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ORGANISATION DES TRAVAUX

Lettre datée du 16 mars 2001, adressée à la Haut-Commissaire des Nations Unies aux droits de l'homme par le Vice-Président de la Colombie, par l'intermédiaire du Bureau du Haut-Commissariat en Colombie

Le Gouvernement colombien a eu l'occasion d'étudier le projet de rapport sur les activités de votre Bureau en Colombie, que vos services ont établi en vue de le présenter à la Commission des droits de l'homme à sa cinquante-septième session et dont vous nous avez fait parvenir une copie à la mi-février dernier.

Comme vous l'a confié S. E. le Président de la République lors de votre visite en Colombie en décembre dernier, le Gouvernement colombien réaffirme son engagement inébranlable à bâtir la paix par la négociation politique. À cet égard, il est conscient des immenses possibilités qu'offre le concours de votre Bureau aux négociations entre le Gouvernement et les insurgés, mais aussi des risques que pourrait entraîner une attitude négative et peu sensible à l'importance cruciale de ce processus.

C'est pourquoi le Gouvernement colombien déplore les inexactitudes, approximations et contradictions dont est émaillé le rapport et, en particulier, le dénigrement et la non-reconnaissance de l'action gouvernementale en matière de respect des droits de l'homme et d'application du droit international humanitaire. S'il n'a pas toujours pu faire face à l'ampleur des effets destructeurs du conflit armé interne, le Gouvernement n'en a pas moins déployé des efforts importants et concrets en vue de moderniser les institutions, de combler les lacunes et d'accélérer la mise en œuvre des engagements pris sur le plan institutionnel pour faire face aux problèmes.

Comme l'ont signalé plusieurs organismes des Nations Unies, le traitement de la question colombienne exige une critique engagée, positive et constructive, à laquelle le Gouvernement est toujours disposé et dont il ne doute pas de la nécessité. Or, force est de constater qu'une telle critique est malheureusement absente du rapport, qui aurait dû être plus complet et plus objectif eu égard à la situation que vit notre pays.

En effet, s'il est indéniable que la situation des droits de l'homme en Colombie souffre de problèmes multiples et profonds, dont la complexité et la gravité ont été reconnues tant par les pouvoirs publics que par la société civile, le rapport présenté n'établit pas un diagnostic équilibré. Il insiste sur un ensemble de lacunes et de problèmes qui datent d'il y a longtemps, sans parvenir à interpréter les faits de manière à faire ressortir l'évolution de la situation durant l'année écoulée, qu'elle soit négative ou positive.

De même, le rapport fait fi des efforts déployés en dépit du conflit et ne prend pas en compte le cadre institutionnel et législatif du pays, qui est fondé sur la séparation des pouvoirs et la répartition des attributions entre différentes instances. Enfin, le rapport est loin d'être le document analytique prévu dans l'accord conclu entre l'État colombien et le Haut-Commissariat, ce que déplore le Gouvernement.

En conséquence, le Gouvernement colombien espère que les précisions et observations ci-jointes[1] seront prises en compte par le Haut-Commissariat au moment de la présentation officielle du rapport à la Commission des droits de l'homme, conformément à l'esprit de confiance et de coopération qui doit présider aux relations entre le Gouvernement et le Haut-Commissariat. Il souhaite en même temps assurer le Haut-Commissariat que toutes les mesures et recommandations de nature à améliorer les choses seront adoptées par le gouvernement du Président Pastrana, dans le but d'assainir la situation humanitaire du pays.

La réponse du Gouvernement n'a pas pour but de traiter à fond de l'ensemble des questions ni de contredire toutes les affirmations contenues dans le rapport, mais plutôt d'apporter des éléments d'information très concrets sur sa gestion des problèmes hautement prioritaires pour la société colombienne dans son ensemble ainsi que de préciser sa position sur certains aspects non visés par le rapport, l'objectif étant de faire aboutir, de manière constructive et positive, l'action commune en faveur du respect des droits fondamentaux et de l'application du droit international humanitaire en Colombie.

Le Vice-Président de la République

(*Signé*) Gustavo **Bell Lemus**

[1] Les observations du Gouvernement colombien sont résumées dans l'annexe qui suit. Quant au texte intégral, il est reproduit tel quel dans l'appendice, en anglais et en espagnol seulement.

Annexe

RÉSUMÉ

Réponse du Gouvernement colombien au rapport du Haut-Commissariat des Nations Unies aux droits de l'homme

Généralités

1. Le Gouvernement réaffirme son engagement inébranlable à bâtir la paix par la négociation politique. À cet égard, il est conscient des énormes possibilités que le Bureau du Haut-Commissariat en Colombie peut offrir pour faire aboutir les négociations entre le Gouvernement et les insurgés, mais aussi des risques que pourrait entraîner une attitude négative et peu sensible à l'importance cruciale de ce processus.

2. C'est pourquoi le Gouvernement déplore les inexactitudes et contradictions que renferme le rapport portant sur l'an 2000 et, en particulier, le dénigrement et la non-reconnaissance de l'action gouvernementale en matière de respect des droits de l'homme et d'application du droit international humanitaire.

3. En effet, s'il est indéniable que la situation des droits de l'homme en Colombie souffre de problèmes multiples et profonds, dont la complexité et la gravité n'échappent ni aux pouvoirs publics ni à la société civile, le rapport présenté n'établit pas un diagnostic équilibré.

4. Certains aspects évoqués dans le rapport dépassent le cadre du mandat du Bureau et ne contribuent pas à une description exhaustive ou fidèle de la situation colombienne. Les exemples les plus frappants sont "la persistance de la corruption dans l'attribution des marchés publics", la référence aux relations entre la Colombie et le Venezuela, où l'on constate une méconnaissance des tenants et aboutissants de cette relation et des difficultés qui peuvent se poser avec ce pays, ainsi que les affirmations concernant la persistance des effets de la crise économique de 1999 et la critique des mesures à caractère macroéconomique adoptées par le Gouvernement colombien.

5. Le rapport évoque aussi la "fermeture progressive de multiples espaces ouverts à la participation, aux plaintes, aux enquêtes et au suivi à tout niveau et échelle". Il ignore ainsi les nombreux dispositifs de coordination mixte qui ont été mis en place pour faire face à toutes sortes de situations matérielles et géographiques qui, de par leur gravité, rendent nécessaire un renforcement des institutions au moyen de mesures destinées à focaliser et à hiérarchiser l'action gouvernementale et à en accroître l'efficacité. Aux espaces qui existent depuis plusieurs années, sont venus s'ajouter de nouveaux espaces, qui se veulent une réponse institutionnelle aux situations difficiles créées par l'escalade du conflit armé et qui forment un véritable réseau d'espaces de travail communs et interdisciplinaires, dont la plupart font appel à la participation des organisations de défense des droits de l'homme, des syndicats, des mouvements sociaux et politiques.

6. De l'avis du Gouvernement, on assiste aujourd'hui à une multiplication des espaces nationaux, régionaux et locaux de dialogue, de convergence et de travail. D'ailleurs, le Haut-Commissariat a presque toujours été appelé à y participer, quand il n'est pas invité à contribuer, de par sa présence, à la réalisation des objectifs visés par ces mécanismes.

7. Le Gouvernement colombien espère que les précisions et observations détaillées dans sa réponse seront prises en compte par le Haut-Commissariat, conformément à l'esprit de confiance et de coopération qui doit présider à leurs relations. Il tient à assurer le Haut-Commissariat que toutes les mesures et recommandations de nature à améliorer les choses seront adoptées par le gouvernement du Président Pastrana, dans le but de contribuer à l'assainissement de la situation humanitaire de la Colombie.

8. La réponse du Gouvernement ne prétend pas traiter à fond de tous les problèmes ni contredire toutes les affirmations contenues dans le rapport, mais plutôt apporter des éléments d'information très concrets sur sa gestion des problèmes hautement prioritaires pour la société colombienne dans son ensemble ainsi que préciser sa position sur certains aspects non visés par le rapport, l'objectif étant de faire aboutir, de manière constructive et positive, l'action commune en faveur du respect des droits fondamentaux et de l'application du droit international humanitaire en Colombie.

Traitement de la question relative au processus de paix

9. En premier lieu, s'agissant de l'Accord global sur les droits de l'homme et le droit international humanitaire, à la présentation duquel le Président de la République a personnellement assisté le 28 octobre 2000, le Haut-Commissariat pour la paix a fait part de son intention de discuter avec le Bureau du Haut-Commissariat aux droits de l'homme en Colombie des dispositions concrètes de la proposition, afin d'en évaluer de façon indépendante la pertinence, l'opportunité et l'efficacité, dans le cadre du dialogue avec les insurgés.

10. De même, le Gouvernement n'a cessé de mettre l'accent sur le respect des droits de l'homme et du droit international humanitaire sur l'ensemble du territoire national, y compris dans les zones prévues pour les pourparlers, comme souligné dans l'accord sur le respect de ces droits dans la zone qui sera choisie pour les négociations avec l'ELN.

11. En ce qui concerne l'analyse faite des pourparlers de paix entre le Gouvernement et la guérilla, notamment le climat de polarisation évoqué dans le rapport, il convient de souligner que cette situation est due en bonne partie au fait que la société, aspirant à une sortie négociée du conflit, est frustrée par l'absence de pas concrets vers la paix, que le Gouvernement n'a cessé de réclamer à la rébellion; en aucune façon, cette situation n'est due à des raisons qui pourraient être attribuées aux autorités gouvernementales. En outre, s'il est certain que certaines couches de la société ont adopté une attitude de scepticisme à l'égard du processus de négociation, on ne saurait affirmer que l'appui au processus de paix s'était "considérablement" effrité. C'est ainsi que sur le plan international, la communauté des nations a constamment fait part de son appui au processus et de sa volonté inébranlable de tout faire pour qu'il ait une issue heureuse.

12. Le Gouvernement ne partage pas l'opinion exprimée dans le rapport, selon laquelle "la voie du dialogue avec l'ELN ne s'était pas non plus dégagée cette année, alors que l'on enregistrait des progrès importants". C'est durant l'année 2000 que les pourparlers avec l'ELN ont enregistré leurs progrès les plus importants, notamment pour ce qui est du développement du droit international humanitaire, comme attesté par la libération unilatérale par la rébellion de personnes qui se trouvaient entre ses mains au cours d'opérations menées à bien en octobre et décembre 2000. En outre, un accord a pu être trouvé sur l'engagement de respecter pleinement les droits de l'homme et le droit international humanitaire dans la zone qui doit être choisie pour les pourparlers et les négociations avec l'ELN.

13. En ce qui concerne les considérations sur l'établissement de l'enclave démilitarisée, le rapport contient des informations très détaillées, cette enclave étant présentée comme un territoire échappant à tout contrôle de l'État, auquel on prétend attribuer la responsabilité de cette sorte de "laboratoire du crime".

14. L'établissement d'une enclave démilitarisée, loin de constituer une concession du pouvoir aux groupes d'insurrection, est précisément un acte de souveraineté de l'État, qui s'inscrit dans le cadre de la recherche réelle d'une solution politique négociée et de l'exercice du droit fondamental à la paix.

15. La Cour constitutionnelle a expliqué ce processus en des termes très clairs dans l'arrêt C-048 de 2001 qu'elle a récemment rendu et dont le texte figure de manière plus détaillée dans la réponse du Gouvernement. La Cour a notamment déclaré que "la décision politique de mettre fin au conflit non pas par la violence mais par la négociation et la concertation est un acte de souveraineté de l'État, du moment que, par des moyens exceptionnels, il s'emploie à mettre fin à une situation anormale, à retrouver sa capacité de réprimer et de punir tout délit dans le souci de renforcer un ordre social, politique et économique juste et de nature à garantir et à protéger réellement les droits de l'homme". La Cour a ajouté que l'enclave démilitarisée "ne peut pas être considérée comme un acte de renoncement par l'État à une partie du territoire ni d'abandon de celle-ci à d'autres pouvoirs, mais plutôt comme un acte de paix destiné à susciter la confiance dans le dialogue".

16. En ce qui concerne la prétendue absence de toute autorité, on ne voit pas non plus le bien-fondé de l'opinion exprimée dans le rapport. Dans l'enclave démilitarisée s'exerce, comme en tout autre lieu du territoire national, une juridiction pleine et entière; l'action et la juridiction des juges obéissent comme il se doit aux règles énoncées dans la Constitution et fixées par la loi, et aucune région du pays, y compris l'enclave démilitarisée, n'échappe à la souveraineté et à l'exercice des fonctions judiciaires. Pour reprendre les termes employés par la Cour constitutionnelle dans l'arrêt susmentionné, "la Constitution n'exige pas la présence physique et permanente des autorités civiles sur l'ensemble du territoire colombien, mais parle plutôt d'exercice de l'autorité de l'État, c'est-à-dire l'exercice d'une juridiction ou d'une compétence afin que ses décisions soient applicables et aient force obligatoire dans tout le pays".

17. Outre l'exercice d'une juridiction, celui de l'autorité municipale est une illustration non seulement de la présence de l'État mais aussi de la reconnaissance de l'autorité de celui-ci et de l'application des principes démocratiques du vote populaire. C'est ainsi que le 30 octobre 2000, ont été organisés, dans l'enclave démilitarisée, en toute légalité, les élections municipales au scrutin direct.

18. Par ailleurs, dans l'analyse de la situation du droit international humanitaire, on constate qu'au lieu de s'attarder sur les aspects généraux de l'évolution du processus de paix concernant cette question, le rapport se borne à exposer les cas les plus spectaculaires, qui ne sont pas nécessairement les plus représentatifs de par leur gravité. Parmi les faits omis par le rapport, on peut citer le lancement d'une étude sur le thème "cessez-le-feu et hostilités" dans le but de pouvoir négocier dans un climat plus propice à la construction de la paix, l'accord mentionné plus haut sur le respect des droits de l'homme et du droit international humanitaire dans la zone de rencontre prévue pour les pourparlers avec l'ELN ou la libération unilatérale et sans contrepartie par les rebelles de personnes qu'ils détenaient.

19. Le Haut-Commissariat pour la paix insiste, comme il l'a toujours fait, sur l'importance du respect des normes du droit international humanitaire, de la volonté de conclure des accords sur les questions fondamentales concernant des personnes protégées par ces normes et de la bonne application des principes de proportionnalité et de discernement, tout en rappelant par ailleurs que c'est là un point particulier de discussion dans le cadre des pourparlers de paix avec les groupes rebelles. Autant de faits que le Bureau ne saurait négliger dans son évaluation de la situation.

Situation des droits de l'homme et du droit international humanitaire

20. Le Gouvernement se doit de souligner que l'année 2000 a vu une confirmation de la tendance observée ces six dernières années, à savoir une nette diminution du nombre de plaintes pour violations des droits de l'homme attribuées aux membres de la force publique ainsi que du nombre de procédures disciplinaires ouvertes débouchant sur des sanctions. En effet, depuis 1995, le nombre de plaintes déposées auprès des services du Procureur général diminue d'année en année, tant dans l'absolu que par rapport au nombre total des membres de la force publique.

21. Cette diminution du nombre de plaintes est attestée par le fait qu'en termes de pourcentage le nombre des plaintes reçues par les services du Procureur général en 2000 est huit fois inférieur à ce qu'il était il y a six ans. Ainsi, le nombre des plaintes enregistrées en 2000 ne concerne que 0,17 % des membres de la force publique.

22. Toutefois, conformément à la politique consistant à mener une enquête et à procéder à des inculpations concernant tout lien entre des membres de la force publique et les groupes d'autodéfense, le Procureur général a publiquement inculpé 17 policiers et neuf officiers de l'armée pour collaboration avec les groupes d'autodéfense. En outre, cinq généraux et 22 officiers font l'objet d'une enquête pour avoir failli à leur devoir de protection ou pour collaboration présumée avec des auteurs de massacres.

23. Dans le même ordre d'idées, le pourcentage des membres de la force publique mis en examen à la suite d'une plainte ne représente que 0,022 %, soit seulement un huitième de ce qu'il était il y a six ans.

24. Pour apprécier ces chiffres à leur juste valeur, il convient de tenir compte du fait que seulement 10,3 % des plaintes déposées auprès des services du Procureur sont accompagnées d'éléments permettant l'ouverture d'une procédure et qu'environ 35 % des procédures engagées se sont terminées par un jugement absolutoire.

25. Pour sa part, le Service du *Fiscal General de la Nación* a, entre janvier 1998 et décembre 2000, dressé des actes d'accusation contre 98 membres des forces armées et 58 membres de la police nationale pour violations présumées des droits de l'homme. Nonobstant l'issue de ces procédures, dont le traitement respecte la loi et les droits de la défense, il convient, avant de juger les institutions militaires, de noter que ces 156 cas concernent un pourcentage minuscule (0,06 %) des 258 120 membres de la force publique colombienne.

Le prétendu "paramilitarisme"

26. Tout au long du rapport, on constate une absence de clarté en ce qui concerne les critères d'attribution de la responsabilité internationale de l'État. Le rapport avance et, à partir de cette hypothèse, développe l'idée d'une "responsabilité générale" de l'État pour "l'existence, le développement et l'expansion du paramilitarisme", ce qui équivaudrait à une responsabilité historique, collective et rétrospective qui n'a aucune espèce de fondement théorique, ni dans la doctrine internationale ni dans la jurisprudence récente. Une telle affirmation est par conséquent inacceptable pour le Gouvernement colombien.

27. En outre, le rapport s'appuie sur les paramètres du droit international humanitaire pour décrire la situation et en attribuer à l'État la responsabilité. Devant cette situation, le Gouvernement, tout comme il l'a fait dans ses réponses précédentes, rejette sans équivoque l'affirmation du rapport rattachant le phénomène paramilitaire à un organe de fait de l'État colombien. Cette affirmation inadmissible revient à simplifier, avec beaucoup de légèreté, la réalité historique et sociale complexe de ce phénomène, à négliger son autonomie militaire et financière et à faire fi de situations absolument claires marquées par un nombre croissant d'attaques mortelles contre les serviteurs de l'État.

28. Si on suivait la logique du rapport, on pourrait commettre l'erreur d'attribuer également à l'État colombien la responsabilité de l'apparition des groupes subversifs ainsi que de l'ampleur prise par ceux-ci, quand bien même ces organisations tirent également leur origine d'une conception d'autodéfense paysanne.

29. Ce qui précède explique que tant dans le présent rapport que dans les précédents, on persiste à ignorer les nombreux assassinats d'agents de l'État commis par ces groupes et à négliger l'importance des mesures prises par les pouvoirs publics contre leurs auteurs.

30. De même, le Gouvernement voudrait souligner qu'il conteste et rejette catégoriquement la double comptabilisation et la narration dans le rapport des actes odieux commis par les groupes paramilitaires, d'abord au titre des violations des droits civils et politiques et, ensuite, au titre d'infractions aux principes du droit international humanitaire tels qu'ils sont énoncés dans les conventions et dans le droit coutumier.

31. Il convient toutefois de rappeler que chaque fois qu'un agent de l'État, qu'il soit civil ou militaire, se rend coupable d'un délit par action ou par omission, les mécanismes nationaux d'administration de la justice sont et seront mis en route pour sanctionner l'auteur et ses complices.

32. En ce qui concerne les progrès réalisés sur les plans judiciaire et opérationnel dans la lutte contre les groupes d'autodéfense, les meneurs et les membres des groupes paramilitaires ainsi que les membres des forces armées qui aident ces groupes ou collaborent avec eux sont actuellement poursuivis avec rigueur devant la justice ordinaire.

33. Il faut signaler que la structure démocratique de l'État colombien, qui se manifeste par la séparation et l'indépendance des pouvoirs, interdit au Gouvernement d'instruire et de diligenter les procédures pénales, cette compétence étant assignée par la Constitution au pouvoir judiciaire.

34. Néanmoins, en vertu du principe constitutionnel d'une collaboration harmonieuse entre les pouvoirs, l'exécutif, en application de sa politique de lutte contre les groupes d'autodéfense, apporte son appui à l'activité judiciaire.

35. La force publique, pour sa part, prête son concours à la lutte contre les membres des groupes d'autodéfense, par des engagements militaires, des visites domiciliaires, des saisies d'armes et des arrestations, comme le montrent les résultats des opérations menées entre janvier et décembre 2000 : 315 membres arrêtés et 89 abattus.

36. Selon l'Institut national pénitentiaire et carcéral (INPEC), 736 membres de groupes illégaux d'autodéfense, soit près de 10 % de l'effectif total de ces groupes, étaient détenus à la fin de l'année 2000 dans les prisons du pays.

37. Le Gouvernement a créé en outre un Centre national de coordination pour combattre les groupes d'autodéfense sur tous les fronts, ce centre étant responsable, comme son nom l'indique, de la coordination des activités menées contre les groupes armés illégaux par les autorités militaires, policières, judiciaires et civiles de l'État.

38. L'augmentation du nombre des individus tués aussi bien qu'arrêtés, obtenue grâce aux stratégies définies par le Centre en matière de renseignement, d'enquête et de poursuites judiciaires, témoigne de manière irréfutable de la détermination de la force publique à combattre avec une égale rigueur tous les agents fauteurs de violence.

39. L'intensification des actions contre les groupes d'autodéfense illégaux est notoire, se traduisant tant dans les chiffres des membres tués et arrêtés que dans les saisies d'armes, de munitions, de matériel de communication et de moyens de transport, qui démontrent l'extrême sévérité et le caractère implacable de l'action menée par l'État contre ces groupes armés illégaux.

40. Le Centre a également mis au point une stratégie financière visant au démantèlement des sources d'où proviennent les fonds et/ou l'appui bénéficiant aux groupes armés, stratégie qui consiste à identifier, surveiller, bloquer et confisquer les actifs bancaires et autres titres ou valeurs qui, à l'intérieur du système financier national et international, appartiennent ou sont destinés à des membres des différents groupes illégaux d'autodéfense, afin de tarir les ressources qui alimentent ces groupes.

