.

Art. 351. Anyone who, for the purposes of gratifying a lewd desire, seizes, takes away or detains a person under 14 years of age, even with that person's consent, shall be liable to imprisonment for one to four years.

Art. 352. The penalties prescribed in the preceding articles shall be increased by up to one-fourth if the offender has any status, position or post giving him special authority over the victim or leads the victim to place confidence in him".

Paragraph 2. Under Colombian law, every child has the right to bear a name and his birth must be registered within one month. In this connexion, the main provisions are contained in Decree No. 1,260 of 1917 and are set out below.

"Art. 3. Everyone has the right to be an individual and, consequently, to the name to which he is entitled by law. The name shall comprise the first name, surnames and, where appropriate, a pseudonym.

Changes in or additions to names shall be allowed only in the circumstances and in accordance with the formalities prescribed by law.

In cases of homonymy, the judge may take any steps he deems appropriate to in order to avoid confusion.

Art. 44. The register of births shall record:

1. Births occurring on Colombian territory;
2. Births occurring abroad of persons born of Colombian parents;
3. Births occurring abroad of persons born of a father or mother who is Colombian by birth or by adoption, or of aliens resident in Colombia, on request;
4. Acts of recognition of a natural child, legitimizations, adoptions, changes in parental authority, emancipations, declarations of legal capacity, marriages, marriage settlements, judicial declarations of incapacity, appointments of guardians, restoration of legal capacity, nullity of marriages, divorces, judicial separations, changes of name, pseudonyms, declarations of missing persons, deaths and declarations of presumed death and, generally speaking, all matters pertaining to civil status and legal capacity.

Art. 45. The persons responsible for reporting births and requesting registration thereof shall be:

1. The father;
2. The mother;
3. Other ascendants;
4. The nearest blood relatives;
5. The director or administrator of a public or private establishment at which a birth takes place;
6. A person who has taken in a foundling;
7. The director or administrator of an establishment which has taken charge of a foundling;
8. The person himself, if he is over 18 years of age.

Art. 48. The birth shall be registered before the civil registrar, within one month following the birth.

In accordance with the provisions of article 90 of the Civil Code, only live births shall be registered.

Art. 53. The registrar of births shall record the surname of the father in cases of a legitimate child, a recognized natural child or judicially declared paternity; otherwise, the child shall be assigned the surname of the mother.

Art. 54. If the child is reported to be a natural child, the civil registrar shall ask the informant for the name, surname, identity and residence of the parents and shall record the name of the mother on the sheet.

As to the father, his name shall be recorded thereon only if such status is agreed to by the deponent himself or witness. If paternity is attributed to a different person, the relevant entries, together with the evidence for such an affirmation, supplied by the deponent after a warning to tell the truth and signed with his signature and that of the registrar, shall be made in duplicate on special sheets.

Art. 57. If the registration of the birth of a natural child is not signed by the presumed father, either as the deponent or as a witness, the civil registrar shall issue the parties concerned with a summons naming the person indicated on the additional sheet of the register as the father.

The police authorities and the Juvenile Counsel shall render assistance so that the presumed father is summoned and appears at the civil registry office.

Art. 58. The presumed father, once he has appeared at the civil registry office and has been informed of the contents of the sheet registering the birth and the additional sheet recording the attribution of paternity, shall state whether he acknowledges being the father of the natural child indicated thereon or denies the allegation.

If the person summoned agrees that he is the father, the recognition of paternity shall be recorded on the sheet registering the birth and shall be signed by him and by the officials.

If paternity is denied, a record bearing the same signatures shall be entered in the additional sheet.

Art. 59. If the name of the mother or the father or the two parents is not indicated and 30 days have elapsed from registration of the birth and the presumed father has not appeared or has not accepted paternity, the civil registrar shall inform the Juvenile Counsel, to whom he shall forward the copy of the additional sheet from the register and shall record that fact on the original.

Art. 60. When the paternity and/or maternity of a natural child is legally established either by recognition or by a firm judicial ruling, the civil registrar in possession of the registration of the birth of the child shall correct the entries and issue a new certificate faithfully

reproducing the facts recorded in the original but duly amended in keeping with the new circumstances. The two sheets shall be cross-referenced.

Art. 61. In the case of registration of the birth of a child of unknown parents for whom there is no record in the register, the civil registrar shall proceed to register the child at the request of the competent Juvenile Counsel, recording the data supplied by him after summary verification of the age and origin of the child to be registered and the absence of any registration.