41. Quant aux cas, que dénonce le rapport, de collaboration présumée de fonctionnaires avec des groupes armés illégaux, les autorités compétentes enquêtent à leur sujet et il convient de ne pas porter de jugement de valeur tant qu'on ne connaît pas le résultat final des enquêtes entreprises.

Les déplacements internes de population

42. La réponse du Gouvernement colombien contient des précisions très détaillées sur l'ampleur estimative des déplacements forcés à l'intérieur du pays, obtenues par le Réseau de solidarité sociale (RSS) à partir des 35 points d'information dont il dispose dans les 32 départements du pays, grâce au Système d'estimation des déplacements forcés par confrontation de sources (SEFC) dont le fonctionnement repose sur la consultation et la confrontation régulières des sources faisant partie du Système national d'aide à la population déplacée, parmi lesquelles des entités gouvernementales, non gouvernementales, ecclésiastiques et communautaires et des services d'aide à la population déplacée.

43. De même, cette réponse fournit des détails sur l'action du Gouvernement en faveur de la population déplacée, dont le rapport du Bureau donne une lecture très réductrice et équivoque. Ainsi, elle traite de l'aide humanitaire d'urgence à la population déplacée, de l'intervention humanitaire directe dans les situations d'urgence liées à des déplacements de population massifs, de l'assistance non alimentaire en cas de déplacement massif, de l'aide humanitaire individuelle ou familiale et d'un dispositif de prise en charge humanitaire par administration déléguée, ne se réduisant pas à la fourniture d'une aide humanitaire d'urgence mais comportant l'affectation de fonds importants à des actions de stabilisation socioéconomique de la population déplacée.

44. La population déplacée bénéficie en outre de l'aide de multiples entités de l'État dotées de responsabilités et de budgets spécifiques, parmi lesquelles il faut mentionner plus particulièrement le Ministère de la santé, l'INURBE, l'INCORA et l'ICBF, qui s'emploient à faciliter l'accès aux services sociaux, au logement et à la terre. L'année 2000 a été marquée par un développement et une amélioration des services fournis à la population déplacée.

45. Enfin, il importe de noter que l'activité du Système national d'aide à la population déplacée s'étend à l'ensemble du pays, grâce à sa structure territoriale décentralisée.

46. Quant au système national d'enregistrement de la population déplacée, le rapport du Bureau, lorsqu'il critique son aptitude à estimer valablement l'ampleur des déplacements de population en Colombie, témoigne d'une certaine confusion quant à sa fonction. Il importe de bien préciser que c'est le SEFC et non le Système unique d'enregistrement (SUR) qui est chargé de l'estimation globale du phénomène de déplacement. L'enregistrement a pour fonction de rendre effectif l'accès aux prestations établies par la loi en faveur de la population déplacée et de fournir la base requise pour le suivi des services offerts aux bénéficiaires.

47. Le rapport se montre également critique à propos de la manière dont l'enregistrement remplit cette fonction, qui est sa fonction véritable, affirmant que la population concernée le perçoit comme une entrave ou un obstacle et non comme un mécanisme d'accès. Or, ainsi qu'il est expliqué dans la réponse du Gouvernement, la facilité d'accès au registre et son utilité sont en grande partie à l'origine de l'augmentation notoire des inscriptions de personnes déplacées observée en 2000, que le Bureau a bien voulu souligner dans son rapport. Entre 1995 et 2000, l'accroissement du nombre d'inscriptions au registre a été en moyenne de 720 % par an.

48. En ce qui concerne la prévention des déplacements, le Réseau s'est employé activement à favoriser la création de mécanismes de protection des populations déplacées en proposant d'aménager des espaces humanitaires dans les zones de conflit. Il a également mis en œuvre d'importants projets intégrés de prévention des déplacements dans des régions comme le Sur de Bolívar, l'Oriente d'Antioquia, le Chocó Central (Bajo Atrato) et Meta.

49. S'agissant de la protection légale, d'importants arrêts ont été rendus en 2000, comme le signale d'ailleurs le rapport, en faveur des droits et intérêts de la population déplacée. En exécution de ces arrêts, le Réseau, en coopération avec d'autres instances clefs du Système national, a mis en route des actions concrètes tendant à assurer la stabilisation de cette population, à la lumière des dispositions de la loi 387/97. De même, le développement en 2000 du cadre normatif a permis d'améliorer l'accès à la santé, au logement et au crédit.

50. Enfin, il convient de signaler que le Conseil national pour la prise en charge intégrée de la population déplacée, qui n'était pas encore entré en activité pendant la période visée par le Rapport de la Haut-Commissaire des Nations Unies aux droits de l'homme, siège déjà, pilotant la mise en œuvre du Système de prise en charge intégrée de la population déplacée ainsi que des décisions rendues par la Cour constitutionnelle relativement à l'application de la loi 387 de 1997.

Administration de la justice et garanties de la défense

51. Le Gouvernement juge extrêmement surprenantes les critiques portées contre l'Unité des droits de l'homme de la *Fiscalía* au motif que celle-ci a permis à la justice pénale militaire de se saisir des affaires de Santo Domingo et Pueblo Rico, où les différents éléments des comportements incriminés et les opérations de combat dans le contexte desquelles ils se sont produits, ainsi que l'imprudence probable ou l'excès de la riposte militaire qui a causé la mort de civils, font apparaître qu'il s'agissait bien de l'exercice d'une activité militaire au sens strict.

52. Dans l'affaire de Pueblo Rico (Antioquia), qui a fait six victimes mineurs, les analyses auxquelles ont immédiatement procédé le Service du *Fiscal General de la Nación*, Direction régionale, et le Corps technique d'investigation de Medellín, les caractéristiques topographiques du site et les antécédents de présence de guérilleros dans le secteur, éléments portés à la connaissance du Haut-Commissariat en novembre 2000 lors d'une réunion tenue dans les locaux du Service du *Fiscal General* ont permis de déterminer que la justice pénale militaire était compétente, dans la mesure où il s'agissait de faits mettant en cause des agents de la force publique agissant dans l'exercice de leurs fonctions.

53. De même, les raisons qui ont motivé la décision de confier à la justice pénale militaire l'instruction des faits qui se sont produits à Santo Domingo, Tame, dans le département d'Arauca, lors desquels plusieurs civils ont trouvé la mort, satisfont pleinement aux conditions prescrites par la loi pour la saisine des tribunaux militaires.

54. Il importe particulièrement de souligner, d'autre part, qu'à la suite des enquêtes diligentées par l'Unité des droits de l'homme de la *Fiscalía*, à la date de décembre 1999, 297 personnes avaient été arrêtées, dont 183 membres de groupes d'autodéfense, 69 agents de l'État et 45 membres de groupes subversifs. Leur nombre s'est accru de 10 % au cours des sept mois qui ont suivi, pour atteindre en décembre 2000 le chiffre de 392 personnes arrêtées, dont 62,24 % de membres de groupes d'autodéfense, 24,23 % d'agents de l'État et 13,52 % de subversifs.

55. Pour décembre 2000, le nombre de mesures de sûreté ordonnées par l'Unité a augmenté de 220 par rapport au chiffre du même mois de l'année précédente. Sur un total de 918 mesures de sûreté ordonnées jusqu'à décembre 2000, 15,46 % concernaient des membres de groupes subversifs, 27,88 % des agents de l'État et 56,64 % des membres de groupes d'autodéfense.

56. En ce qui a trait aux inculpations prononcées, leur nombre atteignait 311 à la date de décembre 2000 pour les membres de groupes d'autodéfense - soit 54,85 % du total -, 13,05 % visant des membres de groupes subversifs et 32,09 % des agents de l'État.

57. Par rapport à décembre 1999, le Service du *Fiscal* a signalé une augmentation de 52 % du nombre de mandats d'arrêt en vigueur à la fin de l'année 2000. La majorité des 628 mandats décernés concernait, là encore, les groupes d'autodéfense, qui avaient fait l'objet en 1999 de 272 mandats, chiffre qui a atteint 316 en 2000.

58. Cependant, l'augmentation la plus forte, d'une année sur l'autre, du nombre de mandats d'arrêt décernés concerne les groupes subversifs : 159 %. Pour ce qui est des agents de l'État, le nombre des mandats a augmenté de 36,36 % et, pour les membres de groupes d'autodéfense, de 16,17 %.

59. En ce qui concerne, d'autre part, la suspension de membres des forces armées impliqués dans des violations des droits de l'homme, le gouvernement national, usant des pouvoirs qui lui ont été conférés par la loi 578/2000, laquelle a investi le Président de la République de compétences extraordinaires en matière de réforme des règles applicables aux forces armées et à la police nationale, a incorporé à l'ordre juridique un instrument qui permet au gouvernement national et aux commandants de mettre à la retraite, à leur discrétion, les membres du personnel militaire, quelle que soit leur ancienneté dans le service. Le même pouvoir existe depuis 1995 dans la police nationale.

60. Le 16 octobre 2000, le Gouvernement, usant de ce pouvoir discrétionnaire inscrit dans le décret-loi No 1790 de 2000, a décidé la mise à la retraite de 388 membres des forces armées, dont 89 officiers et 299 sous-officiers. L'exercice du pouvoir discrétionnaire de mise à la retraite des membres des forces armées qu'établit le décret 1790 de 2000 n'est pas subordonné à des formalités préalables et n'a pas besoin d'être motivé. Exiger que la destitution soit motivée dénaturerait le pouvoir discrétionnaire au point qu'il ne serait pas considéré comme discrétionnaire par le juge; aussi les motifs ou raisons d'une telle décision prise dans l'exercice de ce pouvoir ne peuvent-ils pas être mentionnés. Malgré tout, l'usage massif qui est fait dudit pouvoir montre bien la volonté qu'a le Gouvernement d'exclure de ses forces armées ceux qui ont cessé de servir l'institution conformément aux fins prescrites par la Constitution.

61. La même mesure ne peut être appliquée, s'agissant des mêmes faits, à ceux qui sont l'objet d'une enquête pénale ou disciplinaire, la jurisprudence constitutionnelle ayant considéré que cela constitue une atteinte aux droits de la défense, à la présomption d'innocence et à la garantie d'une procédure régulière.

62. En ce qui concerne le fonctionnement de la justice pénale militaire, le Président de la République, ainsi qu'il est de notoriété publique, a édicté le 17 août 2000 la Directive 01 qui ordonne à toutes les instances de la justice pénale militaire, en tant que composantes du pouvoir juridictionnel de l'État, de respecter et d'appliquer la jurisprudence de la Cour constitutionnelle qui exclut de la compétence pénale militaire tous les comportements constitutifs de génocide, de torture et de disparition forcée de personnes ainsi que les violations graves des droits de l'homme.

63. En conséquence, on a enregistré le transfert à la justice ordinaire de 1307 dossiers qui étaient instruits par la justice pénale militaire.

64. Il importe de souligner, d'autre part, que la criminalisation au plan interne, dans le Code pénal ordinaire, des comportements constitutifs d'infractions graves au droit international humanitaire entraîne l'application aux agents de la force publique qui seraient accusés de telles infractions d'un régime répressif beaucoup plus sévère et englobe des conduites qui avaient précédemment le caractère de délits de droit commun.

La situation dans les prisons

65. En ce qui concerne la situation dans les prisons, évidemment critique, il faut reconnaître les efforts qui ont été déployés, et qui se poursuivront pendant la période en cours, visant à améliorer le système pénitentiaire et carcéral. Les actions entreprises visent, d'une part, à accroître la capacité d'accueil des prisons et, de l'autre, à résoudre les problèmes d'administration, d'exploitation et de gestion des centres de détention. Pour ce qui est du premier aspect, un Plan de développement de l'infrastructure pénitentiaire, approuvé aux termes du document Conpes 3086, est en cours d'exécution et, pour ce qui est du second, l'application d'un accord conclu avec le Gouvernement des États-Unis est en bonne voie.

66. Le Gouvernement national s'emploie résolument à rechercher des solutions efficaces aux problèmes que pose le système national pénitentiaire et carcéral, en prenant à cet effet les dispositions pertinentes. Il faut bien voir cependant qu'il ne sera pas possible de remédier à bref délai à une situation aussi difficile qui remonte à de nombreuses années car cela exige la mise en place de mesures dont les résultats ne seront visibles qu'à moyen et à long terme, lorsque les projets de construction de nouveaux centres pénitentiaires seront achevés et qu'il sera donné effet aux politiques formulées.

67. La réponse du Gouvernement en la matière expose dans le détail les mesures adoptées par les autorités compétentes sur chacun des points mentionnés dans le rapport du Bureau.

Les défenseurs des droits de l'homme

68. L'une des priorités définies dans la politique gouvernementale des droits de l'homme est de protéger la vie, l'intégrité corporelle et la liberté des personnes qui, de par leur activité de défense des droits de l'homme, sont victimes de menaces et de harcèlement. Le Programme de protection des témoins et des personnes menacées de la Direction générale des droits de l'homme du Ministère de l'intérieur est destiné à donner effet à cette politique et aux prescriptions constitutionnelles et légales ainsi qu'aux traités internationaux signés par l'État colombien en matière de promotion, de respect et de garantie des droits de l'homme et d'application du droit international humanitaire.

69. Différentes actions, tant politiques qu'instrumentales, ont été entreprises dans le cadre des programmes de protection relevant du Ministère de l'intérieur, qui ont été renforcés en 2000 par la création des Programmes de protection des journalistes et des professionnels des médias ainsi que des dirigeants, membres et survivants de l'Union patriotique et du Parti communiste colombien.

70. Les principaux axes de l'action menée dans le cadre de ces programmes sont les suivants : aide humanitaire, mise à disposition de moyens de communication, prise en charge de frais de déplacement, fourniture de billets nationaux et internationaux, octroi d'indemnités de subsistance, mise à disposition temporaire de services de transport terrestre ou fluvial, projets de production, blindage des locaux, cours d'autoprotection et d'autosécurité et dispositifs de protection rapprochée, selon la description détaillée qu'en donne, dans chaque cas, la réponse du Gouvernement colombien.

71. On trouvera également dans cette réponse un compte rendu des principales affaires mentionnées dans le rapport, indiquant l'état d'avancement des enquêtes pénales menées par les autorités nationales pour établir les responsabilités dans les cas de violence que dénonce ce rapport.

Les droits politiques

72. Le rapport omet de mentionner la vigoureuse participation citoyenne observée lors des élections qui ont eu lieu en octobre dernier dans 1 020 communes pour élire les maires et dans les gouvernorats pour élire les dirigeants départementaux et les conseillers et députés. Il n'est pas fait état non plus des importants progrès réalisés dans le sens de la transparence du débat public sur les multiples options représentées par les candidatures.

73. L'importance de plus en plus grande prise dans de nombreuses municipalités par des mouvements civiques de toute sorte, l'arrivée au poste de gouverneur du département du Cauca, pour la première fois dans l'histoire, d'un membre de la communauté autochtone guambiana - une minorité ethnique - et, d'une manière générale, le soutien notable apporté aux institutions démocratiques dans un contexte de conflit armé interne témoignent de façon concluante de l'indéniable vocation de respect des droits politiques qui est celle du Gouvernement et de l'État en général.

74. De même, tout au long du rapport, la mention de la multitude de manifestations en faveur de la paix et contre les violations des droits de l'homme, qui constituent une expression importante des libertés politiques, brille par son absence.

Les droits économiques, sociaux et culturels

75. Les principales réalisations et actions du Gouvernement national concernant, principalement, le droit au travail et les libertés syndicales, le droit à l'éducation et les droits de l'enfant sont exposées dans le document gouvernemental, où l'on trouvera non seulement des observations sur ce qui est dit dans le rapport du Bureau à propos de chacune de ces questions, mais aussi des informations détaillées sur les progrès réalisés dans la mise en œuvre des politiques de caractère social définies par la présente Administration.

Appendix

General considerations regarding the report

Absence of clarity concerning criteria of attribution of the international responsibility of the State

The report provides a thesis of types of classes of State responsibility in relation to individual acts, in accordance with which there are at least three distinct notions of it, one of which according to the report is a "general responsibility" for the "existence, development and expansion of paramilitarism" which is tantamount to a historical, collective, general and retrospective responsibility, which has no kind of theoretical support in international doctrine, or in recent jurisprudence.

The notion of a "contextual" responsibility such as that which it is claimed to apply in this case is an unacceptable broadening of international responsibility, whose theoretical support has been precisely constructed, and is radically opposed to the criterion used in the report, through a precise determination of circumstances and facts from which it would be legitimate to appreciate conduct, whether of public servants or private individuals, as violations of international norms connected by them.

The report repeats the two traditionally admitted criteria of responsibility as the support, acquiescence or tolerance of public servants, and places on a sort of third level a particular responsibility for an omission, which is again distinct from the traditional language and categories employed in contemporary International Law and Doctrine which have their origins in The Hague Convention of 1907 (Article 3). In effect, these categories seek precisely to secure objectivity and accuracy in the attribution of responsibility, for which purpose they refer exclusively to conduct and omissions, with which acquiescence and tolerance which in essence belong more to the second category of facts, with the imprecise oscillations between acts and omissions, are subsumed as omissions, thus suppressing possible margins of confusion and mistaking one for the other.

In sum, this worthy attempt, visible in the report to introduce some conceptual values, such as the Government has on repeated occasions requested in its replies to previous reports, unfortunately ends up by generating additional confusion and inaccuracy, and thus produces the questionable effect of creating the mistaken impression that there are a multitude of apparent reasons for attributing responsibility to the State.

The use of the parameters of the International Humanitarian Law to describe a situation and to assign responsibility to the State

As in its previous replies, the Government wishes to express its firm rejection of the evaluation which the report makes of paramilitarism as a de facto organ of the Colombian State. This inadmissible assertion is a superficial simplification of a complex historical and social reality, it ignores the military and financial autonomy of the paramilitaries, and very clear situations in which there are increasing numbers of lethal attacks on public servants. In addition, this is a unilateral interpretation and is countered to the elementary principles of dogma and law, ignoring important developments in international jurisprudence, and blocking sincere efforts to approach the matter objectively from the outset.

In effect, the report on this occasion modulates its allegation that the State is practically the father of paramilitarism, when it states that "historically, legislation and state policy have also played an undeniable part in the current dimensions and characteristics of paramilitarism"; and it assumes that the theory that the legislation issued in the 1960's and subsequent policy indeed provided the conditions required for paramilitarism to grow, and still to be present. However, a careful reading of the evolution of policy and legislation from the 1960's forward will show that the laws passed in 1965 which allowed the creation of a national militia, took place in the context of the reinsertion of the liberal guerrillas of the Llanos into civil life, and allowed civil defense organizations, which still function partially today as city district boards of neighbors responsible for civic work and supervision, to come into being.

When the paramilitaries as such begun to form in the middle and late 1980's, encouraged by the drug traffickers and as a reaction against guerrilla groups, state policy was precisely to make the conduct of the self-defense groups a criminal offense in 1999; this criminalization of their conduct has subsequently continued, passing from special criminal legislation through the transitory articles of the 1991 Constitution, until today it forms part of the Criminal Code.

From the middle 1990's, the growth in numbers, financial resources and criminal activities of these groups has been due to the same intensification of internal armed conflict to whose appalling degradation illegal armed groups have contributed with the highest number of acts of barbarity. On the logic of the report, we could also wrongly attribute the responsibility to the Colombian State for the rise of the guerrilla groups and their current size, since these organizations also have their origins in the ideas of peasant-farmers self-defense groups.

Equally, the assimilation of paramilitarism as a de facto organ of the State contradicts the current state of international doctrine and theory, specially the criteria of jurisprudence expressed in the tribunal for the former Yugoslavia as the Government noted in its previous reply.

Thus, the standpoint assumed in the report has not incorporated these developments of doctrine, and has not properly assimilated the principles of International Humanitarian Law with the criteria of international responsibility in the matter of human rights, which logically imply mutual interdependence between the branches of international public law, and the report arrives at the inconsistent situation of applying the criteria of conventions which are proper to the system of International Human Rights Law which by their own logic cannot take account of the specific demands and requirements of Humanitarian Law with regard to the regulation of armed conflict, and which is built on the bases of different centers of attribution of responsibility which are not exclusively those of the State.

Therefore, the report abstains from making an analysis of specific cases in order to limit itself to a generic opinion, when it should have established the existence of the suppositions of fact indicated by jurisprudence in order to be able to attribute responsibility to the State.

Therefore, this is why in this report as in its predecessors, the commission of many murders of public servants by these groups have been ignored, and why no recognition has been given to the scale of state effort to combat the perpetrator of these crimes[1] .

In conclusion, the report claims to continue to insist on the theses that the Colombian State by action and/or omission with its acquiescence or tolerance, is organizing, financing, sponsoring and undertaking joint military operations with the paramilitary groups. This assertion is one which the Government not only rejects but also notes as a dangerous one, specially when coming from an organ in the United Nations System. [2]

Nonetheless, as this must indeed be said, in cases where there is or has been a deliberate action or omission by some public servant, whether civil or military, the Colombian mechanisms for the attribution of criminal or disciplinary responsibility have been, are and will be set to work in order to punish those responsible and their accomplices.

The Government understands that due to the peculiar character of the agreement between the parties, by which it was agreed to employ the International Humanitarian Law approach to the

[1] Such is the case of San Carlos de Guaroa in July 1997, when 15 public servants, some investigators and some members of the Armed Forces, were killed. This was mentioned in the Government's reply to the report of the previous year, but did not receive any consideration by the Human Rights Office, neither then, nor now.

[2] The Government notes with concern, as an example, that in the international event or an academic nature arranged by the International Counsel on Human Rights Policy and held in Geneva in September 1999, that the proceedings were closed with the preparation of a document called "Approaches to armed groups from the view point of Human Rights" and this upheld exactly these theses, on that occasion when the current director of the UN Human Rights Office in Colombia was present as a specialist.

analysis of the country situation, there have been theoretical difficulties in approaching the precise type of relationship between one and another of these two areas of international law, whose mutual complementation and the special nature of the former with respect to the latter, continues to be an object of debate.

In this, the Government expresses its surprise at the inclusion of a chapter referring to serious violations of International Humanitarian Law which contains violations typical of offenses against human rights.

Likewise, the Government wishes to express its categorical disagreement and rejection of double counting and of the descriptive treatment which the report gives with regard to the appalling conduct to the paramilitary groups, on one occasion and in the name of violations of civil and political rights, and on a second occasion with regard to violations of the principles of International Humanitarian Law as expressed in conventions and in common law. The generic conclusion of the violations of civil and political rights as a responsibility of the state, together with the abuses or excesses committed by the Armed Forces, leads to an unfortunate mixture of massacres and/or events such as the ill-named operations of "social cleansing", but specially, has a result of producing an inflated effect of the conduct of those groups.

Except for cases in which a detailed analysis of the circumstances of facts shows the existence of the presuppositions for state responsibility -by action or omission, or by tolerance, support or acquiescence in the criminal activities of these groups- the rest of such events require inclusion as a violation of humanitarian law. The Colombian Government again therefore rejects this procedure, which only generates confusion.

A legal appraisal of systematic conduct and the framework of the Agreement

The Government notes with pleasure that unlike previous years, on this occasion, the report describes the employment of terms of a judicial nature such as massive or systematic, to a single case, thus showing a greater degree of rigor and restraint in the application of such terms whose complexity escapes an organ of observation and analysis of the situation such as the United Nations Human Rights Office. In effect, both terms are offered value judgments of a qualitative and quantitative nature which entail deep legal repercussions and therefore if they are to be properly applied, there must be an exhaustive and detailed analysis which even for the international organs themselves is difficult to test even through the initiation of a judicial process or through the work of a commission responsible for investigating the perpetration of crimes. In effect, only with regard to violations of International Humanitarian Law under the name of "hostage taking" is stated that the guerrillas actions are "massive" and "systematic". The extensive use of these words in previous reports had already been the object of comment and disagreement on the part of the Government.

However, it is completely inexplicable that, having restricted the application of these words to these case in the list of references made through this type of conduct, the report ends by making a final statement in Chapter VI of "situations of special concern" making the accusation that "systematic violations of International Humanitarian Law have been observed to be committed by all the groups in the conflict, which again presents a contradiction with the account of the facts given in Chapter E corresponding to the "International Humanitarian Law situation" in which no mention is made of such characteristics except that just mentioned, among the nine modes of violation1.

There is also an untenable assumption that the Armed Forces are perpetrators of a set of practices described in Chapter E. This statement implies in itself that the Armed Forces commit mass murders out of combat, attack the civil population, and make indiscriminate rapes, perform acts of terrorism, torture, rape, hostage taking, recruitment of minors, forced displacements, attacks on medical missions and ambulances, and attacks on private property.

It would be difficult to find a statement which is so openly contrary to the reality of the Colombian Situation, or that so sharply criticizes the significant efforts of institutions, as described later in this document, made to modernize the Armed Forces and to train it in the observance of International Humanitarian Law. Given the general nature of the statement, and its implications, the Government considers that it exceeds the terms of the mandate in that it involves a major inconsistency and is a judgment which should only be made by an organ of a jurisdictional or a quasi-jurisdictional nature.

In effect, the permanent training of members of the Armed Forces in the field of human rights and the international humanitarian law has made a decisive contribution to the improvement in their performance, and to their achievement of their constitutional mission.

Today, the Armed Forces are leaders in Latin America with regard to the training and formation in human rights and international humanitarian law among their members, who receive constant instruction in these areas during their careers in the service, and this is shown by the fact that more than 97,000 active members of the Armed Forces have received training in the last five years, much of it in combat zones, and this is considered to be an achievement unrivaled by any country, with due consideration of proportions in the number of active service men.

The Armed Forces have also been pioneers in distance courses designed for personnel engaged in military and police operations.

In Colombia, during the period of formation of an officer (4 years), of an under officer (2 years) and of executive grade personnel (1 year) each member of the Armed Forces receives an average of 90 hours a year of training in human rights and International Humanitarian Law.

Further, during promotion courses, a basic and advanced training courses, staff courses and senior military studies, personal receive at least 20 hours former complementary formation in this area. Troops and marines receive permanent training during their instruction period in human rights and international humanitarian law.

This fact can be shown to have specific results. For example, it should be noted that in the year 2000 the percentage of complaints received by the Office of the Procurator against members of the Armed Forces is 8 times lower that it was 6 years ago. The number of complaints recorded in the year 2000 involves only 0.17% of all members of the Armed Forces.

Matters whose inclusion or presentation exceed the Mandate of the Human Rights Office

There are certain aspects of the report which exceed the terms of the mandate of the Human Rights Office and do not contribute to a more complete presentation or illustration of the Colombian situation. One clear example is the reference to "persistent practices of corruption in state procurement" which, given the seriousness of the accusations made there, will we replied to in detail in the next section of this reply, but these are matters which certainly do not form part of the terms agreed between the Government and the High Commissioner.

Another example is the relation between Colombia and one of its neighbors, Venezuela, in which there is no recognition of the handling of these relations and of the difficulties which might arise with that country as with all states with common frontiers with Colombia, which have been developed with full respect for the international role in the framework of bilateral mechanisms now in force or through the creation of special mechanisms for the treatment of issues such as displacement, in which there has been a frank and open dialogue, and, at Colombia's initiative, proposals have been made for the holding of triparty meetings in which we hope to have the participation of the Office of the UNHCR.

The Government considers it equally inappropriate, since it exceeds the mandate of the Office, to make statements related to the persistence of the effects of the economic crisis of 1999, and offers criticisms of the macro economic measures taken by the Government of Colombia. In this matter and in the statements referring to the implementation of economic, social and cultural rights, the Government considers that the Human Rights Office should take advantage of the experience of reports presented by the Government and evaluated by the Economic, Social and Cultural Rights Committee, which provides a detailed analysis and in appropriate depth, of the situation of states which such as Colombia are part of the pact. This would prevent inaccurate statements being made which contribute little to a comprehensive an objective evaluation of the economic politics of this country.

Difficulties in the Handling of the Mandate

The Report states its view that one of the difficulties in performing the work of the Human Rights Office and in its actions is caused by the "progressive closure of many opportunities for participation, denunciation, investigation and follow up at all levels and in all areas" and to the presence of "instances which have been dissolved, placed on the side lines and diverted into work other than that for which they were designed". This appraisal is openly contrary to recent evolution of Colombian institutions.

In effect, there are many new institutional arrangements for mixed coordination which have been set to work in order to attend to all kinds of material and geographic situations whose seriousness merits the strengthening of institutions through new and different forms which will supply focus and priorities, and will make state action more effective. In addition to the many instances which have existed now for some years, such as the Special Committee for Case Follow-up in Violations of Human Rights, the Workers Commission, the Indigenous Peoples Commission, the Program for Protection of Human Rights Defenders, and the Arauca Commission, now, as an institutional response to the difficult circumstances which have been generated by the intensification of armed conflict, an immense variety of new mechanisms have been added, such as the special commission for the Colombian Macize, the Middle Magdalena Commission, the Commission for the Search for Displaced Persons, Municipal Committees for Assistance in Forced Displacement, the National Counsel of the Displaced, all of which were set to work in the year on the report, the Program for the Protection of Journalists, the Standing Inter-sectorial Commission for Human Rights International Humanitarian Law, its dependent technical group, and 10 issue subgroups as working tools for both of them to function. This is a genuine plurality network of joint and interdisciplinary instances for work, in most of which there is participation by the human rights defense organizations, the unions, and social and political movements.

In the opinion of the Government, what there has in fact been is a multiplication of national, regional and local opportunities for dialogue, convergence and work in which in almost all cases, provision has been made for the participation and assistance of the Human Rights Office, or an invitation has been made for its valuable presence to contribute to the achievement of the objectives proposed for these mechanisms.

In the last year alone, there have been more than one hundred coordination meetings between different agencies of government and NGO's, the unions and social movements. And indeed, the Human Rights Office has been invited to many of them, since the Government has always hoped that its intervention will be a constructive companion for the process.

Specific considerations

The national situation

With regard to the analysis of the peace talks between the Government and the guerrillas, the report states that "the Government persisted in its efforts to progress towards the adoption of agreements in the quest for peace, and initiated a number of actions for this purpose. Nonetheless, during the period covered by this report, this Office has noted that the broad support for the continuation of negotiations with the FARC has considerably reduced. There are some sectors of society and political leaders who are asking for the cooling-off area to be closed down, and for military offenses to start against the guerrillas on a large scale. In the same way, they are also calling for the approval of legislation which will make it possible to create "on the militias" which is the prelude to a dangerous intensification of armed conflict".

While it is true that certain sectors of society have adopted the position noted as a result of polarization, it is not true to say that the support for the peace process has reduced considerably. Specially from the international point of view, the community of nations has expressed its constant support for the processes and its unbending will to cooperate so that the peace processes will be successful. As one example, there is the fact that on June 29 and 30, 2000, one of the most important public hearings was held, as the special and international hearing on the environment and unlawful crops, in which international support for the peace process was formalized by delegates from 21 friendly nations.

With reference to the climate of polarization, this situation has been generated by the expectations of civil society of a negotiated end to the conflict, and to society's frustration at the lack of specific acts of peace -which the government has insistently requested of the guerrillas- but at no time for reasons which can be attributed to Government authorities.

The Government does not share the opinion that the dialogue with the ELN could not be formalized this year, although important progress was made. Definitely, the peace process has recorded its most important achievements during the year 2000; in particular, with regard to the development of international humanitarian law, on October 30 the Government signed an agreement with the ELN which made it possible for them to hand over unilaterally a group of 19 persons whom they had been holding, and the operation then took place over two days, with a humanitarian commission, and was a total success.

On December 24, a similar operation was undertaken and was also completely successful, in which the guerrillas unilaterally handed over 42 soldiers and police man which it had been holding, as noted in the draft report.

Further, as a consequence of the lengthy meetings between representatives of the Government and representatives of the ELN, it was possible to reach an agreement on a commitment to full implementation of human rights and international humanitarian law in the zone which it is proposed to establish to proceed with dialogue and negotiations with this group.

With regard to the "Global Agreement on Human Rights and International Humanitarian Law", whose presentation was personally attended by the President on October 28, 2000, the Office of the High Commissioner for Peace expresses his wish to discuss the specific terms of the proposal with the Office of the High Commissioner in Colombia, in order to make an independent appraisal of its relevance, timing and effectiveness, in the framework of the dialogues with the guerrillas.

With regard to the revelation of persistent practices of corruption in state procurement, which includes all spheres of the State, the Government of Colombia considers that statements of this kind clearly exceed the mandate of the Human Rights Office. However, given the gravity of such value judgments, the Government expresses the following position:

The philosophy which inspires the draft reform to the Administrative Contracts Code is part of the Presidential Program Against Corruption, mounted by this Government, as a priority action among the different mechanisms for achieving peace.

The anti corruption bill includes, as a flagship project, an improvement in the efficiency and transparency of public administration, and the achievement of an ethical commitment, for which the strengthening of mechanisms of transparency and social control and the engagement of all sectors which play a decisive part in the problem of corruption is of the greatest importance. For this, competency must be defined, of the opportunity for discretionality in decision taking must be reduced, and effective systems of control, follow up and evaluation must be generated.

An inter-institutional commission was created, and it consulted the opinion of various sectors with regard to problems generated by the application of the procurement bill; it then prepared a project for changes to the procurement regime which maintains the general principles of the law now enforced and proposes some substantial reforms in order to add transparency to the procurement activity.

A national forum was arranged by the Vice-president of the Republic and through the Anti-Corruption Program, with the assistance of the Ministry of the Interior, the Ministry of Justice, the Ministry of Finance and the Ministry of Transport, sponsored by the World Bank. Congressmen, public servants, NGO representatives, universities, sector associations, professional associations, students, and independent professionals, amongst others, were invited to this academic discussion, which analyzed the current scene, and identified priority issues which, as a final result, produced the text of the draft reforms. These were then revised by the Ministry of Justice and presented to Congress in September 2000.

The most important of the reforms proposed are the following:

- The fact of having giving donations to the political campaigns of a public servant who takes a decision to contract, or of the person delegating that power has been made a disqualification for contracting.
- The State will not loose money when it undertakes contracts for sums in excess of the real value of the good or service contracted, since government agencies will now be allowed to refrain from paying the excessive part of the price, or may take action to recover excessive amounts paid.
- In order to avoid judgments being made against the State for violation of due process upon declaring the forfeiture of the contract, the administrative procedure to be followed will be clarified.
- Technological means will be used to simplify, modernize and give transparency to contracting processes.
- The public access to documents which contain rules for selection so that interested parties may have access to them with no cost other than their copying, will be supplied.
- Not all additional expenses generated in the performance of contracts will give rise to the restoration of financial equilibrium. This mechanism may only be used in unforeseen situations, or where agreed obligations have not been satisfied, or there are acts of a general nature which affect the economics of the contract.
- The responsibility of partners in "project companies" will be extended to the acts and commitments acquired prior to the formation of the company.
- In the name of economy, transparency and agility, all of which are required in the acts of the administration, those participating in a selection process will not be required to provide information which is already contained in the bidders register, but in order that the accuracy of the information contained there may be verified, those appearing on the register will be obliged to update their legal, economic or financial information as relevant, and if they fail to do so, they will be disqualified from contracting.
- In order to establish clear responsibilities which will also make them effective, the duties of supervisors or inspectors of state contracts will be defined.
- The possibility of direct contracting is one of the focuses of corruption, and it is therefore proposed to adopt as a system whereby the Chambers of Commerce, by lot, send government agencies a list of 3 names for them to choose the best, using criteria of objective selection.
- In order to control the direct contracting of services, the head of the agency or its legal representative will be required to certify that it does not have specialized full-time staff, or staff which is capable of performing the object of the contract.
- In order to avoid the manipulation of results of tenders, by setting unnecessary requirements, there is a proposal for regulations for the general section and terms of reference, that is, for the qualifying requirements which must be the same in all cases. It will also be prohibited to amend terms of reference after the hearing arranged for clarifications, except where overwriting and unforeseeable circumstances arise.

This shows once again the immense and permanent concern of the Government to combat the spirit of corruption which evidently affects the State in all its branches, through controls which will enable it to overcome the serious excesses of loss of values, ethics and moral which it has produced.

Finally, the Government recognizes that the Human Rights Office has on this occasion made reference to the constant and harmful activity of the drug trafficking networks, and has thus attended to the Government's claim that this subject should have been included in the previous report.

The situation of Human Rights and International Humanitarian Law

Given the conceptual positions adopted with regard to this chapter, the Government must stress that during the year 2000 there was a consolidation of the trend observed in the last 6 years for a substantial reduction in the number of complaints of violations of human rights attributed to members of the Armed Forces and in the number of disciplinary cases opened which terminated in convictions.

In effect, since 1999, the number of claims made to the Office of the Procurator General has fallen in each year, both in absolute numbers and in proportion to the total number of members of the Armed Forces.

This reduction in complaints is evidenced by the fact that in the year 2000 the percentage of claims received by the Procurator's Office is 8 times lower than it was 6 year ago (1995). The number of complaints recorded in the year 2000 involves only 0.17% of the members of the Armed Forces. Nonetheless, and in the implementation of the policy to investigate and trie any member of the Armed Forces with links to the self-defense groups, the Procurator General made public accusations against 17 Police men and 9 Army officers for collaboration with those groups. Further, 5 generals and 22 officers are under investigation for dereliction of their duty to protect, or alleged collaboration in massacres.

In the same vein, the percentage of members of the Armed Forces against whom complaint procedures were opened represented only 0.022%, which again represents $1/8^{th}$ of the number of complaints made 6 years ago.

A proper appreciation of these figures should take account that of the complaints received by the Procurator's Office, only 10.3% met the requirements for a case to be opened, and around 35% of cases which were opened ended with an acquittal.

Also, between January 1998 and December 6 2000, the Attorney General's Office prosecuted 98 members of the Armed Forces and 58 Policemen for alleged violations of human rights. Leaving aside the results of these processes, which are pending due process and defense, it should be noted when appraising the performance of the military that these 156 cases are a tiny percentage (0.06%) of the 258,120 members of the Colombian Armed Forces.

Civil and political rights

With regard to the specific cases cited in the report, the Government of Colombia wishes to offer the following observations and to provide related information on the status of investigations undertaken by the internal authorities:

With regard to the "massacres for "social cleansing" in the Municipal districts of Salamina, Neira and Aranzazu" despite the inquiries made by the Police, there has been no evidence to show that Police personnel took part in the assassinations, or were linked with the self-defense groups in the region.

With regard to the events in Pasto, Nariño, in which one officer and several policemen were called in for interrogation regarding the death of indigent persons whose throats had been cut and showed signs of torture, it should be stated that immediately the facts referred to in the report were known, the competent authorities took cognizance. Within the investigations, the following decisions have been made:

- On February 28, 2001, the Attorney General's Office issued an indictment and a warrant for the detention of a police officer.
- Equally, and trough the same decision on the part of the Attorney General's Office, an indictment was issued against one junior officer in the police, who had been summoned for evaluation of his service record by resolution of April 7 2000, and is now detained.
- The disciplinary investigation was taken up by the Procurator-Delegate for Human Rights, who has overriding competency.

The report also states that "in Pueblo Rico, Risaralda, on April 18, 3 members of the Embera Chami indigenous group were victims of a massacre which was perpetrated by the Army. The information given in the report does not agree with the official information. According to the information supplied by the Army, on April 18 in the rural district of Aguita, the Municipality of Pueblo Rico, Risaralda, the troops of Artillery Battalion No.8 San Mateo, came into armed confrontation with ELN guerrillas from the Cacique Calarcá Front, during which two members of the indigenous community were killed and 3 more were captured, and weapons and equipment were seized, including items such as fragmentation grenades, and guerrilla pamphlets. The prisoners were put at the disposal of the Prosecutor's Office in Apia, Risaralda.

Another example mentioned in the report is “the death on October 3 of Over Perea, age 15, at the hands of a policeman in the El Cartucho Sector of Bogota. The youth, who was detained along with 3 other minors, was tortured and shot, and his body was then left in a refuse container”. In this case, the Office of the Procurator, using his overriding powers, has since November 2000 been conducting an investigation which was started by the Police, in order to clarify the circumstances of these events; a criminal investigation is being undertaken by Prosecutor 50, Bogota Regional Office. The patrol man allegedly responsible has been retired from the service.

At all events, it should be explained that this event only involves the will of the person investigated, and is an isolated circumstance which does not compromise the policies of the Institution.

Later in the report, its is stated that “in the massacres at Ovejas and the El Salado, already mentioned, this Office received testimony as to the possible direct participation of members of the Army in these paramilitary actions”. This statement does not agree with the official information on those events. The testimony on such delicate matters can only offer credibility when it is taken during a judicial or administrative process, since it would then be provided under oath. It should be explained that the unit which has jurisdiction in the area in question is the First Marine Brigade, which belongs to the Navy and not to the Army, as the report suggests. In addition, it should be noted that the criminal and disciplinary investigations undertaken by the Prosecution Service and the Procurator respectively, are at the stage of preliminary investigation, and so far no member of the Armed Forces has been implicated. It is therefore not appropriate to speculate on their results.

It should be noted that the Armed Forces at the time of the crises produced by the violent actions of the self-defense groups, provided the civil population of the area affected with all kinds of humanitarian aid, in the form of food supplies, medical support and psychological support. Further, on the days following the incursion, the Army succeeded in killing 7 members of this illegal group, and capturing 15 more, as well as neutralizing the group’s helicopter.

Another case included in the report refers to events in Toledo, Norte de Santander on February 11 when a protest roadblock of the indigenous Uwa against the Oil company Oxy was broken up, and “ a 6-month old girl died”. On this point, it must be stated that the police only use force in situations were it is required by the civil authorities, and that all events the action taken was within the prescriptions of the law and with full respect for citizens rights. In the specific case cited, the Operations Director of the Police reported that the mobile anti-riot squad of the Police in that area, in response to a request from the Departmental Authorities, dissolved the march and restored communications in the Samore-Cumará road which had been blocked by some 500 members of the indigenous Uwa group, stopping traffic and pedestrians from passing since February 1 2000. This process of dislodgment was conducted in the presence of representatives of the Procurator’s Office and the People’s Defender; and, in compliance with the requirements of law, the protesters were urged to disband peacefully and clear the road; but they resisted by burning tires and committing aggressive acts with sticks, stones and arrows against the police, and therefore tear-gas was used in order to clear the road.

Later, and as a result of denunciations made of alleged excesses, the Norte de Santander Police Department requested the Procurator to send a delegate in order to establish the events. A meeting was held between the indigenous community and the delegate of the Procurator's Office. The indigenous community said that at the time that they abandoned the road block, a baby was handed to a child aged 12. When the child tried to cross the river, he was swept away by the current.

The report repeatedly refers to "the events in Pueblo Rico, Antioquia on August 15, were members of the Army killed 6 children and left another 4 wounded, having shut at them for around a half an hour. On this point, it is basic that the cases analyzed in reports studying the situation of Colombia should not be opened to mistaken interpretations. In this case, as presented by the High Commissioner, there seems to be an *a priori* accusation without distinguishing such important elements of crime as malicious intent or blame. With regard to these lamentable events, it must be stated that both the civil judiciary and the military authorities who made the initial investigations, after evaluating the evidence collected, decided that the deaths were due to human error and not to an intention to cause harm. There is a necessary distinction between culpable acts such as that in question here, and malicious acts whose intention is to cause harm. It is clear that the intention of the soldiers was not to cause the death of the children, and this is therefore not a case of violation of human rights, which presupposes malicious intent.

When analyzing a case such as this, it is important to take account of the background and circumstances, in order to determine the degree of responsibility of those involved. Immunity gives the members of the Armed Forces the right to be tried in a special tribunal, which is competent, independent and impartial, where the acts of which they are accused are derived from the exercise of military or police function and are part of their duty. Judicial decisions which transferred the Santo Domingo and Puerto Rico cases to the military criminal courts are based on legal criteria and jurisprudence with regard to the causal nexus with service activities, and to that extent, they are not arbitrary decisions but they are decisions made in accordance with the law.