Art. 62. If the new-born child is a foundling or, for any other reason, the names of the parents are unknown, the registrar shall assign him or her a name common in Colombia.

Paragraph 3. In connexion with nationality, the National Constitution prescribes the following:

"Art. 8. The following are Colombian nationals:

1. By birth:

(a) Persons from Colombia fulfilling one or two requirements: either the father or mother is from Colombia or a Colombian national, or persons who are born of aliens and are domiciled in the Republic;

(b) Persons of a Colombian father or mother who are born abroad and then become domiciled in the Republic;

2. By adoption:

(a) Aliens who request and obtain naturalization;

(b) Persons who are Spanish American or Brazilian by birth and, with the authorization of the Government, asked to be registered as Colombians in the municipality of the place in which they establish themselves (Legislative Act No. 1 of 1936, art. 3).

Art. 9. Colombian nationality shall be foreited by obtaining naturalization in a foreign country and establishing domicile abroad; it may be recovered in accordance with the law (Legislative Act No. 1 of 1936, art. 4)".

Article 25.

Colombian citizens enjoy, without any discrimination, the political rights referred to in this article. They take part in the conduct of public affairs through representatives freely elected at periodic elections held by universal suffrage and by secret ballot, on terms of complete equality. They may be elected and have access to public office if they fulfil the requirements prescribed by the Constitution or the law. The relevant provisions are set out below.

National Constitution

"Art.14. Colombians over 18 years of age are deemed to be citizens."

Citizenship shall be automatically forfeited upon forfeiture of nationality. It shall also be forfeited or suspended by virtue of a court decision in cases prescribed by law.

Persons who have forfeited their citizenship may apply for it to be restored. (Legislative Act No.1 of 1975, art.1).

Art.15. Citizenship is a prerequisite for the exercise of the right to vote, to be elected and to hold public office involving authority or jurisdiction (Legislative Act No.1 of 1975, art. 2).

Art.114. The President of the Republic shall be elected for a period of four years by the direct vote of citizens held on a single day in the manner prescribed by law.

The election of the President of the Republic and members of Congress shall take place on a single day on the date prescribed by law; the election of other bodies referred to in article 83, paragraph 3, shall take place on the same day if renewed election thereof coincides with the election of Congress (Legislative Act No.1 of 1968, art.37).

Art.171. All citizens directly elect councillors, regional councillors, deputies to departmental assemblies, representatives, senators and the President of the Republic (Legislative Act No.1 of 1975, art.3).

Art.94. Candidates for election as senator must be Colombian by birth, in possession of citizenship, over 30 years of age on the date of the elections and, in addition, must have held any of the posts of President of the Republic, President Designate, member of Congress, minister, head of an administrative department, head of a diplomatic mission, governor, judge of the Supreme Court of Justice, the Council of State or higher or administrative court, Attorney General, Comptroller General of the Republic or a university professor for not less than five years or must have engaged for not less than five years in a profession requiring a university degree.

No citizen who has been sentenced by a court to rigorous or long-term imprisonment may be elected senator. This ban does not apply in the case of persons convicted of political offences (Legislative Act No.1 of 1968, art.24).

Art.100. A candidate for election as representative must be in possession of citizenship and over 25 years of age on the date of the elections.

No person who has been convicted by a court to rigorous or long-term imprisonment may be elected representative. This ban does not apply in the case of persons convicted of political offences (Legislative Act No.1 of 1968, art.27).

Art.115. The requirements for President of the Republic shall be the same as for a senator.

Art.133. The requirements for a minister shall be the same as for a representative.

Art.150. A judge of the Supreme Court of Justice must be Colombian by birth and in possession of citizenship, over 30 years of age and a qualified lawyer; in addition, he must have served either as an established judge of the Supreme Court of Justice, a judge of any of the higher district courts for a period of not less than four years, a prosecutor at a higher court for the same period of time, Attorney General for three years, Deputy Attorney General for four years or a State councillor for the same period of time or have worked honourably for at least 10 years as a professional lawyer or teacher of jurisprudence at a public establishment (Legislative Act No.1 of 1947, art.1).

Art.139. A candidate for election as a State councillor must, in order to hold such office, fulfil the same requirements as for judges of the Supreme Court of Justice (Legislative Act No.1 of 1945, art.39)".

Code on the Political and Municipal System (Act No.4 of 1913)

"Art.241. All citizens may be appointed to public office involving authority or jurisdiction, unless the Constitution or the law prescribes specific requirements and qualifications or establishes specific prohibitions.

In the case of all other employment, no requirements shall be needed other than appointment by the party concerned".