It is therefore unacceptable to speak of arbitrary deprivation of life in the case of Pueblo Rico, since applying the principle of good faith, the final decision of the criminal process should be awaited, and account must be taken of the fact that the accused are being investigated for culpable homicide and not murder.

With regard to personal integrity, the report states that "during the course of the year there were also violations of the right to personal integrity, through cruel inhuman or degrading treatment. This treatment harmed persons who were taking part in public acts of protest, as happened in Monteria, Cordoba on March 6 during eviction from a property occupied by squatters". With regard to the situation, it is observed that the fact mentioned in the report do not coincide with the official information, since they do not indicate the circumstances of the eviction nor the aggressive attitude of the squatters which caused injuries to several members of the Police. Nonetheless, the members of the Police acted with due respect for human rights. The facts are as follows:

– On March 6 2000 at 10:30 a.m. eviction proceedings were held on the property of Constructora Agora, under the command of the Assistant Commander of operations of the Police Department, with the presence and coordination of the Municipal People's Representative, Inspector 5 delegate" the delegate of Humans Rights Representative, the delegate from the Procurators' Office, the Family Welfare Agency ICBF, and the People's Defender, after the deadline had expired for them to leave the property voluntarily, as had been agreed at a meeting with the spokesman for the squatters.

The Office of the Mayor, given the gravity of the problem, and in the face of possible disturbances of public order, requested the support of Brigade 11 to help in the process of eviction. Once this begun, the squatters begun to attack members of the Police with fire arms, blunt objects (stones), molotov cocktails, machetes, knives, switchblades and daggers and other weapons; they physically assaulted the Armed Forces, leaving 70 injured, some seriously. The civil authorities who accompanied the proceedings were also the object of aggression.

Given the size of the attack it was necessary to withdraw the forces of law and order, since the squatters were supported by the community of nearby districts, and the number of those taking part in the protest in fact doubled.

It should be noted that the supervisory authorities for the eviction and support such as the Red Cross and ICBF were the object of aggression, thus making the irrational nature of the action more evident.

The report contains a number of general statements which compromise the responsibility of agents of the State such as "the officers received complaints on the disproportionate use of force in military and police actions. Cases were reported in which public servants responsible for law enforcement, openly ignoring the international principles of legitimacy, proportionality and opportunity of the use of physical force in the context of street process and inside penitentiaries"; or statements such as "if indeed the authorship of most of the forced disappearances reported to this Office attributed by the complainants to members of paramilitary organizations, there were also cases in which the persons allegedly responsible were members of the Armed Forces". And in the section on personal liberty, it is stated that "most frequent and repeated violation of the right to individual freedom was materialized in the detentions effected by public servants who lack the competency to do so, and who proceeded without any bases in law or acted on the bases of provisions of law whose purpose is openly incompatible with respect for international principles".

In this regard, the Government repeats the importance of quoting specific cases when accusations of this kind are made, so that the competent authorities may undertake appropriate investigation. Certainly, and this does not reflect the rigor with which a report such that of the Human Rights Office should have, when making generic accusations against the Armed Forces through the repeated attribution of authorship, and indicating increases in certain types of conduct which in an extremely vague and general way, uses quantitative adjectives such as "many", "some", "numerous", "increasing" or simple statements which provide no connotation of this class of magnitude. This methodological faults would be acceptable or innocuous in best case in a press release, but since in this case there is a document of great importance in question, and its author is the Office of the United Nations High Commissioner for Human Rights, such expressions are absolutely improper, specially when the accusations of generalized and collective responsibility are constructed upon such inconsistencies.

The report also refers to "momentary capture" or "government preventive detention". The observations are again based on supposition, and specific cases are not mentioned. Also, it should be remembered that Colombia is a social state of law in which no action of the authorities escapes the ambit of judicial control, whether in the case of administrative acts or in the case of administrative operations, and this control is provided through the actions of nullity and restoration of law, or direct reparations, respectively.

In the same vein, the Constitutional Court as noted by the Government on an earlier occasion, in finding C 024 of 1994, has stated that is a function of the Police to preserve public order, as understood within a social state of law, and a value subordinate to respect for human dignity and human rights. In the same finding, the Court establishes the possibility in law that in certain circumstances and with certain formalities, non-judicial authorities may materially detain a person without prior order from a Court. This situation applies only to the verification of certain facts and judicial control of the legitimacy of a detention is subsequent to the material apprehension of the person. The Police in these cases acts within the framework of the criteria or jurisprudence described, and observing provisions of the law and the Constitution.

The Report states that "on October 21, in Yondó, Antioquia, 8 peasant farmers were apprehended by soldiers in Battalion 45, Heroes de Majagual, and were only put at the disposal of the Regional Prosecutor of Barrancabermeja 48 hours later". It should be noted that the events described in the report do not agree with the events as they actually happened. In accordance with information obtained from the Army, on October 21, troops from Battalion 45 as part of Operation Huracan, were in combat against members of FARC Front 24, in which 3 guerrillas were killed. On the following day, troops from Counter-Guerrilla Battalion Number 5 captured 6 individuals from whom they seized war materiel.

Another case mentioned by the Report "was that of the San Jose de Apartado, Antioquia Peace Community, in which, by order of the local commander troops demanded the name and identity document of all persons who entered and left the community, advising them that only those who are members of that community would be admitted. The population of the Municipality of San José de Apartadó has been the object of threats and continuous harassment by armed groups, and for this reason and in response to the request for provisional measures issued by the Interamerican Court for Human Rights, the Armed Forces use their powers, and in accordance with their constitutional duty to protect the community, may exercise controls and restrictions which far from limiting the rights of the local population, provides guarantees of security.

On March 8, in Cedeño, Norte de Santander, states the report "when a health brigade which was traveling towards an UWA settlement to provide medical assistance to the sick, it was detained for two hours by members of the Police and the Army, and then obliged to return. According to the report made by the commander of Division 2, on the day of the events members of the Gibraltar Company searched an ambulance-type vehicle belonging to the Sarare Hospital in Arauca, and this search was conducted in accordance with the rules and procedures established for such cases, and at no time were they harassed or accused by the Armed Forces of being guerrillas, as the indigenous Uwa Community afterwards said in a press communicate.

In addition, and according to the police report, the vehicle lacked any surgical equipment or drugs, and only carried a first aid box which could be found in any vehicle. No wounded or sick persons were being carried, but there were 12 individuals on board, 4 of them without documents. According to the same report, the vehicle was not on a medical mission. It is important to underline the legality of the procedures used by the police in their inspection, both of persons and of vehicles, for which there is no exception for ambulances, and the controls have no other purpose than insuring the tranquillity of the community and to prevent acts of violence.

The right to due process

First, in relation to the application of Military Criminal Justice, as is well known, the President issued Directive 01 on August 17, 2000, ordering all instances of the Military Criminal Courts, as military members of the Judiciary, to observe and apply the jurisprudence of the Constitutional Court regarding the exclusion of military immunity from all conduct which constitutes genocide, torture and false disappearance, and serious violation of human rights.

This presidential order repeated the exclusion which had already been made in the new Military Criminal Code for the crimes of genocide, torture and forced disappearance in the sphere of competency of the Courts Martial. As a result of the foregoing, 1307 cases which were previously being tried by the Military Criminal System were passed to the civil criminal jurisdiction.

It is important to note also that the fact that conduct which constitutes serious violations of International Humanitarian Law have been classified as a crime in the ordinary Criminal Code, and they carry a much more severe punishment in relation to members of the Armed Forces who are accused of such offenses, and there is also cover for conduct which was previously considered as a common crime.

The report also states that "the new criminal and criminal procedure codes which come into effect in 2001, did not give a satisfactory response to the changes internationally recommended, such as that related to habeas corpus, which is still not effective in the case of deprivation of freedom originating in judicial decisions. Nor have the provisions of law related to preventive detention being changed to avoid their systematic application".

In this regard, we must answer that since the Constitution of 1991 the guiding norm (Article 30) protects the individual against unjust deprivation of freedom, in any circumstance in which he is captured. Neither there, nor in current procedural legislation (Article 430 to 437) nor in the future Criminal and Procedural Codes (Articles 4 and 382-391) is there any limitation to the sacred right to invoke habeas corpus as a consequence of being detained, where the person captured is considered to be the victim of an illegal detention.

The indication of habeas corpus in due criminal process is not only well regulated but also generously made available. When in a criminal case there has been no interrogation within 3 days following the detainee being at the disposal of the Prosecution Service, habeas corpus becomes effective, even though the case is proceeding formally. If a statement is received from the accused, but the prosecutors do not resolve his legal status within the next five days, then the public action of habeas corpus may immediately apply. The Constitutional Court has protected this fundamental right in any number of actions for restoration and rights in which the judiciary had been obliged to reveal decisions which had denied Habeas Corpus. Indeed, by interpretation of the Constitutional Court, the recourse of appeal against decisions of the courts who deny the concession of Habeas Corpus has been extended. And in the case that the tones for deprivation of freedom are not complied with, to appraise the merits of the case or a public hearing of the trial is not materially initiated, in which case the right to a provisional freedom immediately applies if in the first event a judicial officer or in the second a judge deny recognition of this benefit of release which operates at the petition of the party (the accused, the defender, or the

Procurator's Office) or ex-ofitio. If release is still not granted, the public action of habeas corpus operates, and this is not limited even by the fact that the Courts and judicial institutions are taken their annual holidays. Therefore, this appreciation seems to be unfounded, within a criminal case, with regard to judicial decisions, obviously the first result is ordinary process, which is established for that purpose. In the case of abuse by action or omission on the part of a judicial officer, this ipso facto permits the accused or any person to invoke the fundamental right of habeas corpus.

Further, the new Criminal Procedure Code requires a greater abundance of evidence in terms of quantity and quality in order for a Court to order a person to be deprived of its freedom, excluding the different kinds of detention, solely to impose preventive detention in certain crimes whose gravity, amongst other things make it necessary for the person to be physically and legally deprived of his freedom. It also requires, for the judgment of the judicial officer, that there is no clause excluding responsibility, as an additional requirement for detention to operate.

Article 356 of Law 600/2000 states this as follows:

> "Article 356. Requirements. Preventive detention will only be effected as a means of prevention. It will be imposed when there are at least two serious indications of responsibility based on evidence legally produced in the case.
> No preventive measure will be in order where the evidence indicates that the accused may have acted for any of the reasons which release him form responsibility"

We clarify this point in response to the fact that preventive measures are not systematically or cyclically applied, if we take rigorous account of the requirements of process to limit individual freedom.

With regard to the Mapiripan case mentioned in the Report, it is important to note that since this is a case within the competency of the Military Criminal Courts in accordance with the finding of the Superior Counsel of the Judicature, the Military Criminal Courts convicted in the first instance on February 12, 2001 General Jaime Alberto Uscategi Ramirez and sentenced him to 40 months imprisonment, and convicted Lieutenant Coronel Hernan Orozco Castro with a sentence of 38 months imprisonment, a decision produced by the competency given to the Military Criminal Justice System by the Superior Counsel of the Judicature.

Economic, social and cultural rights

The Government of Colombia considers as it states in the section referring to aspects in which the Human Rights Office is exceeding its mandate, that if consideration is to be given to the economic, social and cultural rights, there should be a deeper analysis of the elements of context which will allow a less superficial treatment of these rights, the panorama of multiple violence, and the re-intensification of the regular war which affects much of Colombian territory.

The right to work and union freedoms

In context of the agreements reached in the ILO Administrative Council in the year 2000, there is a special representative of the ILO Director General, Doctor Rafael Alburquerque, who has come to Colombia to follow up all the cases before the Union Freedom Committee, including cases of violence against union members and leaders, based on all the information which was given as specific answers by the Government of Colombia to the control organs of the International Labor Organization.

The Ministry of Labor has reported the following specific advances in matters within its competency:

1. The Inter-institutional Commission for the Defense, Protection and Protection of Workers Human Rights, shared by the Minister of Labor, whose fundamental purpose is to discuss and recommend polices, actions for protection, and the dissemination of fundamental rights of workers.

2. The Human Rights Office in the Ministry of Labor, whose principle task is to contribute to policy formulation in the area of human rights, and to coordinate ministry actions on this subject.

3. The adaptation of internal legislation, through Law 584/2000 taking up the observations of the commission of experts in the application of ILO conventions and recommendations.

4. The creation of 25 sub-units of the Prosecution Service to encourage investigations of violations of human rights of workers (Resolution 814 of October 29, 1999).

5. Ratification of 5 ILO conventions, referred to in the chapter corresponding to compliance with international recommendations.

6. Creation of the Commission for Treatment of Conflict in Colombia, a tri party commission within the Standing Commission for Negotiation, in which ILO acts as an observer.

7. Re-launching and permanent activity of the National Negotiation Commission for Salaries and Labor Policy, which has already produced important results and agreements, such as that related to the national minimum salary.

The right to education

In the face of considerations contained in the report with regard to the threats against many educators, of coverage in basic and intermediate education, and of educational assistance to the displaced population and education on the subject of human rights, the Government here reports on the following specific actions which have been taken.

Assistance for threatened educators

Given the situation of public order in the country, which also affects teachers and administrative personnel in national and nationalized educational institutions, the Government, through the Ministry of Education, considered it necessary to take special measures to protect their lives. Based on this, Decree 1645 of October 9, 1992, established mechanisms and administrative procedures to be performed in order to resolve the situation of teaching and administrative personnel in national and nationalized schools, whose lives or personal safety is under threat.

The Decree created a Special Commission for the Threatened in each Department, to study, evaluate and resolve cases of threats to lives or personal safety, made against teaching and administrative personnel in national and nationalized schools.[3] The Decree also contemplates procedures to be followed by personnel who come under threat, with relocation and payment of salaries and emoluments for any teacher who has been declared as threatened.

It is important to note that the State teachers, along with other public servants in Colombia, may freely exercise their rights of expression, reunion and association, all within the respect for the rights of other citizens, and in development of the constitutional principles of association, freedom of expression and instruction, and fundamental rights, protected specially by our order.

With regard to payments to teaching personnel, there have been backlogs, principally in the paying of salaries of teaching personnel financed with the resources of the Departments and the Municipalities. The situation has not affected the teachers financed by transfers from Central Government, since the Government has appropriated the resources required to make up the shortfalls occurring in this source of funding. In the year 2000, the Government allocated more than CP$1 billion for this purpose. In order to help the Departments in the payment of teachers financed by the Departments with their own resources, a sum of CP$45,000 million was also allotted.

[3] The national schools have their teachers and administrators named directly by the Ministry of Education, and they are paid by the National Budget. The teachers and administrators of nationalized schools are those appointed by the relevant regional entity (departments), and they are paid from the national budget.

Wider coverage of basic and intermediate education

In order to guarantee the right to good quality basic education for all the population, the National Development Plan 1998-2002 proposed to extend the coverage and improve the quality, efficiency and equity of the service. For this, it has promoted its rationalization plan in support of the target of universal coverage for basic education, offering educational opportunities to special population groups through non-traditional educational models.

The purpose of the plan is to secure the access and permanence of boys, girls and young people in the education system, under conditions of quality, where they are at present excluded, by making full use of the resources allocated to the education sector. At the end of the year 2000, as a result of this measure, the number of new places has risen by 278,868, which has had an effect on increased coverage of preschool, basic primary, secondary and intermediate education, whose gross rate rose from 78.3% in 1999 to 79.8% in 2000.

A rural education program has also been set in train, to expand coverage, with the purpose of increase of improving access in rural areas and marginal urban sectors, through the application of non-conventional educational strategies, and increases in the efficiency of overcoming failure. The actions provided for in the program will allow access to children and young people in basic education, through a process of remedial instruction. The intention is to create 250,000 new school places, created by reorganization, and with the support of the Rural Education Project.

Education for the displaced

During 2000 the education sector in conjunction with Government agencies which form part of the Comprehensive System of Assistance for the Displaced, and with the support of several NGOs and international organizations, has sought to provide a prompt and appropriate attention to the displaced, facilitating school enrollment and psycho-affective attention for boys and girls in the Municipal districts which have received those groups.

Since the displaced population has excessively increased last year in several parts of the Country, due to the armed conflict, now totaling some 300,000 persons, of whom it is calculated that 32% are of school age, and that the provision of education services is decentralized, the Ministry has been working to support regional authorities in order that they will be able to expand their offer of educational services, including special programs for the displaced. For this purpose, work has been done basically on two fronts: the arrangement of funding and the design of models for psycho-affective and pedagogical assistance.

a) Arrangement of local and international funding

The project "Education Program for the Displaced" was prepared with the collaboration of UNESCO. The project has a cost of US$21 million, of which US$12 million are international counterpart funds provided through UNESCO. It is a four-year project, and the components are: 1. Expansion of educational coverage; 2. Curriculum design and specialized teaching; 3. Model of community management of education resources; 4. Formation of educators who are members of the displaced communities; and 5. Extension of the program to all schools affected by displacement.

The project "Subsidies to assistance and permanence in secondary education for displaced primary school pupils" was registered in the BPIN of National Planning Department DNP for the year 2000, at a cost of CP$500 million.

The BPIN project "Implementation of a Program for Assistance to the Displaced School Population" was prepared at a cost of CP$1,000 million as of the year 2001. This projects intends to develop the following actions: 1. To continue with subsidies for assistance and permanence in secondary education; 2. To provide emergency assistance to children and young people with psycho-social care, and accelerated learning; 3. To advance a program of literacy and formation for work for displaced fathers, mothers and adults; 4. To provide technical assistance to regional teams in their assistance for the displaced school population.

b) Comprehensive care models for the displaced population

Inter-institutional work has been done with ICBF and the Ministry of Health with regard to the psycho-affective attention to the displaced population. The care guidelines are for psycho-affective work prepared by the Ministry of Health are now being reviewed, and the proposal is to provide comprehensive care, within the competencies assigned to each institution.

The Ministry of Education and RSS has signed a circular informing the education offices of the Departments, metropolitan districts and the Municipalities of the policy and procedures for attending to the requirements for formal education for school population displaced by violence.

Subsequently, and following the decision of the Constitutional Court (SU 1150/2000) all institutions forming part of the comprehensive system of assistance for the displaced have been working on the preparation of the protocols for care, and on the drafting of a new decree to replace Decree 173 which currently regulates Law 387 of August 1997 on assistance for the displaced.

c) The case of the community in the Cacarica river basin

The reception of displaced population is made difficult, specially in rural areas and in the case of groups who return to their places of origin, such as the case of Cacarica, where the displaced and threatened teachers have not been able to return. In the face of this situation, the communities which have been returning to the Cacarica river basin have been making contacts with the network of universities for peace, where student teachers are providing educational support. The Ministry, in compliance with commitments made to the community on its return, has provided them with equipment and texts for the schools of Esperanza en Dios and Nueva Vida in the community, and action has been taken for locating teachers with the Education Office of Choco.

Special care for juveniles

As a development of the Constitution of 1991, Law 375, the Youth Law was passed, defending the rights and duties of young people over 14 and under 26 years old. This law contains 3 basic advances: the expressed recognition of youth as a subject of law, the call for full participation of society, and the recognition of the responsibility of the State and society in the formulation and implementation of public policy for youth.

In this framework, in the year 2000 the Presidential Program Colombia Joven was organized in order to promote the coordination and consensus between all state agencies and other social, civil and private organizations, as a function of the full development of the National Youth System established by Law 375, and regional systems for inter-institutional care for the youth.

Among the successes of the program we should mention the definition of rules and criteria for the organization and functioning of the youth counsels, the incorporation of the component of the Office of the Youth Defender in the People's Defender Office, the drafting of criteria of public policy and the consolidation of national and international presence, as well as the establishment of youth councils across the country through governors and mayors, and the promulgation of legislation for the creation of the program of promotion and protection of human rights. For the implementation of this last element, a committee has been formed, including the Office of the President and the People's Defender, and they have begun to take specific actions in the Municipal district of Jurado, Chocó.

Teaching of the Constitution and democracy

Since the 1991 Constitution the education sector, hand in hand with several NGOs interested in the subject, has been working on the introduction of instruction on the new constitution and on democracy as an area running through the whole curriculum. This area naturally includes instruction in human rights and education for peace.

In mid March, the results of the first phase of a study of the IEA on civic education in 24 countries will be published. Colombia took part in this study, and the results will be used as input for curriculum's research and development, for the production of curriculum guidelines in the area of social studies, including a basic chapter on human rights.

The UNESCO Chair for Human Rights, Peace and Democracy

This program has been coordinated in Colombia since 1995 by the Luis Carlos Galan Institute for democratic development, and among its services is the identification and organization of pedagogical experiences in education for democracy, human rights and peace, and to provide pedagogical advise to educational offices and educational institutions through programs designed for formal and non formal education, and the training of teachers in the area of education for democracy, peace and human rights.

The UNESCO Encounter is an interdisciplinary and academic event of reflection and analysis of developments in human rights, peace and democracy, whose results contribute to generating greater awareness of the promotion and defense of fundamental rights and the strengthening of democracy.

Every year the encounter brings together more then 150 representatives of government agencies and NGOs, social sectors, academics and universities to debate and reflect on urgent lines of action to provide pedagogical contributions and to foster policies for education for peace.

Children's rights

The report states that no progress has been made in reforms to the Minor's Code, and that there are no programs for comprehensive care for minors disengaged form armed conflict, and this simply ignores the programs and projects which the Government has been advancing, principally through the Reinsertion Division of the Ministry of the Interior, designed to construct in a participatory manner, public policy for reinsertion, assistance, rehabilitation and integration of minors disengaged in the internal armed conflict, and its victims. The areas covered are basically the following:

Immediate attention

– Humanitarian assistance

This is given in the place were the minor is delivered or captured. He is provided with medical advise, clothing and conditions for temporary logging and food in places other than military units, in particular in ICBF centers. In all cases, the minor is guaranteed transfer to a special center, to his family, or to a peace house.