Decree No.2,400 of 1968

"Art.4. A candidate for a post in the executive branch of government shall fulfil the following requirements:

(a) In accordance with the relevant regulations, he must have the qualifications required for the post, be physically fit and have no debts outstanding in connexion with the internal revenue service;

(b) He must have fulfilled his military obligations;

(c) Amended by Decree No.3,074 1968, art.1. He must be in possession of a certificate from the competent authorities to the effect that he has not been disqualified from exercising public rights or holding public office; he must not have been sentenced to imprisonment, except in the case of convictions for a minor offence; if he has been dismissed from service, the administrative act imposing such a penalty shall specify the period of disqualification, which may not exceed one year;

(d) He must be appointed by the competent authority; and

(e) He must swear on oath to abide by the Constitution and the law and to fulfil the duties of the post".

In addition to the foregoing, the exercise of political rights is safeguarded by the following provisions of the Penal Code:

"Art.310. Anyone who, other than in the specially prescribed cases, obstructs or impairs the free exercise of political rights by means of coercion, threats or deceit shall be liable to imprisonment for a period of one month to one year.

If the person concerned is a public official, he shall in addition forfeit his post".

Article 26.

The equality of all persons before the law is a fundamental principle of Colombian law. The provisions of title III of the National Constitution are intended to safeguard equality before the law and the freedom and security of all persons in Colombia.

Article 27.

All persons who are resident in Colombia and belong to ethnic, religious or linguistic minorities have full freedom to enjoy their own culture, to profess and practice their own religion and to use their own language. There are no legal provisions or regulations imposing restrictions on this freedom.

Article 53 of the National Constitution, referred to earlier in this report, safeguards freedom of belief and religious worship.

Colombia has some indigenous groups descended from the peoples who were living on the national territory before the start of the Spanish colonization in the sixteenth century. These groups cannot be regarded as an ethnic minority in the sense that the term is customarily used for groups living in a country with another majority group from which they are appreciably different. The Colombian people is of American, European and African origin and the groups which maintain indigenous American traditions are not in the same situation as so-called ethnic minorities in other countries. In Colombia, the differences between the indigenous groups and society at large are marked not so much by race as by cultural characteristics, although a process of transculturation has taken place in such groups and has in some respects brought them closer to the predominant society. The Government has been conscious of the need for protection of the indigenous population in Colombia. This protection is afforded chiefly by the Indian Affairs Division, which falls under the Ministry of the Interior.

The Government has put before Congress a bill under which the President of the Republic would be vested with special powers to issue a National Statute for the Indians and adopt further measures to protect the indigenous groups. The bill includes the following provisions:

"Art.7. Colombian Indians shall enjoy special protection by the State intended to preserve their culture, guarantee the permanence and development of their communities and furnish them with the material needs for their individual and collective welfare.

Art.8. The rights of the Indians to use and preserve their native languages and dialects and their religious beliefs and practices is hereby recognized. Education in the Indian areas shall be bilingual.

The authorities of the Republic shall be required to respond to requests and petitions by the Indians in their native language.

Art.9. The indigenous communities may apply for and secure recognition of legal personality and shall be legally represented by their traditional authorities.

The Administrative Department for the Development of Indian Community Affairs shall certify the existence of each indigenous community, its traditional authority and the persons exercising such authority.

Additional clause. The Indians or the indigenous communities may be represented judicially or extrajudicially by officials from the Administrative Department for the Development of Indian Community Affairs determined by the Government".

The following decree is in force with respect to education:

"Decree No. 1,142 of 1978
(19 July)

Regulating article 11 of Decree-Law No.088 of 1976, concerning education in the indigenous communities.

THE PRESIDENT OF THE REPUBLIC OF COLOMBIA

In the exercise of his constitutional and legal powers and more particularly those vested in him by article 120, paragraph 3, of the National Constitution, and

WHEREAS

Education for the indigenous communities must be bound up with the process of production and the entire social and cultural life of the community so that such education furnishes theoretical and practical elements consonant with their own structure and socio-economic development;

The indigenous communities have autochthonous political and socio-economic structures which must be understood, valued and disseminated through the process of education;

The distinguishing features of the indigenous communities are, inter alia, their language, social organization, culture and location, and the Ministry of Education is thus required to take account of the educational experiments carried out locally by the communities concerned;

The Ministry of Education must guarantee equal rights of all pupils and students, regardless of their ethnic, cultural or religious origins;

The Ministry of Education must provide for the preservation and development of the mother tongues of the indigenous community and make such communities gradually conversant with the national language, without detriment to their mother tongues,

DECREES:

Article 1. All educational programmes for the indigenous communities shall be planned, supervised and evaluated by the Ministry of Education, with the co-operation of the communities concerned.

Article 2. For the purposes of article 23, paragraphs (f), (g), (h) and (i), and article 32, paragraph (h), of Decree-Law No.038 of 1976, any educational programmes carried out among the indigenous communities by international private or official bodies shall be regarded as international technical co-operation. No educational programme of this type may be initiated without the consent of the communities concerned.

Article 3. The educational facilities for the indigenous communities shall be provided free of charge at the official educational establishments functioning within the indigenous communities or at outside establishments which are intended exclusively or largely for them. The Colombian State shall, through the Ministry of Education, allocate the requisite funds to cover the educational needs of such communities and set up contractual local administrative machinery, with the participation of the indigenous communities, for the purposes of effective decentralization of the management of the funds in question.

Article 4. The curricula for the indigenous communities shall be prepared and evaluated by the Ministry of Education, Directorate General for Training, Curricula and Educational Facilities, with the participation of the indigenous communities.

Article 5. At the request of the indigenous communities, the Ministry of Education may organize experimental centres to test the curricula prepared for such communities.

Article 6. The educational programmes for the indigenous communities must be in keeping with the environment, the process of production and the entire social and cultural life of the community. Consequently, the curricula shall ensure respect for and promotion of their economic, natural, cultural and social heritage, their artistic values, their means of expression and their religious beliefs. The point of departure of the curricula shall be the culture of each community, the purpose being to develop the various individual and groups skills required in the community's social environment.

Article 7. The Ministry of Education shall promote research into various aspects of the indigenous communities in support of educational programmes in such communities and arrange for the training of indigenous researchers and their participation in such research.

Article 8. The educational programmes arranged for the indigenous communities shall include the essential elements of basic education (primary and secondary levels), in keeping with the specific characteristics of each community.

Additional clause. The curricula, despite their diversity, must instruct pupils at educational establishments in the indigenous communities at the basic level of education, so that they may proceed to the higher levels of formal education.

Article 9. Literacy programmes for the indigenous communities shall be carried out in the mother tongue and shall facilitate gradual acquisition of the national language, without detriment to the mother tongue.

Article 10. The educational programmes for the indigenous communities shall help to develop indigenous technologies, encourage creative innovations and train the indigenous communities to select from other cultures to which they have access the skills and techniques suited to their needs and to genuine development in their environment.

Article 11. The selection and training of teaching personnel for the indigenous communities shall be governed by the following rules:

1. Wherever possible, teachers shall be selected by the indigenous communities from among the members of the community concerned;
2. The teacher shall be bilingual or shall be tested, apart from his suitability as a teacher, for basic knowledge of the mother tongue of the community and of Spanish;
3. The Ministry of Education, Directorate General for Training, Curricula and Educational Facilities, shall prepare the curriculum for training teachers in indigenous communities in the light of the provisions of the preceding articles and shall include all elements of non-formal education which may contribute to the development of the communities.

Article 12. The curriculum for formal education prepared for the country as a whole shall include, in the social sciences, matters pertaining to the history and culture of the indigenous communities of Colombia, placing emphasis on the communities which still live on national territory, as a further means of achieving a true understanding of such communities.

Article 13. The Ministry of Education shall, by means of a resolution, authorize the preparation of flexible school hours and calendars responding to the social, economic and cultural characteristics and the needs of the indigenous community.

Article 14. This decree shall enter into force as from the date of issue.

For notification and enforcement

Done at Bogota, D.E., 19 July 1978

Signed: ALFONSO LOPEZ MICHELSEN

Signed: RAFAEL RIVAS POSADA, MINISTER OF EDUCATION

Bogota, D.E., 9 October 1979".

LIST OF ANNEXES */

- ANNEX 1. NATIONAL CONSTITUTION
- ANNEX 2. PENAL CODE (Articles connected with the provisions of the International Covenant on Civil and Political Rights)
- ANNEX 3. Decrees Nos. 2,132, 2,193, 2,195, 2,260 and 2,578 of 1976; 2,066 of 1977 and 1,923 and 1,984 of 1978, issued on the basis of article 121 of the National Constitution
- ANNEX 4. VERDICT OF THE SUPREME COURT OF JUSTICE ON THE APPLICABILITY OF DECREE No. 1,923 (Security Statute)

*/ The Spanish texts of the annexes to this report can be consulted in the Secretariat's files.