– Legal support

The Colombian State made progress in this area, to guarantee that minors will be treated as the victims of armed conflict, and not as delinquents. Care for minors as victims for armed conflict finds its most relevant expression in the conduct of the Army in combat at Suratá, Santander, during November and December 2000 against the FARC mobile column and Arturo Ruiz, in which support was given to 62 minors in the process of disengagement from the armed conflict. This can be evidenced by:

◊ Reports from Brigade V, based in Bucaramanga, Santander, and interviews given by the Brigade Commander General Carreño.
◊ The reduced intensity of combat on the part of the Army took place immediately was known that the guerrilla column was basically composed of minors. This allowed the lives of 62 of them to be saved, and they were able to be reinserted into civil life.
◊ The statements made by these minors are also testimony of the commitment which that Colombian institution has with the disengagement of minors.

Also, discussions have been held to make changes to the law, with government agencies, NGOs and international organizations. Three national workshops and two investigations have been undertaken, one by the Office of the Procurator and the other by the Reinsertion Division.

These changes seek to resolve the difference between a captured minor and a minor who gives himself up. The ways in which the State can support minors who return to their families and to the education system and the policy for prevention, so that minors will not become engaged in the conflict.

Training workshops have also been held for the judges of juvenile courts and the Prosecution Service Defenders.

Treatment, rehabilitation and integration of disengaged minors

- Location

Three special centers for disengaged children who had been abandoned or whose life was at risk, were built in the year 2000 by the Pastrana Government.

20 Peace Houses were set up, to facilitate the development of these children in dignified conditions, with affection, a family nucleus, and social and economic conditions for his reinsertion.

A Program of Family Support was mounted for the reinsertion of some minors into the family nucleus, with guarantees of support for these families. As in most cases a return for the place of origin represented an extremely high risk to the life of the minor and his family, reinsertion was facilitated for some of the minors in other parts of the country, or with a close relation.

In the year 2000, the Institutional Support Network for disengaged minors begun to be constructed, guaranteeing:

° Coordination with the institutions responsible
° A wider and more varied offer of services for the minor
° The participation of 10 national institutions
° Links with the international community in different programs

Programs

– Social Programs:

° Health: In compliance with the terms of Article 158 of Law 100/93, all individuals who disengage themselves or demobilize from armed groups are entitled to the subsidized regime of social security, in health. In this, Order 138 of the Social Security Council was signed in 1999 to affiliate demobilized individuals without the resources to pay and their immediate family nucleus to the subsidized regime. This service covers the mandatory health plan of the subsidized regime.

° Education and Formation: with reference to basic and intermediate education, the State guarantees these services for all minors disengaged. Under Resolution 3370 of the Ministry of Education, which permits the Reinsertion Division to design a special educational proposal addressed to disengaged minors. With regard to training, there are facilities for formation in arts and trades, through institutions such as the National Training Service SENA. Finally, when the minor completes his basic and intermediate education, he has access to higher education with special loans through the ICETEX-Reinsertion Agreement.

° Economic reinsertion: The Government supports the organization of family or associative production projects with technical assistance and follow up by the Reinsertion Division and UNDP. The cost per minor and his family for the year 2000 was set at $8 million. During the time in which the minor is at the design stage for the project, and is studying or training, he receives food, logging, recreation, affection, communication with his family, and reinsertion into his family.

° Psycho-social care: the psychological and social factors which affect minors by the impact of conflict are treated. The minor is encouraged to participate, his opinions are respected, and he works to build jointly with other minors a culture of peace and reconciliation, of the values of tolerance and the peaceful solution and processing of conflict. Initiatives by the First Lady and the Ministry of Education have brought specific and tangible results in this area.

Figures

In the year 2000, the Colombian Government through ICBF and the Reinsertion Division, provided comprehensive care to approximately 400 minors, age between 11 and 18. This figure is approximate, since the information system on disengaged minors is in the process of being set up.

It is assumed that the number of minors disengaged is higher, since many of them return to their families without passing through the hands of state institutions. Organizations such as the Church and NGOs have attended to several of these situations.

THE SITUATION OF INTERNATIONAL HUMANITARIAN LAW

First, the Government notes with surprise that the terms in which the situation of International Humanitarian Law are reported upon contain imputations of a general character, without mentioning evidence of responsibility, which in principle is a contradiction of the postulates of International Law and of the social and democratic state of law which require a conviction of responsibility in order to prove an allegation.

Thus, the Report makes such statements such as -generally- "there are situations in which support, the acquiescence or tolerance of public servants has been material in the realization of these acts" (this refers to violation of human rights by paramilitary group; or that the guerrillas "have not contested" accusations made in the report" or that "the minors Andrés Felipe Navas and Clara Oliva Pantoja were taken to the cooling-off area during their captivity" which makes the statements seem incontestably certain, but no evidence is offered. That a person accused contests or fails to contest an accusation cannot be considered as a legitimate means of demonstrating responsibility.

It is also observed that the analysis limits itself to a narration of the most spectacular cases, which are not necessarily the most representative ones in terms of the degree of injury, and pays no attention to the general aspects of the developments of the peace process, in relation to these subjects. For this purpose, we mention some which the report omits.

- The initiation of the study of ideas on "a cease-fire and end of hostilities" with the purpose of negotiating in an environment more favorable to the construction of peace. In development of this study, based on Order 16 of May 31, 2000, there was an exchange of proposals on the cease-fire and end of hostilities. At present, negotiations continue.

- The agreement on the validity of human rights and international humanitarian law in the Zone which it is proposed to establish for dialogue with the ELN.

- The unilateral and unconditional hand over by guerrillas of persons that they held.

The Office of the High Commissioner for Peace insists and has always insisted on the importance of respect for the principles of International Humanitarian Law and the will to sign agreements on fundamental matters of respect for persons protected by such norms, and by due application of the principles of proportionality and distinction.

The High Commissioner also recalls that this is particular point of discussion in the Peace Dialogues with the guerrillas, in the following terms:

- For the specific case of the negotiation process with the FARC:

Point 9 of the Agenda:

Agreements on International Humanitarian Law
Disengagement of children from armed conflict
Anti-personnel mines
Respect for the Civil population
Validity of international norms

Point 10 of the Agenda:
The Armed Forces
The defense of sovereignty
The protection of Human Rights
The fight against the self-defense groups
International treaties

- Without prejudice to the signature and implementation of humanitarian accords in the past, during the month of January 2000 an agreement was reached regarding the method to be used in discussions and main issues, and it was agreed that the first point of negotiation would be economic and social development, with four basic objectives: the generation of employment, economic growth, distribution of income and social development.

- For negotiations with the ELN:

Point 1 of the Agenda:
International Humanitarian Law, Human Rights, impunity, justice, insurgency and conflict.

Situations of special concern

The evolution or armed conflict, and peace talks

The draft report states that "the constant debasement of the terms of the conflict and its generation run very deep, and calls to armed agents to subject to their actions through the mandate of International Humanitarian Law, and to avoid destruction among the civil population and damage to the environment, have been completely ignored and even rejected. In this framework, the situation has come to the extreme that not only is the civil population not respected, but also the minimum humanitarian rules for the combatants themselves have been ignored".

The Government recognizes humanitarian norms since Colombia is High Contracting Party for the international instruments which contain them. Thus, it cannot accept that it has "rejected" observance of them in a report.

In regard to the considerations of the establishment of a cooling-off zone, highly specific remarks will be made, since the report treats it as a territory in which any act or authority of the state is absent, and claims that the zone is a "laboratory of crime".

The establishment of a cooling-off zone is, in no way a concession of power to the guerrillas, and is precisely an act of sovereignty on the part of the State, within the real scheme of a negotiated political solution, and the development of the fundamental right to peace.

The Constitutional Court has explained this clearly in its recent Finding C-048 of 2001:

> *"The political decision not to end conflict through violent means but through a negotiated and concerted solution is an act of sovereignty on the part of the State, since through exceptional means it seeks to put an end to an irregular situation, recover its capacity to repress and punish crime, in the name of a just and more vigorous social, political and economic order, which will genuinely guarantee and protect human rights."*
>
> *"The cooling-off zone cannot be considered as an act of abandonment of territory by the State or as the delivery of the same to other powers, and it must be understood as an act of peace which must generate trust in dialogue."*

With regard to the alleged absence of authorities, the opinion expressed in the draft is incorrect. First, it should be explained that in the cooling-off zone there is, as there is in any and every part of Colombia, full jurisdiction. The action of the judges in that jurisdiction is developed in accordance with the Constitution and the law, and no part of the country, including the cooling-off zone, lie outside the framework of sovereignty and the performance of judicial functions. In effect, the Court stated:

> *"The Constitution does not order the permanent physical presence of civil authorities throughout Colombian territory, but it refers to the exercise of the authority of the State, that is, the existence of jurisdiction or competency for its decisions to be applicable and enforceable throughout the country" (Constitutional Court, Finding C-048/2001).*

In order to understand this particular problem, we offer a brief explanation of the development of jurisdiction in the cooling-off zone, which indeed differs from the view proposed by the draft report.

<u>Department of Meta</u>

– In the municipality of Mesetas, and with regard to the Prosecution Service, prior of the establishment of the cooling-off zone, there was one local Prosecution Office for minor offenses, transferred to San Juan de Arama. For crimes within the competency of the Regional Prosecution Service (crimes for greater amounts) competency was previously and still is with the Regional Prosecution Office in Granada. With regard to the Courts, prior to the establishment of the cooling-off zone, there was one municipal civil and criminal court which moved (but continued to exercise jurisdiction) and today is the Third Civil Criminal Municipal Court of San Juan de Arama.

- In the municipal district of La Uribe there was no Prosecution Office prior to the establishment of the cooling-off zone, and crimes within the competency of the local prosecution service and the Regional Prosecution Service were taken up by the Prosecution Office in San Juan de Arama. There were not and are not any courts there. Jurisdiction is in the courts of the nearby municipal districts.
- In the municipality of Macarena there was no prosecution service prior to the establishment of the zone, and criminal offenses continue to be the business of the Villavicencio, San Juan de Arama and Granada prosecutors. There was one civil-criminal municipal court, which changed its location, and became the Fourth Civil-criminal Court of the municipal circuit of San Juan de Arama.
- In the municipality of Vista Hermosa there was no prosecution office, and crimes were and are the business of the regional prosecutor of San Juan de Arama. There was a civil-criminal municipal court in Vista Hermosa, and this was relocated to become a civil criminal court in municipal circuit of San Juan de Arama.

Department of Caquetá:

- In the municipality of San Vicente del Caguán there was a local prosecution service for petty crimes, which was moved to Puerto Rico. For crimes within the competency of the regional prosecutors (crimes for higher sums of money) competency was and is located in the Prosecutor's Office of Puerto Rico. There are two civil-criminal municipal courts in San Vicente del Caguán, which relocated and became civil-criminal courts of Puerto Rico.

In addition to the existence of jurisdiction, there is the exercise of municipal authority, and this is a reflection not only of the presence of the State, but of the recognition of that authority and the development of democratic principles of popular election. Thus, on October 30, 2000, the elections of mayors took place by direct voting of the local population in the cooling-off zone, in an atmosphere of total normality.

It is therefore untrue to state that "the FARC have become a de facto authority".

With regard to the crimes which are allegedly committed there, the State is undertaking the criminal investigations related to them, in accordance with jurisdiction.

Here, the Government views with extreme concern that the draft report, given its importance and seriousness, contains radical assertions such as that kidnapped people are to be found in the cooling off zone, and this only serves to exacerbate the war, and paradoxically, to feed the polarization referred to in the report itself. On this point, it should be noted as an illustration, even though it is not part of the period covered by the report, that despite the assertions made as to the location of the girl Juliana Villegas, kidnapped by the FARC, the facts show that this was not the case.

The evolution of paramilitarism

The characteristics of the armed conflict in Colombia and its intensification in recent years have led to a significant increase in the guerrilla groups, who number some 21,645, and in the self-defense groups who number some 8,150, despite the actions of the State to combat all groups acting beyond the pale of the law.

It is important to note that it is also a matter of serious concern to the Government, as it is to the Human Rights Office, that certain members of the Armed Forces, retired with discretionary powers, have formed links with the illegal armed groups, as reported by the mass media.

With regard to specific situations included in the Report, the Government wishes to state, on the one hand, that the accusations made against public officials for supposed cooperation with illegal armed groups are being investigated by the judicial and disciplinary authorities competent to do so, and value judgments should not be passed in advance of the final result of the investigations.

On the other hand, in the events in which there is mention of the existence of paramilitary activity in different parts of Colombian territory, the authorities have mounted operations which on several occasions, as the figures given below will show, have provided specific results in the capture or killing of members of these groups acting beyond the pale of the law, and the seizure of war material.

In other events, at which the Prosecution Service has been present, raids have been conducted, and the forces of law and order are engaged in control operations in cities and rural areas, with the human and technical resources required for this type of activity.

With regard to judicial and operational progress against the self-defense groups, it should first be stated that the leaders and members of paramilitary groups, and members of the Armed Forces who have been assisting or collaborating with them, are being tried, with all the rigor of process of the ordinary courts.

It should be stated that the democratic structure of the Colombian State, expressed as a division and independence of public power, prevents the Government from instructing or conducting criminal cases, since this competency is assigned by the Constitution to the Judiciary. Nonetheless, by virtue of the constitutional principle of harmonious cooperation between the powers, the executive, as part of its policy to combat the self-defense groups, provides support to the actions of the judiciary, in a number of different ways, amongst which mention will be made of the following:

- Support, through the Presidential Program for Human Rights and International Humanitarian Law, for the Human Rights Unit of the Prosecution Service, through logistic cooperation for the transfer of members of judicial commissions, the gathering of evidence, a transfer and maintenance protection and relocation of witnesses.

- Working groups have also been formed between government entities and investigation agencies for the follow up and encouragement of investigations regarding cases of human rights violations. It should be noted that the special committee for case pursuit is shared by the Vice-president of the Republic, and two of its members are the Attorney General and the Procurator. Of a total of 18 serious and relevant cases selected, 12 convictions have been issued, 16 preliminary investigations have been ordered, and a large number of people have been implicated in the process in these cases, with regard to the disciplinary power exercised by the Procurator's Office. With regard to the investigations pursued by the Prosecution Service, there have been 44 orders to indict, and 36 warrants issued, and 6 related criminal cases have resulted in 6 convictions.

- The forces of law and order, for their part, have contributed to the struggle against the self-defense groups, through combat, seizure of weapons and capture of members of those groups, as is corroborated by the operation of results during the year 2000: 315 members of the groups captured, and 89 killed.

- The Prison Administration Service INPEC reports that 736 members of the illegal self-defense groups are being held in prisons, that is, close to 10% of the total membership of the self-defense groups (8,150). The Government has also created a National Coordination Center to combat the self-defense groups on all fronts.

  The center is responsible, as its name suggests, for coordinating activities against illegal armed groups by the military authorities, the Police, the Judiciary and civil authorities of the State.

  As a result of strategies in intelligence, investigation and action by the courts as guided by the Center, the increase in the number of armed illegals captured and killed has indisputably shown the commitment of the Forces of Law and Order to combat all those who generate violence with equal rigor.

  The increase in the number of actions against the self defense group has been satisfactory, and is expressed both in the previous terms of captures of casualties and prisoners, and in the seizure of weapons, ammunition, communications equipment and transport equipment, and this in turn demonstrated that the action of the state against this illegal armed groups is exceedingly severe and unremitting.

– Within the framework of the Center's activities, a financial strategy has been designed and is being implemented, to dismantle the sources and funds of support for the armed groups. The strategy consists of the identification, follow up, freezing and seizing of financial assets in banks and other securities belonging to the various self-defense groups, in the local financial system and abroad, which belong to or are intended for their members, in order to weaken the flow of resources which sustains those groups.

Also, the mechanisms required to adopt measures such as the extinction of ownership of movable goods and real estate belonging to these groups is in the implementation phase, and when this property has been seized it will be auctioned in order to obtain additional funds to combat those groups. This activity is being undertaken by the Superintendency of Banks, the Prosecution Service, the Procurator's Office and the Ministry of Finance, amongst others.

The evolution of internal displacement

Estimates of forced displacement

In order to quantify the dimensions of forced displacement, the Report bases itself on figures published by the NGO CODHES, which operates an information system which attempts to estimate displacement through monitoring of information published in a national press, a periodical sampling of institutions, and a survey of the displaced population.

For the same purpose of making global estimates of displacement, the RSS operates its SEFC system, which uses contrasting sources, based on a regular procedure for consultation and comparison of sources which are part of the National System for Assistance to the Displaced, among them government agencies, NGOs, the churches, community sources and the displaced themselves, from 35 RSS information points located in the 32 departments of Colombia. According to the RSS-SEFC estimates, there were 1,351 events of mass displacement in the year 2000, which displaced 128,843 individuals, forming 26,819 households. 35% of these displacements (467) correspond to the first 6 months, and 65% (884) to the second six months, an increase of 89%[4] . The global figure of CODEES , quoted in the report (308,000 individuals in 11 months) is 58% higher than the SEFC estimate, and no account is taken of the December figures for the Report.

[4] RED DE SOLIDARIDAD SOCIAL. Red Nacional de Información de Población Desplazada: Avances, Componentes, Metodología y Cifras. Bogota, February 2001. p 7 and p.36.

With regard to the burden of responsibility among those allegedly causing forced displacement in 2000, the RSS-SEFC estimate is that the self-defense groups were the cause of 58.09% of the total, the guerrillas 11.26%, armed agents of the state 0.13%, and more than one of the foregoing, 30.1%. The proportion of the responsibility varies, but with respect to events of displacement, were the responsibility of the guerrillas is 43% and of the self-defense groups 34%. This explains the fact that the actions of the self-defense groups, on average displace 154 individuals, while those of the guerrillas displaced 24. And armed confrontation between more than one of these groups displaces on average 185 individuals.

With regard to the geographic distribution by department of displacement, the Report coincides in general terms with the RSS, but with two important omissions. The report makes no reference to the situation of the Department of Choco, which according to RSS-SEFC in 2000 held third place in expulsion of the displaced (11.29% of the total) and the fourth in reception (6.2%); nor does it mention the department of Sucre, which occupies 6th place in expulsion (3.61%) and 9th in reception (3.79%). Both departments are among those with the highest priorities for attention.

There is another important omission in the quantity of information on forced displacement in the Report. There is no information on the return of the displaced to their place of origin after displacement. The RSS-SEFC estimates are that in the year 2000, a total of 47,338 individuals, forming 9,692 households, returned to their place of residence. Given the total estimated of 128,843 individuals displaced, this returning population represents 36.74% of the population displaced in 2000. If the relocations for the year 2000 are also taken into account, the RSS-SEFC estimate is for 2,835 individuals, and there is therefore a balance of 78,670 individuals affected in that year who continued to be displaced at the end of it. It should also be noticed however, that return or relocation does not cancel the legal status of being a displaced person.

Assistance for the displaced population

The Human Rights Office report offers a very short and mistaken appreciation of the Government's performance in emergency humanitarian assistance to the displaced population. In order to comment on its scale, it refers solely to the amount of one of the lines in the National Budget intended for this purpose. In reality, public funds destined to assistance in 2000 are much more than the $9,400 million mentioned by the Report, and indicate a remarkable expansion of institutional capacity for the response to the emergencies of the displaced during the year.

Last year, direct humanitarian assistance for emergency cases of massive displacements, using resources from the National Calamity Fund and the RSS, have provided humanitarian aid to 12,062 households. With regard to non-food assistance for mass displacements, a total of $402,643,811 was invested, in cooking kits, tableware, night kits and hot-climate kits. This was a benefit to 1,558 families.

In cases of individual or family humanitarian assistance, the RSS has set up guidance and assistance units (UAO) and a scheme of manage humanitarian assistance through several NGO operators, covering 16 cities, which in the year 2000 provided food and non-food assistance to 107,055 individuals, for a cost of $9,816,996,750.

It should also be noted that this assistance is provided in coordination and in complement to assistance provided by international community organizations, such as the International Red Cross Committee.

As coordinator of the National System for Assistance to the Displaced, the RSS seeks to optimize the use of its various resources available, to maximize the promptness and coverage of its delivery of services. Here, the funds donated to Colombia by the international community and executed by operator agencies such as the International Red Cross Committee are an integral part of the scheme of assistance operating in Colombian to attend to the displaced.

Assistance for the displaced population is nonetheless not limited to emergency humanitarian aid. It also includes major investments in actions to secure their social and economic stabilization. In 2000, the RSS financed 31 production projects, for the benefit of 5128 households, at a total cost of $3,045,660,485. In addition, a loan fund was set up in 2000 for the displaced, with contributions from the RSS and the Peace Investment Fund (FIP) for a value of $6,000 millions.

The displaced are also assisted by a number of state agencies with specific responsibilities and budgets, among them the Ministry of Health, the Housing Agency INURBE, the Agrarian Reform Agency INCORA, and the Family Welfare Agency ICBF, amongst others, which provide access to social services, housing and land. In 2000, the services provided to the displaced were expanded and improved.

Finally, we must note that the National System for Assistance to the displaced operates throughout the country on a regional and decentralized basis. The municipalities and the departments play a decisive role in direct assistance to the displaced, and to the co-financing of lasting solutions.

During the year 2000, the RSS actively promoted the resuscitation or start up of Departmental Committees for the implementation of public policy benefiting the displaced. These Committees have made progress in preparing contingency plans and in designing action plans to organize their activities over time.

The National Register of the Displaced

The Report presents a confusion concerning of the function of the National Register of the Displaced, since it criticizes its capacity to make valid estimates of the scale of displacement in Colombia. It is most important to be clear that the overall estimate of the placement is produced by the RSS/SEFC and not by the Register. The function of register is to materialize access for the displaced to the benefits established in the law, and to provide a basis for follow-up in services rendered to beneficiaries.

The Report also criticizes the register in its real function, stating that the displaced see it as an obstacle and not as a mechanism of access.

In the face of the statement, it must be first said that there is no regime for benefits using public funds which does not require a registration process in order to formalize the individual as a beneficiary. All systems providing services require information on the persons served by the regime. This information is the basis for the organization, planning, logistical operation and follow up of assistance programs, and is essential in order to account for the cost of public policy, in particular where benefits are directed at the needs of a specific population group.

Second, it should be said that the National Register for the Displaced operated by the Government has been developed with the active participation and direct technical assistance of UNHCR, and its design and content correspond to international practices and standards for process involving the census and registration of the displaced population.

Third, the procedure for registration is very simple, and is in no way and "obstacle". The persons affected who wish to have access to the programs have only to present a statement that they are displaced, in the office of any agency of the Procurator´s Office, in any municipality in Colombia. No evidence is required to make such a statement.

Finally, for access to emergency humanitarian assistance in cases of mass displacement is registration is not a prior requirement. Also, for such cases there are simplified procedures for collective statements to be made, which allow appropriate assistance to be provided promptly.

The facility of access to the register explains the notorious increase in the number of registrations of the displaced during the year 2000, and this is a point which was noted by the Report. The average annual increase in registrations between 1995 and 2000 was 720%.

Legal protection and security

While it may be true that the current situation of expansion and degradation of armed conflict in Colombia imposes very serious challenges in the protection of the civil population in general, and of the displaced population in particular, progress was made in 2000 in the protection of the rights of the displaced.

With regard to displacement, the RSS has actively promoted the creation of a mechanism to protect the displaced with its proposal to open up humanitarian spaces in areas in zones of conflict. Important and comprehensive projects have also been implemented in the area of displacement, for regions such as Southern Bolivar, Eastern and Antioquia, Central Choco (lower Atrato) and Meta.

With regard to legal protection, as the Report states, there have been important decisions in favor of the rights and interests of displaced during 2000. The R S S, in implementing these decisions, works together with other key agencies in the National System to start up specific activities ensuring that the displaced are provided with stability in the terms of Law 387/97. Also, the development of regulations during the year 2000 has improved for access to health, housing, and credit.

Finally, it should be noted that the National Council for Comprehensive Assistance to Displaced, during the period covered by the Report, had not yet come into operation. It should however also be noted that the Council is now sitting, and leads the start-up of the System for Comprehensive Assistance to the Displaced and actions ordered by findings of the Constitutional Court, in the terms of Law 387/97.

The administration of justice

Preliminary comments

The Colombian justice system has, like all organs of the State, suffered from the critical fiscal situation of the country. Thus, the Judiciary has had to cut costs in order to co-operate with the government in achieving proposed macro-economic targets for.

Despite this, and indeed recognizing that there are weaknesses in the administration of justice, efforts were made during 2000 to improve and maintain the level of training and formation of investigators, prosecutors and other judicial officers; and the processes of computerization of prosecution offices and courts, amongst other projects, continue.

In the present circumstances, international assistance, in the form of non reimbursable technical co-operation, has been of great help to the Colombian justice system. Thus, funds allocated to the Justice component in *Plan Colombia* will be invested in the improvement of certain important aspects of the justice system. Amongst them we should mention training and instruction for investigators and prosecutors; advisory services for the improvement of the Prosecution Service's protection program, including judicial officers; and advice and strengthening of criminal investigation techniques, and criminalistics.

It also be noted that the World Bank has given support in the design of a project for strengthening the jurisdictional sector of the judiciary, which is intended for the implementation of schemes and processes into the activities of the courts.

The work of the Human Rights Unit of the Prosecution Service

The government is totally surprised at the repeated criticisms made of the Human Rights Unit of the Prosecution Service, on the grounds that it supported the assumption of competency by the Military Criminal Courts in the cases of Santo Domingo and Pueblo Rico. In the light of details of conduct reported, and in context of combat apparition operations in which such conduct occurred, and the probable imprudence or excesses of army response, which caused the deaths of civilians, it was considered that this was a matter of the exercise of military activities in the strictest sense. If there is any agency whose work has produced progress in the investigation of serious violations, it is precisely the Human Rights Unit of the Prosecution Service, which has been praised by international organizations of the credibility and standing of the Inter-American Commission for Human Rights.

As a result of the investigations made by the Human Rights Unit of the Prosecution Service, at December 1999 there were at 297 individuals detained, of whom 183 were members of the self-defense groups, 69 were agents of the State and 45 were guerrillas. This number increased by 10% in next seven months, and by December 2000 there were 392 persons detained, of whom 62.24% were members of the self-defense groups, 24.23% were agents of the State and 13.52% were guerrillas.

At December 2000, the number of prevention orders issued by the unit was 220 higher than that for December 1999. Of the total of 918 warrants issued in the last month of 2000, 15.46% were against the guerrillas, 27.88%, against agents of State, and 56.64% against members of the self-defense groups.

With regard to indictments, 311 orders had been made against members of the defense groups at December 2000, representing 54.85% of the total; 13.05% were issued against the guerrillas, and 52.09% against agents of the State.

The Prosecution Service reported an increase of 52% in the number of warrants issued, by comparison with the previous December. Once again, the largest number of such warrants -316 out of a total of 620- were issued against the self-defense groups, which had been the object of 272 warrants in 1999.

However, the greatest increase in warrants for arrest from one year to the next was against the guerrillas: 159%. Agents of the State increased by 36.36%, and self-defense groups by 16.17%.

Observations regarding the performance of the Prosecution Service

With regard to point 4 in Chapter VI (Situations of Special Concern) the Prosecution Service considers that, in the light of the analysis of the administration of justice and impunity, that if indeed not all members of Prosecution Service are part of the judiciary career structure, this is not a totally report negative point for reasons to be explained below, a large number of judicial officers administration personnel and technical personnel do belong to the judicial career structure.

At present, some 12% of those in the Prosecution Service, in national terms, are part of the career structure.

We consider, contrary to the suggestion made in the Report, that given the particular circumstances of conflict in Colombia, the security considerations involved in criminal investigations under way, and those who take part and the officers responsible for managing them, it is advisable that the Prosecution Service should retain the discretion to determine in each case, which of its servants should remain active in its service.

Further, it cannot be said that by reason of the free appointment and dismissal for posts in the Prosecution Service, and difficulties surrounding the security situation, victims and witnesses are reluctant to collaborate and to denounce criminal conduct.

In our opinion, there are two situations which are independent of each other: one is the power to appoint the servants of the Prosecution Service, and the other is the guarantee of success which may be obtained from the co-operation of witnesses and victims in their testimony.

On this point, it must not be forgotten that the so-called "regional Justice" system is being dismantled, and this has had a decisive effect on the problems experienced in obtaining statements from individuals directly affected by the commission of serious violations of human rights and in the effective cooperation of witnesses of the events, as well as presenting an implicit risk for judicial officers who are responsible for these investigations. It is at this point which the discretionary powers of the Attorney General come into operation to remove officers of the Prosecution Service not only from their responsibilities for certain cases, but also to produce their relocation, and, on several occasions, to seek ways of allowing them to leave the country due to risks to their personal safety and that of their families.

At all events, it should be noted that there are minimum requirements it to apply for a post in Prosecution Service, and this greatly assists the process of selection and appointment of its officers in all areas of activity.

The internal resolution which develops Decree 49 of January 10, 1995, with regard to the minimum requirements and equivalences for access to posts at any level of the Prosecution Service, is an additional element in decision-taking when making appointments in it.

With regard to the observation that there are serious violations of human rights, of which the National Human Rights Unit has not taken cognizance, such as the case of Pueblo Rico (Antioquia) in which six children lost their lives, the analysis immediately conducted by the Prosecution Service, its regional office and the technical investigation unit in Medellin, found that the terrain where the incident took place and the history of a guerrilla presence in the area - both factors which were known to the High Commissioners Office since November 2000 when there was a meeting held at the Attorney General's office - determined that competency should be based in military criminal justice, since the acts or in question were principally the work of members of the forces of law and order, in pursuit of acts related to their statutory functions.

We consider that the reasons surrounding the decision that the Military Criminal Courts should take cognizance of the events which occurred in Santa Domingo, Tame, Department of Arauca, in which several civilians lost their lives, are supported by all requirements of law for the military tribunals to take responsibility for the investigation.

The particular circumstances which surrounded the conduct of those who took part, and the context of this lamentable incident, are part of the exercise of military activities, in strictest sense.

Nonetheless, the Prosecution Service takes cognizance, by mandate of the Constitution, ex officio, or as a result of a complaint, of the alleged commission of punishable acts provided for in the Criminal Code, in this case, as it did for the denunciation which has made by the commanding officer of the Colombian Air Force for the alleged crime of slander. And this, for obvious reasons is within the competency of the ordinary courts, which have in fact taken cognizance of it.

We agree that is important to keep the National Human Rights Unit informed of investigations concerning the most serious violations of fundamental rights in this country.

The Office of the Attorney General, in order to guarantee transparency and efficient in the allocation of investigations to the National unit, has delegated powers to the Prosecution Service Headquarters to make such allocations, in strict observance of criteria which should be followed.

The constant and special instructions of the Attorney-General with regard the allocation of investigations to the National Human Rights Unit reflects the gravity of violations of fundamental rights, and refers to those alleged to be responsible for them, and to the impact which they may produce, amongst other considerations.

We therefore do not share the appreciation that due to the "excessive discretionary powers of the Prosecution Service Headquarters", investigations in matters of human rights are conducted outside the competency of the Human Rights Unit.

It should be noted that the Human Rights Unit is competent to undertake investigations related to serious violations of Human Rights and offences against international humanitarian law, a fact which, given the particular characteristics of Colombia´s conflict, adds to the volume of cases under its responsibility.

With regard to the appreciation of the Report concerning the program for the protection of victims, witnesses, judicial officers and those taking part in criminal processes, for account of the State and under the co-ordination and management of the Office of the Attorney General, based on the provisions of Law 418 of December 1997, the government provided instruments in the search for peaceful co-existence and the efficacy of the justice system, amongst others, we must propose the following considerations:

- It is true that the program has not had sufficient funds for implementation, and this is a situation which is which should be provided for by the Ministry of Finance, the representation of the government. This should be included in the budget proposals of the Prosecution Service, with the amount required to equip and operate the program. Nonetheless, the efforts and the commitments of the Service have enabled it to ensure the safety and protect the lives of program users and those of their families, when necessary. This is shown in the comparative statistical report, which goes back to the start of the program.

The responsibility, interest and concern of the Prosecution Service to make the protection program efficient and appropriate, led the Attorney General and the director of the United Nations High Commissioners office for Human Rights in Colombia to sign a letter of intent in order to make a diagnosis of the program, with the decisive support of the High Commissioners office.

This exercise has been in train since December 2000, and is intended to provide the design of a protection system for witnesses, the victims and Prosecution Service officers.

While it is true that the Prosecution Service protection program has not had the funds to implement all of its primary activities in the preservation of lives and safety of those who have, effectively, co-operated with the justice system, mention must be made of the figures which illustrate the program´s activity, especially since over the last two years there has been a progressive increase in them (47% in 1999 and 70% in 2000) in terms of the number of cases attended to, as can be seen in Charts 1 and 2.

It is plain that the budget provided for the program to function is insufficient, principally in terms of assistance, given the flow of new individuals requiring protection each year, and in particular, if account is taken of the fact that protection and relocation of the family nucleus is sometimes required.

CHART 1
STATISTICS OF CASES ATTENDED TO AND REGISTRATIONS WITH THE PROGRAM, 1997-2000

Year	1997	1998	1999	2000	Total
Total requests received	317	352	449	578	1696
Individuals protected accepted	74	115	136	154	479
Cases not accepted/evaluated	243	237	313	424	1217
Individuals covered by the Program	235	389	485	542	1651
% of cases accepted/No. of requests	23.34%	32.67%	30.29%	26.64%	
Earmarked funds spent (million pesos)	$359.9	$516.3	$628.9	$821.9	$2,327.1

CHART 2
NEW CASES RECEIVED

	1999	2000
January	5	9
February	5	12
March	16	9
April	16	12
May	13	16
June	7	14
July	6	9
August	9	12
September	13	11
October	9	10
November	11	13
December	5	17

The situation of the prisons

With regard to situation of prisons, which is evidently critical, there must be recognition of the efforts which have been made and which will continue this year, with the intention of improving the prisons system. On the one hand, action has been taken to increase increase the number of places in prisons, and on the other, to overcome problems in administration operation and management of detention centres. With regard to the increase in the number of places, the "plan to expand prison infrastructure", approved in CONPES Document 3086 is being executed, and with regard to the management and operating problems, progress is being made under an agreement with the Government of the United States.

With regard to the comments on prison establishments operating in this country, the Report expresses concern at the serious situation there, and the following comments should be taken into account.

First, it should be noted that the difficult situation of the country's prisons is a long-standing problem, and due to its complexity it cannot be remedied quickly. However, and despite the economic problems, this Administration has made it a priority to look for solutions to the crisis in the prison system, such that an individual deprived of his freedom may be assured that he will have adequate installations and space to guarantee his human dignity, and his re-socialization.

With regard to the decisions of the Constitutional Court (T-847/00) it should be noted that the competent authorities are complying with the Decision mentioned, and further, the prison authorities do not remit individuals who have been convicted to police stations, which are the responsibility of a different organization, and on contrary, in accordance with their legal functions, they receive individuals held in police stations and detention centers by investigation agencies which act as a judicial police, since they may not remain more than 36 hours in a detention center (see the final section of Article 371 of the Criminal Procedure Code).

Only in exceptional cases, and for security reasons, are the police premises or detention centers used by agencies which perform the functions of the judicial police for such purposes.

With regard to the comments in the Report on follow-up of the comprehensive prison plan, the following should be stated:

In accordance with information supplied by the prison administration INPEC, from the time of notification of decision T-153 of 1998, and up to this date, the administration has provided 6286, as follows: the Picota Central Prison, 400 places; Palmira prison, 400 places; Cucuta prison, 404 places; Girardot prison, 400 places; Apartdo new prison, 328 places; Valledupar, 1600 places; the Picota forces of law and order wing, 100 places; Manizales prison, 304 places, the Modelo prison, Bogota, 304 places; Villahermosa prison, Cali, 360 paces; Ipiales prison, 160 places; La Ternera prison, Cartagena, 660 places; Lorica prison, 50 places; the Acacias penal colony, 298 places; Monteria prison, 258 places; El Barne prison, Tunja, 260 places. And there has been an investment of CP$923,763,627 in the improvement of living conditions in the following prisons: Modelo (Bogota), La Picota, San Gil, Quibdo, Pitalito, Acacias, Cartago, Women´s Prison (Bogota), Puerto Boyaca, Women´s Prison La Badea (Dosquebradas) and others.

For its part, and the prison infrastructure fund FIC has contracted the following new works, which will shortly be completed: New Prison, Acacias, 1600 places; San Isidro, Popayan, 1,600 places; El Barne, Tunja, 1,600 places, totaling 4,800 new places.
The first two of these projects should be delivered between June and November this year, and the last in early 2002.

As part of adaptation plan, the prison infrastructure fund has contracted the following works which should be delivered this year: Tolemaida, 200 places, Neiva 400 places, Cartagena 400 places, Monteria 200 places, Ibague 248 places, Espinal 200 places, Mocoa 200 places, Pasto 200 places, for a total of 2048 places.

As can be seen, a substantial number of places has been created, and this will no doubt help to improve the overcrowding which has occurred in several prisons.

It is also true that not all health services have been arranged with outside providers, since none of the health promotion enterprises -EPS - have wished to make themselves responsible for the provision of all services, due precisely to the special nature of this case, but the prison authorities have signed agreements with some of them for each level of medical complexity.

At the same time, contracts have been made with hospitals at all levels of medical complexity in order to attend to the prison population, and this has increased health coverage in the prisons. A reinsurance policy has been obtained to attend to high-cost diseases. Health professionals have been contracted to provide services inside the prisons.

In the interests of the health of the prison population, vaccination brigades were formed, and basic sanitation exercises were conducted in several establishments. At the same time, the prisons were provided with medicaments, and laboratory and odontological materials.

With regard to the attention to the food needs of prisoners, audit procedures have been created to insure that there is transparency in the contracts signed, especially with relation to the quality of the service and compliance with time schedules. Also, support has been given to the food committees, which are formed by representatives of each wing, and an officer of the prison, to whom the inmates may make complaints or expressed their dissatisfaction in this matter.

In the struggle against corruption in the prisons, progress has been made and INPEC has created an "anti-corruption unit" and a convicts assistance office, which handle all complaints by inmates, and those of their families and relations. Further, and for the same purpose, an anti-corruption hotline has been installed, with direct communication to the INPEC headquarters, so that anyone may denounce any irregularity, any offence against human lives, or an act of corruption of which he or she may have become aware in any prison.

The iNPEC headquarters and the prison training school have been working on the selection of future members of the Prison Service, and one of the most important requirement for this is that candidates have good ethical and moral formation.

The prison authorities have been using the powers conferred upon them by the Prison Emergency Act, and have suspended or dismissed members of the service who have committed irregularities, while guaranteeing them due process and the right to defense. There has been encouragement for prison officers, especially for members of the security and custody group, to act as an example of honesty. At the same time, there has also been encouragement, including the offer of payment of rewards and total confidentiality as to the identity of the informant, for the prison population to denounce acts of corruption or crime, which have occurred within their prisons. Also, there is strict compliance with the terms of Law 190/1995, the Anti-Corruption Statute.

The government, through the Enrique Low Murtra prison training school, has developed a series of programs designed to train members of the Prison Service, amongst which are the following: Training of Lance-Corporals, Special Training for Valledupar, Basic Instruction for High-School Graduates Auxiliaries, Guidance for Official Logistics. Retraining and Refresher Courses for Guards, Refresher Courses for Prison Directors, Training for Promotion to Inspector, Seminar for Awards of Distinction, Training for Promotion to Lieutenant, Captain and Major, Induction to the Service, Seminars on Prison Management and Diploma courses in Prison Security.

In this training, there is emphasis on instruction with regard to issues related to the Service, as a facilitating agent in the process of comprehensive assistance to the prison population, prison security, legislation, the prison regime, Human Rights, professional ethics, and the management of convicts in the new prison culture. During 2000, 6200 fall INPEC staff were trained. The training programs have continued in 2001, with an emphasis on the subjects mentioned above, particularly with reference to respect and protection of Human Rights of the prison population.

It should be noted also that the Ministry of Education (Cundinamarca Education Office) has authorized the accreditation of the prison school to offer the Diploma of Prison Service Technical Officer to those members of the Service who have taken training courses at that school. At the same time, it is intended that by mid-2001, the School will be recognized by the Higher Education Authority ICFES.

Despite the serious difficulties which have arisen in the Prison Service, there is a state policy for the promotion and comprehensive development of the prison population, as part of which a comprehensive prison plan has been designed, prepared and adopted. The plant makes a diagnosis of the principal difficulties in the system, and proposes solutions for them. The Plan will be followed up on an ongoing basis in order to verify application and to analyze impact.

At the same time, the Government, in the belief that the main problem of the prison system is the lack of prisons, and the fact that existing prisons are obsolete and out of date, has taken a priority decision to build new prisons and to update those currently in operation, designing a strategic prison plan, which is linked to the National Development Plan. This requires the Administration to construct more appropriate premises for the prison population and ensured that is has dignified conditions, and to secure re-socialization, based on the satisfaction of basic needs.

In Decree 1890 of 1999, the Ministry of Justice was restructured, and a Criminal and Prisons Policy Division was made part of its new structure. This Division was assigned the functions, amongst others, of contributing to the preparation and presentation of draft legislation designed to establish a State criminal and prison policy.

At the same time, and at the same Decree, the FIC was formed as an internal Department with administrative and financial independence, and with functions formerly assumed by the iNPEC Construction Department. Its purpose is to formulate and develop prison infrastructure policy, in particular the acquisition of land, and the design, construction, reconstruction, or remodeling, expansion and equipping of national-level prison infrastructure.

Thus, INPEC has come to specialize in the function of the custody and re-socialization and prison population.

Within this new strategic plan, and following CONPES Document 3086 of July 14, 2000, it is predicted that new prison establishments will be built for a total of CP$314 billion, to generate 20,828 new places, also expanding the existing infrastructure by 3800 places, at an estimated cost of CP$32.6 billion, and improving and maintaining existing prisons at a cost of CP$16.7 billion.

In the light of overcrowding in the regional prisons, provision has been made for the construction of 11 new regional prisons at medium-security level, each with a capacity of 1600, at a unit cost of CP$24.2 billion, located as follows: Interior 3, Northwest 4, West 1, East 1, Viejo Caldas 2. As part of the new prison policy of the Ministry of Justice, there is a proposal for an architectural model for prisons, which can easily be adapted to local conditions, and which the buildings designed by FIC will have a modern infrastructure in accordance with international parameters,

with substantial and appropriate space for the inmates, to work and undertake activities in culture, instruction, recreation and health, and receive social and spiritual assistance in such a way that re-socialization will be facilitated.

In addition, there is a provision to complete the wing for members of the forces of law and order who are on trial or have been convicted in the Picota prison in Bogota, where they will be provided with security measures that their particular conditions may demand.

The construction, design and layout of the new prisons will permit greater internal and external control, and this should insure that law and order will be maintained in them, and that peaceful co-existence will be allowed to continue, with the development of a genuine programs for re socialization. This should also reduce overcrowding, since in the prisons will be built for a specific number of inmates, and this should facilitate the acceptability of living conditions in terms of dignity, re socialization, and respect for fundamental rights.

Further, and with regard to the expansion of the existing infrastructure, the plan provides for work in medium-security wings in prisons where the infrastructure conditions allow, in the establishments mentioned as part of the FIC adaptation plans.

One of the first actions in the Government's priority to modernize the prison system was the development of the Valledupar pilot plan, which consisted of the implementation of a new model of national-level prisons. The intention is, within the framework of respect for human rights, to comply with the purposes of a conviction, which are primarily the re-socialization of the convict, and to involve the active participation of the community in that process, following the principle of solidarity expressed in Article 1 of the Constitution. A special disciplinary regime has been implemented in that prison, as a model for application in other prisons of the same type.

The Ministry of Justice, in order to define a single design for prisons in accordance with international parameters, and to implement a prototype system for their management and operation which will guarantee the quality of the service, signed an agreement with the United States Embassy which was primarily developed in the Valledupar prison in the areas of selection, training and instruction of administrative personnel and the prison guard service. It also covered the proportion of procedure manuals to be used by operational and administrative personnel.

In order to apply these regulations and procedures in new prisons, the government is developing programs which are being applied in the first instance in the Valledupar prison, and it can be stated that that prison is a pioneer in anti-corruption programs, in the administration and operation of prisons, in the standardization of design processes for the construction of new prisons, and in quality assurance for human resources, and that this will guarantee the maintenance of peaceful co-existence and safety inside prisons, and secure effective management control.

Nonetheless, it should be noted that this type of construction will be improved and enhanced in terms of security and in the distribution of space dedicated to the re-socialization programs and the reception of visitors, with in a new scheme to be corrupt for the new prisons such as the "Eastern prison center" in Acacias, and the Popayan San Isidro prison, which are 2-story constructions, and which for technical and security reasons have been made earthquake-resistant and will be located on flat ground, with concrete foundations and floors, in order to provide additional durability and avoid excavation by inmates.

At same time, the standards Agency ICONTEC has been contracted to certify, for the first time in Colombia, the functioning of a prison establishment (the Valledupar prison). The efforts of or operational and administrative staff have been brought together in order to obtain the ISO 9000 Certificate, and if this is obtained, it will represent a further progress towards a solution of the “Colombian prison crisis. “

At the same time, and based on the same agreement, technological co-operation is sought, with a view to strengthening the high-security wing of the Picota prison in Bogota, the pilot plan in Valledupar, the FIC, and the Enrique Low Murtra prison school. The intention is to standardize regulations, and to define procedures for the implementation of a model system of prison operation and management.

At the same time, an inter-institutional co-operation agreement has been signed between the Ministry of Justice, the INPEC, and the Office of the People's Defender. The agreement is currently being followed up in order to ensure that its purpose has been strict complied with, which is to strengthen the compliance of the office of the People's Defender, and in particular of the Peoples of Defenders assigned to the Public Defense Department DNDP, with their constitutional functions. This will contribute to the technical defense for the effective protection of the fundamental rights of users, and the effective exercise of legal benefits available to the prison population throughout the country.

As one fundamental aspect of the modernization of the prison system, work has been done in computerizing the prisons, and in network integration of information at national level, in order to facilitate consultation and the updating and control actions taken with regard to the remission, reception and discharge of inmates. It will also help to locate individuals, update their personal information, provide information on their legal status, protect human rights, and improve the prison service.

Another priority target set by the government is the humanization of the prisons. In this, the intention is to change the attitude towards inmates, in a way which takes account of the individual, his conditions, needs, rights and obligations, in a framework of respect for the dignity and human rights of an offender. This will allow an evaluation to be made of its potential, even within the limitations of his situation, encouraging the progressive development of individual and social values and improving self-esteem, and this in turn will be further encouraged by the active engagement of different sectors of society, government agencies and NGOs in crime prevention programs and programs for re- socialization, as well as action intended to provide welfare and support to prison inmates.

It should be noted that the Government, in the face of outbreaks of violence, and in order to prevent criminal activities in the prisons, has acted to protect the lives, property and other rights of inmates and prison staff, as required by Article 2 of the Constitution, in harmony with the terms of Law 65/93. On several occasions it has ordered the forces of law and order to intervene in one or another prison in order to restore control, and to protect the human rights of inmates and staff working there.

Also, in order to prevent situations which may affect good order and peaceful co-existence in the prisons, extreme measures have been taken by staff, with continuous operations of search and control of cells and wings in order to detect any irregularity. At the same time, procedures are being implemented to insure greater security for visitors, with greater and more appropriate control over times, days, numbers of visitors received, and admission of visitors, with a view to guaranteeing their personal safety.

Further, the Minister of Justice has issued his approval for the I N P E C Director to respond to riots, conflict, and repeated disturbances to public order in the prisons, to create an immediate reaction group (GRI), which should restore normal functioning of the prisons, and of transfers and remissions.

With the collaboration of the police and the forces of law and order, extreme measures have been taken in order to avoid the entry of prohibited objects into prisons, including money, jewelry, arms, drugs and so limit violence. Preventive and intelligence work inside and outside the prisons is an ongoing activity.

The government has issued directives for preventive security purposes, intended to promote and support the creation of Human Rights Committees and Standing Working Commissions, so that there will be concerted dialogue which will promptly make public and resolve situations which may give rise to conflict, and disturb the public order and peaceful co-existence which should exist in the prisons, and should implement a constant follow-up to develop and strengthen them, as activities which are also considered as a means of reducing sentences.

With regard to the violence which occurred if in the Modelo prison in Bogota on 27th April, 2000, it should be noted that the members of the forces of law and order, before entering the prison, waited for Human Rights defenders- the Red Cross and the People's Defender's office - who acted as intermediaries; and that they, with regard for the social state of law which governs this country, and which demands that dialog should precede any resort to force, only proceeded to enter the prison when dialog was exhausted, and only in order to preserve public order and to protect the rights of the inmates.

The tragic events of that day were the consequence of a confrontation between some of the inmates, and were not due to the actions of the authorities which at all times acted with prudence, and with respect for the rights of the inmates. If the forces of law and order had not taken action at the right moment, there would have been more casualties. We attach a copy of the Report made by the authorities. According to that report, 25 individuals lost their lives and 17 were injured, and there were no disappearances.

With regard to the draft legislation to concede a reduction of sentences in the Jubilee year, the study made by the Constitutional Court, reflected in Decision C-1404 of 2000, found that the initiative was not constitutional. The reduction of sentence proposed did not correspond to any justified or justifiable instrumentation of State policy, and the Court therefore find that it was not compatible with a state of law.

Further, the Court found that this was a "concession" which amounted to a pardon, snf which therefore did not comply with the minimum requirements established in the Constitution.

Also, it should noted that law 599/2000 - the new Criminal Code - would apply the principle of favorability, which will be of benefit to a large number of convicts, since it reduces the maximum sentence of imprisonment from 60 to 48 years, and this proportion will be reflected in all sentencing periods contained in the present Code.

While it is true that Law 599/2000 created new forms of crime, it is also true that the reduction of the sentences to be imposed will benefit a large number of those deprived of their freedom, many of whom will take advantage of the principle of favorability.

In the same vein, it should be noted that the new Code (Article 38) allows that, once certain requirements are met, a judicial officer may exchange imprisonment for house arrest. A similar provision of the new Criminal Procedure Code (Law 600/2000) allows that provided that certain conditions are met, a judicial officer may exchange preventive detention for house arrest. The same precept applies to Subsection 1, in which a preventive measure - detention -will be appropriate "when it the offence may be subject to a prison sentence of four years or more".

The conclusion therefore is that the new Criminal and Criminal Procedure Codes, following the States criminal policy, are consistent in their principles, and contain provisions in which, in accordance with the principles of minimum penalties, regulates personal freedom as the rule and detention as the exception, which undoubtedly allows the reduction of the prison population, with a consequent relief to overcrowding currently evident in the prison system.

As part of the prison policy of the Colombian State, the construction of new prison establishments is one of the considerations to be taken into account in the overall solution of the prison situation, since in addition to the reduction of overcrowding, in makes will be able to have appropriate accommodation for a dignified treatment and re- socialization, and this will facilitate humanization of the system.

In formulating its criminal policy, the Government is placing great importance of prevention, and in addition, is allocating this function to the Criminal Policy Division. It is strengthening the invocation of alternative means to resolve conflict, it designs projects for prevention which will be developed in co-ordination with other state agencies which have competency, and it has recently created the Conciliation Division as part of the Ministry of Justice.

Similarly, for the program for the "Houses of Justice" has been strengthened, in an effort to decentralize the administration of justice, by bringing the system close to the community, and offering an opportunity to resolve conflict and legal problems within the neighborhood itself, providing faster and more personalized assistance from the system to users. The program brings together different institutions in a single place, for them to co-operate in solving community problems, as a form of access to the justice system as provided for in Article 229 of the Constitution.

Given the complexity of crime prevention and the interest of this Administration in drawing up proposals to combat the causes of crime effectively, we take this opportunity to request the collaboration of the Office of the High Commissioner in Colombia in the training of officials, and in the provision of technical support considered appropriate, so that significant progress may be made in this area.

The Ministry of Justice is also working on draft legislation to introduce a new Prison Code, and designed to protect the dignity and rights of the prison population.

Similarly, electronic means are being used to record and control visitors, so that neither their dignity more rights are imperiled. The authorities are also forming security rings to control the process of admission, and avoid the introduction of producing objects such as weapons, money, cellular telephones, drugs, and this will help to maintain security in prisons and the protection of the property and its of the inmates, and of Prison Service personnel.

As can be seen, the Government is attempting to find effective solutions to the problems of the prison system, and has taken relevant action to this end. Nonetheless, it should be noted that the solution to this difficult situation, which dates back many years, will not be reached in the short term, since it requires the implementation of measures whose results can only be seen in the medium and long-term, as and when the projects for the construction of a new prisons, and the application of this Government's policy, materialize.

Finally, it should be noted that the solution to the current crisis in prison system depends on the ongoing and effective collaboration of all citizens, without exception.

Human rights defenders

The program for the protection of witnesses and threatened persons of the Human Rights Division of the Ministry of the Interior is a response to a mandate of the Constitution and the law, and to the terms of international treaties signed by Colombia for the promotion of, respect for and guarantees of rights and the application of international humanitarian law.

This program has been an element of high importance in government policy for Human Rights, and has defined as its priority the protection of life and personal safety, and the freedom of those who, due to activities related to the defense of Human Rights, have been the victims of threats and harassment.

The protection programs, for which the Ministry of the Interior is responsible, have undertaken a number of actions in the area of policy and instrumentation, as described below, where we also state actions approved and performed during 2000 by each of the Committees for the Regulation and Evaluation of Risks.

It is to be noted that the protection programs for journalists, social communicators, and leaders members and survivors of the Union Patriotica (UP) and Partido Comunista Colombiano (PCC) were created in the second half of 2000, which explains in the quantitative difference in performance in comparison to the program for the protection of human rights defenders and union leaders.

The Program for the Protection of Witnesses and Threatened Persons: Human Rights Defenders, Union Leaders, Society Leaders and Witnesses of Violations of Human Rights and International Humanitarian Law.

This is the first of the protection programs for which the Ministry of the Interior Human Rights Division was made responsible. Mention has been made of the concerted work performed jointly by social organizations and the Government, designed to prevent violence and to protect the persons covered by the program.

The experience accumulated over more than three years of activities has led to the promotion of other protection programs in order to provide special treatment for individuals and organizations who have come under threat.

The legal framework of the Program

Article 6 of Law 199 of May 1995 makes it an obligation of the Ministry of the Interior to form "... a special administrative unit, accountable to the Ministry, which should take preventive action in the event of imminent threat to the to civic rights, and to undertake programs designed to protect, preserve and restore human-rights of those denouncing such threats".

Subsequently, Article 81 of Law 418 of 1997 defines the causes which may give rise to protection as those which "relate to political or ideological violence, or to the internal armed conflict", and the key groups to be protected a defined as follows:

- leaders or activists in political groups, in particular opposition groups
- leaders and activists of social, civic and community organizations, and industry associations, unions, peasant-farmer associations and ethnic groups
- leaders and activists of human rights organizations
- witnesses of violations of human rights and offences against international humanitarian law, regardless of whether criminal proceedings have been initiated, or disciplinary or administrative action has been taken".

* The protection program of the Ministry of the Interior will present the witness referred to in second section of this Article upon request of the judicial or disciplinary authorities, or permit authorities access to him, for which purpose it will take the security measures required in each case.

Article 82. The program mentioned in the preceding Article will provide beneficiaries with protection services and means of safety, including a change of domicile and location, but it may not change their identity.

Law 549 of 1999 extended the term of Law 14 of 1997 for a further three years.

Article 4 of Presidential Directive 7 of 1999 orders "the Human Rights Director of the Ministry of the Interior to attend to and process, through the Committee for Regulation and Evaluation of Risks in the Program for the Protection of Witnesses and Threatened Persons (Article 49 of Decree 32 of 1996), requests for protection for persons covered by this Directive, in order to evaluate the risks and to take protective measures as necessary".

The Committee for the Regulation and Evaluation of Risks
Article 49 of Decree 372 of 1996 created the Committee for the regulation and evaluation of risks in order to regulate the program, establish levels of risk and evaluate and assign security measures required for each individual case. The members of the Committee are:

- the Director of the Human Rights Division of the Ministry of the Interior
- the delegate of the Office of the Vice-President
- the delegate of the Vice Minister of the Interior
- representative of union organizations
- representative of Human Rights NGOs
- a representative of the security police DAS
- a representative of the police (Special Guest)

The technical secretariat of the Committee is the responsibility of the coordinator of the Protection Area of the Ministry of the Interior Human Rights Division.

The Committee for the Regulation and Evaluation of Risks is a democratic and pluralist exercise, in which representatives of the unions and Human Rights organizations, together with government officials, and police and security police officers, bring together their efforts to adopt the most appropriate measures for security of leaders and witnesses under threat.

Lines of action
The Committee for Regulation and Evaluation of Risks considered it necessary to attend to its target for promotion with measures which immediately minimize the degree of vulnerability of a person or organization which, due to his or its activity in relation to the defense of Human Rights, is in a risk situation.

In this framework, the allocation of special protection measures is coordinated with state security agencies, in addition to measures which the Constitution and the law require to be offered to all citizens.

Some of the principal measures are described below.

Humanitarian aid: In cases where a person covered by the program requires, as a consequence of threats, to leave a zone of risk, the program provides emergency economic support equivalent to three national minimum monthly salaries for up to three months, in order to reduce the impact of forced displacement immediately.

In cases where the protected person has taken the decision to leave the country, this support may be extended for the period equal to that initially granted, in order to facilitate proceedings with the relevant embassy.

During 2000, approval was given to the delivery of 214 humanitarian aid payments, covering the family of the threatened person as well as the person himself. This aid was distributed as follows:

For leaders and members of Human Rights NGOs (including union leaders and witnesses), 170 aid payments for a total of CP$312,598,162

For union leaders and activists, 44 aid payments were made for a total of CP$78,917,969

Communications Equipment. Amongst the protective measures provided by the program, an early warning system has been set to work, using cellular telephones and radios for those protected and for the agents of the State, which have enabled the forces of law and order to react promptly in order to combat risk situations generated by persons involved in conflict situations.

During the year 2000, 500 communications units were acquired at a cost of CP$64,096,325, and these were distributed in accordance with the needs of each organization, giving priority to parts of the country in which the internal armed conflict has intensified, including the south-west (Valle del Cauca, Cauca, Nariño), the north-east (Santander, Arauca) and the north-west (Antioquia, Atlantico).

Currently, the defenders network is composed of 264 radios, which allow immediate communication with officials responsible for attending to emergencies.

Up to the present, local sub networks have been created in the Departments of Valle and Nariño.

Relocation expenses. This support is provided to persons covered by the Program who, as a result of threats made against them, have decided leave the area and to relocate elsewhere. For this purpose, three quotations must be supplied to the Human Rights Division of the Ministry of the Interior.

In the year 2000, relocation expenses were paid on three occasions, for a total cost of CP$1,137,950

Domestic air travel. There are threats which are so serious that in order to protect the life and personal safety of the person threatened and his family, air tickets must be provided to another part of the country, where the degree of vulnerability will be reduced

During the year 2000, 315 domestic air tickets were supplied, at a cost of CP$121,995,997 as follows: 136 for union organizations; 125 for leaders at NGOs, including witnesses; 33 for the police, and 21 for members of the Committee for the Regulation and Evaluation of Risks [1].

International air tickets. In some cases, individuals who have registered under the program, with the corroborating evaluation of the situation by the committee, consider that it would be convenient for them to leave the country temporarily, given that the threats are so intense that it can be seen that the means of protection provided with in Colombia are insufficient. In the circumstances, the program provides international at tickets for the family, provided that it can be shown that the person concerned has the means of sustenance in the country of destination.

This measure is approved by the Committee for cases in which the technical study of level of risk shows the result of medium-low or higher.

In the year 2000, 135 international air tickets were provided the cost of CP$150,640,958, as follows: 51 for union leaders, and 84 for leaders and NGOs including witnesses.

Travel allowances. The program pays perdiems or travel allowances in order to secure in order to ensure that the person protected is accompanied by his bodyguard whenever he is traveling. This support also provided to public servants who are members of the Regulation and Evaluation Committee, when personally attending to cases whose characteristics require their presence in a specific part of the country.

Although technically classified otherwise, the cost of board and lodging of members of the Committee is covered by the program when their duties require them to attend to the requirements of protection.

Likewise, funds are provided for members of the police who travel on duty, in the work of preparation of the risk studies of the offices and organizations registered under the program.

During the year 2000, travel allowances were provided on 289 occasions, at a cost of CP$ 104,682,490, distributed as follows: 228 for bodyguards for union organizations; 14 bodyguards of leaders and NGOs; 33 for the police, and 27 for members of the Committee.

Temporary support for overland transit. Where senior personnel of organizations are constantly required to travel by reason of their work, or for reasons of security, and they do not accept bodyguards, or it is not convenient or advisable for them to have them, due to the characteristics of their organization or of the area in which they are working, the program provides support for by contracting an overland transport service which enjoys its full trust, in order to reduce the degree of vulnerability during such transits.

[1] The Legal Department of the Ministry of the Interior authorized operating expenses to be paid to Committee members traveling to emergency situations or holding meetings in places where groups in the program were at high risk, in order to make direct contact with the person harassed or under threat.

Services are contracted subject to the presentation of three quotations to the Human Rights Division of the Ministry of the Interior

In the year 2000, 15 temporary services to support land transport were contracted, at a cost of CP$224,424,316, as follows: 5 for union organizations and 10 for NGOs.

Temporary support for river transport. In some cases, senior members of organizations need to travel by river. In this event, the program contracts a river transport service which enjoys its full trust.

During the year 2000, river transport was provided on one occasion, at a cost of CP$3,564,000, for an NGO.

Productive projects. The Committee for the Regulation and Evaluation of Risks, has considered the possibility of going beyond ordinary security operations for protected persons, and as part of its means of protection, of encouraging those persons to stay in the country. It has therefore opened a new line of action, in the form of productive projects, in order to support persons who definitely cannot or do not wish to return to their place of origin, nor to leave the country.

This line of action has been suspended until the program receives fresh funds. Meanwhile the program will continue to provide guidance to persons affected, and refer cases to the social solidarity network RSS.

During the year 2000, one pilot productive project was approved at a cost of CP$4,950,000, to provide the possibility of restoring impaired rights, and to seek a lasting solution to forced displacement due to threats.

Armoring of offices. The protection program commas offices of organizations registered with the program, at the recommendation of the police.

During the year 2000, contracts signed during 1999 were performed for a value of CP$2,302,372,889, to provide armor for 58 offices. Additional work was required in the light of new considerations regarding armed internal conflict, in Saravena (Arauca) and Apartado (Antioquia), where armor initially recommended by the police had to be reinforced at cost of CP$392,166,029.

Also, new contracts for armoring the offices of 20 more organizations were tendered, and are now passing through the appropriate legal procedures. The sum of CP$400 million has been brought forward from 2000, and a further allocation of CP$1,100 million has been appropriated in the budget for 2001.

Likewise, technical studies have been contracted to be made by a an engineer who is a specialist in architectural armor, and inspectors for the armoring contracts have been contracted in order to ensure that installations and equipment are correctly provided and the work is properly done, at a cost of CP$36,666,666.

Courses in self-protection. Among the means of protection provided by the program through State security agencies there are workshops for self-protection. During the year 2000, 577 courses were given by the security police DAS. The costs incurred in arranging the courses were defrayed by DAS.

This method is used in cases where the technical study on risk levels and gives a result of “low" and does not require the allocation of a more elaborate or technical scheme of security for the person or organization. At the same time, the course is a complement to other schemes for security protection, and aims to make sure that the resources used in each case are used as effectively as possible.

Hard protection. Like the self-protection courses, hard protection schemes are provided by the DAS, and consist of the allocation of one vehicle and up to two bodyguards trusted by the person protected. The bodyguards are on the DAS payroll and are trained by it, to accompany the person protected permanently to reduce vulnerability.

The DAS provides bodyguards with bulletproof waistcoats, communications equipment and appropriate weapons to meet the requirements of protection.

Thus, a summary of various kinds of protection offered by Program can be described as follows.

Lines of Action	Committee Cases	Cost CP$ million
Humanitarian assistance	214	391.5
Communications equipment	450	64.1
Relocation expenses	3	1.1
Domestic airfares	315	121.9
International airfares	135	150.6
Travel allowances	289	104.6
Overland transport support	15	224.4
River transport support	1	3.6
Productive Projects	1	5.0
Armoring of offices	97	792.2
Self-protection courses	577	
Hard protection schemes	45	
Total	2142	1,854.2

This does not include the cost of self-protection courses or security schemes, since they were borne by the DAS

The execution of budget includes a balance carried over from 1999, of CP$460,538,344. Of the total of CP$2,572,800,000 for the year 2000, CP$1,393,641,851 were executed in implementing the measures described here, and the balance, $1,279,158,148 were assigned to the agreement with UNDP, which contained commitments for the adoption of protective measures

Notes

- The Regulation and Evaluation Committee attended to around 2200 cases in the year 2000, but 2142 of those correspond to cases in which support from the program budget was arranged. The other cases referred to persons not registered with the program, or with a level of risk which did not merit special security treatment.
- The cost of communication services are not included, and these amount to approximately $33,746,000 per month .
- The number of beneficiaries of the lines of support for overland and river transport refers to organizations, and does not state the actual number of individuals benefiting from them. It is estimated that 150 individuals benefited from land overland transport support, and 10 for river transport support.
- Only one productive project materialized, since it was only analyzed in the final sessions of the Regulation and Evaluation Committee for 2000
- The chart does not include the cost of hard protection schemes approved by the Committee, which was borne by DAS.

Special program for comprehensive protection for leaders and members and survivors of UP and PCC

As a result of representations made to the Inter-American Commission for Human Rights through the Mixed Commission for the search for an amicable solution in the case of the genocide of members of the UP and PCC, the government undertook to set up a special protection program designed for leaders, members and survivors of the UP-PCC, which began work in the second half of 2000.

Legal framework of the program

Decree 978 of June 1, 2000 created special program for comprehensive protection for leaders members and survivors of the UP and PCC, in the following terms:

Article 1. The social program for the comprehensive protection of members and survivors of the UP and PCC is created to attend to request for protection made by persons who due to their ideological or party affiliation to either of the political groups mentioned, have received threats against their lives, freedom or safety.

The Committee for Regulation and Evaluation of Risks

The same Decree which created the program also set up the Committee, which evaluate cases and decides on action to be taken.

Article 4. The approval of protective measures referred to in the preceding Article will be the responsibility of a Committee for Regulation and Evaluation of Risks, composed as follows:

- the Director of Human Rights of the Ministry of the Interior, as chairman
- a delegate of the Office of the Vice-President
- the Co-ordinator of the Human Rights Group of the High Command of the National Police
- the Manager of the Social Solidarity Network RSS or his delegate.

The following will be permanently invited, and may speak and vote:

- the Secretary General of the PCC or his delegate
- the national President of the UP, or his delegate
- President of Corporacion Reiniciar, as a petitioner before the Inter-American Commission for Human Rights, or his delegate, and
- the director of Comisión Colombiana de Juristas, the Petitioner in the case before the Inter-American Commission for Human Rights, or his delegate.

Paragraph 1. A delegate of the Office of the Procurator General and a delegate of the People's Defender may attend, representing state control agencies

Paragraph 2. The Executive Secretariat of Committee will be the responsibility of the Co-ordinator of the Protection Area of the Human Rights Division of the Ministry of the Interior.

Paragraph 3. When the Committee discusses matters related to the armoring of offices, a delegate of the National Police who is a specialist in this area may attend will attend as a guest.

Lines of Action

The program has been attending to its target population by supplying the following protective measures:

Lines of Action	Committee cases	Cost CP$ million
Humanitarian aid	120	264.9
Communications equipment	100	33.8
Relocation expenses	11	6.7
Domestic airfares	127	38.9
International airfares	1	3.1
Travel allowances	9	1.6
Service contracts	1	4.0
Equipment purchases	1	6.2
Communications support	241	3.5
Commitments for armoring of premises	5	250.0
Total		700.0

Notes

- The total allotted to this program was $700 million, of which $250 million will be executed in 2001 in contracting the armorg of offices and residences of members of the two organisations. This amount, plus CP$53,571,504 was the budget agreed with UNDP for the implementation of protect measures.
- The Committee held its first meeting of on July 11, 2000
- The cost of communications services are not included, and these totaled some CP$33,746,000 per month.
- The travel allowances were paid to delegates of the UP-PCC and Reiniciar, who as members of the Regulation and Evaluation Committee travelled to attend to the target population in various parts of the country.

Program for the protection of journalists and social communicators

Given the difficult situation in Colombia, in which journalists have been injured, or have been forced to leave the country under threat, as a result of the their professional activities in the dissemination, defense, preservation and restoration of human rights and the application of international humanitarian law, the Government considered it essential to create special mechanisms to protect them.

It has thus started on the program for the protection of journalists and social communicators, which, like the other programs, has the support of the Government and of international community.

Legal framework of the program
Decree 1592 of August 18, 2000, regulates Article 6 of Law 199 of 1995, in the following terms:

Article 1. The program for the protection of journalists and social communicators is created for those who in exercise of their professional activity undertake to disseminate defend, preserve and restore human rights and the application of international humanitarian law, and who, due to circumstance, face risks to their lives, safety or freedom, for reasons related to the armed conflict in this country.

The program will be the responsibility of the Human Rights Division of the Ministry of Interior.

Committee for Regulation and Evaluation of Risks
The same Decree which created the program also provided for the formation of the Committee for Regulation and of Evaluation of Risks, to evaluate each case and to define the actions to be taken.

Article 2. In order to establish the levels of risk and to evaluate each individual case for journalists and social communicators, and for offices in which they work, the Committee for Regulation and Evaluation of risks is created and is composed as follows:

- the Vice Minister of his delegate
- the Director of Human Rights of the Ministry of the Interior
- a delegate of the security police DAS

Paragraph 1: a delegate of the Office of the Vice-President and a delegate of the National Police will attend all Committee meetings, as special guests, entitled to speak and vote.

Paragraph 2: Three delegates of journalists associations appointed by the Ministry of the Interior will attend all meetings as permanent guests, entitled to speak and vote. At present these associations are:

- a delegate of Fundacion para la Libertad de Prensa
- a delegate of ASOMEDIOS
- a delegate of Fundacion Medios por la Paz.

Paragraph 3. The executive secretariat of the Committee will be the responsibility of the Coordinator of the Protection Area of the Human Rights Division of the Ministry of the Interior.

Lines of action
The Committee for Regulation and Evaluation of Risks has in principle adopted the same lines of action as the other programs, and as and when new alternatives arise, they will be developed in accordance with relevant provisions of law and the needs of persons protected.

Despite budget difficulties experienced by this recent program, 26 cases were analyzed during the year 2000, and the following measures were approved and are pending implementation:

Lines of Action	Committee Cases	Cost CP$ million
Humanitarian aid	4	
Communications equipment	20	
Domestic airfares	5	
International airfares	12	
UNDP Agreement		100.0
Total		400.0

Notes
- The Committee held its first meeting on October 5, 2000
- The sum of CP$300 million was committed with IMO implement soft protective measures, and these are pending implementation and therefore are not detailed in the chart.

Political action to protect the Programs´ target population.

As a development of the programs described, political action is being taken to a comprehensive system of protection for the target population, including the following:

- The generation of cooling-off activities between the departmental authorities and social organizations
- Accompaniment of communities at risk
- Inter-institutional verification commissions
- Meetings of the Committee for Regulation and Evaluation of Risks in towns and cities around the country to support the work of union leaders and human rights defenders
- Monitoring and follow up of complaints regarding violations of human rights
- Encouragement of investigations for violations of Human Rights and offences against international humanitarian law
- Permanent dialogue at central and regional levels with the military and police authorities, in order to co-ordinate security activities.
- Dialogue with university authorities, designed to facilitate solutions for members of the academic community under threat for their activities in the defense of human rights.
- A committee to design mechanisms of protection for the medical mission
- Regional seminars in Human Rights for workers, in conjunction with the federated union CUT.
- Ongoing attention to personal inquiries regarding security and protection

- Ongoing on-the-spot attention to security and protection
- Participation in the Subcommission for the protection of the population of the Rio Cacarica basin
- Protection for the committee and leaders in Apartado
- Participation in the Human Rights Commission of the indigenous peoples
- Participation in the Rio Viejo Alliance Commission
- Technical secretariat for the Intersectorial Commission for follow-up of investigations of human rights violations in the Department of Arauca
- Technical secretariat for Intersectorial Commission for follow-up of investigations of human rights violations in the Colombian Massif
- Technical secretariat and Coordination of the Committee to promote the design of a special program for the protection of the academic community at risk
- Dissemination in videos and leaflets of Presidential Directive 7 of 1999 "Support, a dialog and collaboration of the State with human rights organizations".
- International seminar on protection for human rights defenders and union leaders, in co-ordination with the police
- International seminar on conflict and protection of the university community, in co-ordination with the police
- The promotion of the creation of a special commission to follow up investigation of human rights violations against members of ASFADDES and CREDHOS
- Coordination of humanitarian transport for high-risk communities
- Participation in regional seminars on the protection of threatened journalist, or journalists at risk
- Participation in the Inter-institutional Commission for cases involving preventive measures required by the Inter-American Commission for Human Rights, and injunctions issued by the Inter-American Court for Human Rights.

Further, the Prosecution Service continues with its unbending commitment to reduce levels of impunity, and has strengthened all national order Prosecution Service units in basic areas such as training, logistics for infrastructure, and appropriate staffing.

This can be seen in the progress made in several investigations undertaken by the National Human Rights Unit, and we mention some of those referred to in the draft Report.

No. 593. Terrorist attack on the premises of ASFADDES and others, in Medellin, on 24th June, 1999.
The investigation was assigned by order of the Prosecution Service headquarters in the Resolution 624 of September 14, 1999. It is in the preliminary phase.

No. 782. Murder of Jesus Ramiro Zapata, in Segovia, Antioquia on May 3, 2000
In resolution 443 of May 5, 2000, the Prosecution Service headquarters allocated the investigation to this unit, and the investigation is in the preliminary phase. A collection of evidence has been effected on order to establish the motives and authors of the events in question.

No. 837. Murder of Elizabeth Cañas, in Barrancabermeja on 12th July, 2000
The investigation was assigned to the Human Rights Unit by order of the Prosecution Service headquarters in resolution 1.230 of July 18, 2000.

By a resolution dated 28th February 2001, the Prosecution Service ordered instruction proceedings to be opened, and a issued a warrant of arrest and interrogation of Wilmer Amaris Jaimes, aka Chucho.

No. 921. Kidnap of Angel Jose Quintero Mesa and Claudia Patricia Monsalve Puligarin, who disappeared on 6th October, 2000 in Medellin.

The Prosecution Service headquarters assigned this investigation to the Unit in resolution 2547 of October 29, 2000.

In an order dated November 27, 2000, instructions were given for a judicial inspection in the offices of GAULA Oriente in the municipal of district of Rionegro, Antioquia, to obtain documentation related to the operations of GAULA personnel on the date of occurrence of the events, and of persons detained or investigated.

And there were also 15 judicial inspection proceedings arranged by the special prosecutor's office in Medellin, including Battalion 17 Bejarano Muñoz. Army Brigade 17 in Carepa Antioquia, the Voltigeros de Carepa Battalion and others, as commissioned by the Service.

Evidence continues to gathered in order to establish the motives and authors of these events.

No. 943. Attack on the President of FENALTRASE Wilson Borja, on 15th December, 2000, at Cra 80/Calle 103, Barrio Bochica, Bogota, in which a heavily armed gang attacked, leaving the bodyguards Tomas Enrique Quiñones Mendigaño and Giovanni Aldana wounded, and Maria del Pilar Bolaños Gonzalez and Elmer Horacio Rueda Daza dead.

On January 4, 2001, an order was issued for the preventive detention of Janeth Araceli Orozco Benavides, for offences against Article 2 of Decree 1194/89, as author, and has Co author of attempted culpable aggravated homicide, aggravated simple homicide and aggravated theft.

In a resolution dated 18th January, 2001, the order was given that no action should be taken against Sandra Matilde Fernandez Gil or Marco Aurelio Martinez Osorio.

On February 23, 2001, preventive detention was ordered against Juan Evangelista Basto Bernal, a captain in the active service of the police Carlos Fredy Gomez Ordoñez and Jorge Ernesto Rojas Galindo, a former Army captain. This measure was ordered for attempted and culpable homicide, in material but heterogeneous concurrence with paramilitarism.

On 1st March, 2001, an injunction was issued against Edgar Rodriguez Cortes. Two individuals who were interrogated are awaiting a decision on their legal status, and 4 warrants for arrest are pending issue.

Political rights

The Report simply states that elections were held at Departmental and Municipal level, and goes on to list a series of attacks against militant politicians of the UP movement. This ignores the vigorous interest of the public in mayoral elections in 1020 municipal districts and in elections for Departmental Governor's, Councillors and Assemblymen. The Report also ignores important progress made in terms of a transparent public debate between the many options represented by the candidates.

The arrival of a variety of civic movements to form the local administration in many Municipalities, the election of a member of the Guambiana indigenous community- an ethnic minority- as governor of the Department of Cauca, for the first time in history, and in general, the remarkable support for democratic institutions expressed in the context of internal armed conflict, are convincing evidence of the unwavering respect of the Government and the State in general for political rights.

Further, the large number of mass demonstrations for peace and against violence a violation of fundamental rights, which are important expressions of political freedoms, are conspicuously absent throughout the Report.

With regard to the case of the UP, mentioned in the Report, this was the object of a denunciation made to the Inter-American Commission for Human Rights by Corporacion Reiniciar and Comision Colombiana de Juristas. Colombia is a party to the American Convention on Human Rights, and recognized the mandatory jurisdiction of the Inter-American Court of Human Rights. Therefore, the individual petitions made it to the Commission must the observed by a state in the context of its obligations under the Convention, and the cases may be laid before the Court.

In the case of the UP, the Government has indeed recognized the existence of many very serious violations against members of this group, but its position is that this was not genocide, since the events did not coincide with the International definition of this crime.

In January 1997, in Report 5/97, the Inter-American Commission for Human Rights declared the case admissible, accepted that it not a case of genocide, and recognized need to individualize events in order to obtain elements for making a pronouncement on the responsibility of the State.

The Commission offered itself as an organ for amicable solution of the case. The parties (the Government and the petitioners) expressed their willingness to initiate the search for an amicable solution, given the importance of the case in domestic and international terms. It was therefore agreed that the process should start with the creation of a Mixed Commission to study ways of making progress with this mechanism.

The Commission was formed in March 1999, and was composed of representatives of the U P, PCC, Corporacion Reiniciar, and Comision Colombiana de Juristas on one side, and of the Prosecution Service, the Procurator´s Office, the Office of the Vice-President and the Ministry of Foreign Affairs, on the other.

The Mixed Commission met on several occasions, and held special sessions to analyze the security situation of members of the U P, in which representatives of the police, the security police DAS, and the Ministry of the interior, have also taken part.

With regard to the protection program, the petitioners before the Inter-American Commission, and the members of the UP and PCC themselves, have presented a diagnosis and a proposal.

Based on this, the Government undertook to them and to the Commission, on 24th March, to set up a protection program in response to the needs of its beneficiaries, within the framework of a competent national institutions.

In order to discharge this commitment, the Government has created a special program for comprehensive protection of members of the UP and PCC, which was referred to in the chapter on human rights defenders.

As part of this amicable solution, there has also been at special encouragement for the investigation of acts of violence committed against members of the UP and PCC, under the responsibility of the Prosecution Service and the Office of the Procurator, both of which have created special internal sub-units to investigate individual cases, applying uniform criteria, and taking account of the special features of each case.

The process of amicable solution also includes the creation of a database of each individual case being processed with regard to the UP and PCC, and the database is now completed. Meetings have been held with technical staff responsible for the project in order to refine the base, which now contains all the information which was manually processed last year, for a total of 1445 records.

The database has enabled a statistical report to be prepared, taking account of any combination of criteria which the parties have agreed to include in each record, and this is an important basis of work for the stage which will now begin, and will allow a specific follow up and updating not only of these cases, but of a future ones. The Mixed Commission has decided that in principle, the database will be located in the Ministry of Foreign Affairs, and in Corporacion Reiniciar, but may subsequently be extended for the purposes of consultation or updating, to other locations.

In a hearing held before the American Commission for Human Rights on 27th February, 2001, the Mixed Commission delivered a joint report on a its evaluation of the work completed so far. There was no agreement on the appreciations of the parties regarding the execution of the special protection program, and separate presentations were therefore made. It should be noted on this point, that the special protection program has provided a very valuable support to individuals at risk, and indeed, none of the individuals covered by the program has suffered from any attack. With regard to the lamentable actions committed last year against members of the UP, the competent authorities are conducting relevant investigations in order to determine the circumstances of these events, and the persons responsible for them.

In the Mixed Commission's report, it was decided to set up a working group to begin a second stage of the search for an amicable solution with regard to truth, justice and reparations, at the latest by May 15, 2001, with the issue of an administrative act to create the group, and the holding of a formal event with the presence of the highest levels of government.

Meanwhile, and until the second phase begins, the Commission will continue to meet in order to resolve persisting difficulties in the process, and will attempt to discuss various aspects various matters which arise in the process, in order to comply with the International commitment made, and as a demonstration of the parties sincere conviction that a solution can be found to this complex case.

The Government has repeatedly stated to the Interamerican Commission that it is willing, and has the irrevocable intention to make progress in this case of such great importance to the Colombian state, within the framework of the mechanisms created, and those which may in future be agreed, as part of its duties under the Constitution, the law, and conventions.

Follow-up of international recommendations

Recommendations related to the adoption of measures, programs and policies for human rights and international humanitarian law.

With regard to the suspension of members of the armed forces compromised by violations of human rights, there is currently a provision of law which allows preventive measures to be taken for suspension as a disciplinary matter, and this is contained in Legislative Decree 1797/2000, the Army Disciplinary Code. The competent authorities are military commanders with disciplinary powers, and the Office of the Procurator, which has overriding disciplinary powers. Also, in the cases of alleged violations of human rights, the Procurator´s office has demanded cognizance, and in some cases has ordered the suspension of the person investigated as a precautionary measure, or as punishment. In the last three and a half years, the Procurator-Delegate for Human Rights has imposed a total of 136 disciplinary sanctions on members of the armed forces. The decisions have been applied by the competent administrative authority, depending on the rank of the person sanctioned.

The Government, exercising its powers under a law 578/2000, conferring special powers on the President to reform legislation regulating the army and the police, has introduced an instrument of law which enables the Government and commanding officers to retire military personnel at their discretion, and regardless of length of service. This same power has been applicable to the police force since 1995.

On October16, 2000, the government used this power of discretion contained in Legislative Decree 1795/2000, and ordered the retirement of 388 members of the armed forces, of whom 89 were officers and 299 were NCOs: 2 Lieutenant-Colonels, 2 Lieutenants acting as commanders, 1Navy Lieutenant Colonel; 27 army cadet captains, two Navy Captains, and 3 Air Force Lieutenants; 21 Army Lieutenants, 1 Navy Lieutenant, and 8 Air Force Lieutenants; 9 army Second Lieutenants, and 225 NCOs, 47 from the Navy and 27 from the Air Force, amongst others.

The discretion provided for in Decree 1790/2000 which permits orders to be given for the retirement of personnel from the armed forces does not require any prior procedure or motivation. The motivation of an act to order retirement would deny the discretionary nature of these powers, to the point that they would not be considered to be a matter of discretion by an administrative court. Therefore, it is not appropriate to indicate motives or reasons at the time of exercising these powers of discretion. Nonetheless, the mass use of these powers is a sufficient demonstration of the Government's wish to retire from the armed forces those who have ceased to serve their institution in the terms required by the Constitution.

The measure also cannot be applied with respect to the same events, to those who are under cruel or disciplinary investigation, since jurisprudence has considered that in such events there would be a violation of the right to defense, of the presumption of innocence, and of due process.

Recommendations regarding legislation

In the area of ILO conventions, the following ratifications have been formalized:

- Convention 15, regarding working relations and public administration
- Convention 154, regarding the encouragement of collective bargaining in the public sector
- Convention 161, regarding health services at work
- Convention and 62, regarding the use of asbestos in safe conditions in
- Convention 138, regarding the minimum age of admission for employment

A bill will shortly be presented to Congress to approve Convention 182, regarding the abolition of the worst forms of child labor

Application of ordinary jurisdiction

The Report states that the new Criminal Code is to come into force on July 24, 2001 earth, incorporating types of crime against human rights, such as torture, displacement, genocide, forced disappearances, and offenses against international humanitarian law, to be tried exclusively by the ordinary courts, and asks how, in practice, it will not be the Military Criminal Courts that try these types of crime. The Report also states that on July's 6, 2000, Law 589 of 2000 came into force, defining forced disappearance, genocide, forced displacement and torture, but not containing any Article which give exclusive Competency to the ordinary courts for this type of crime.

The Government does not share these observations, since both in current criminal legislation and in the code which is due to come into effect in July 2001, there is a clear direction for Competency to be assigned to the ordinary courts.

We also note, since mention is also made of Law 522 of 1999 (the new Military Criminal Code) that the new Code was issued not as the result of improvisation or lack of study, but as the result of lengthy and rigorous legal discussions.

The most recent previous Colombian legislation with regard to the military criminal justice system was issued in the exercise of exceptional powers assumed by the Executive, as occurred with Decree 2550 of December 12, 1988, a statute containing 731 Articles, repealing Decree 250 of July 11, 1958, with 620 Articles, and Decree 2038 of October 9, 1958 with 27 Articles. Therefore, the new Military Criminal Code is the first code approved in recent times through the legislative process.

The new Code is the fruit of discussions which has continued over more than five years, starting with Congressional approval, and presidential sanction. It appeared in *Diario Oficial* 43665 of August 13, 1999, as law 522/99.

We quote the words of the President of the Republic, Andres Pastrana, when signed the new Military Criminal Code into law:

"This reform contains all the various pronouncements made by the Constitutional Court and it incorporates the various concerts developed by its jurisprudence. In effect, for some years now, Colombian society, international organizations, NGOs and the armed forces themselves have been calling for reforms to the Military Criminal Code, to adapt it to the 1991 Constitution, and the increasingly demanding conditions related to human rights and international humanitarian law.

Since 1993, when the Gaviria Administration first presented a draft reform to Congress, the road has been a long and difficult one, but today we are happy to have achieved a code which will renew and improve the framework of the military criminal justice system.

Among the most important of the reforms, there is the re-definition of military immunity, such that the military justice system no longer has competency for crimes which seriously compromise life and human dignity, and are repugnant to the army as an institution, and to private morality. Therefore, crimes such as torture, genocide and forced disappearance will be subject to the ordinary courts".

The President's remarks are coherent and consistent in terms of the provisions of the Military Criminal Code, and particularly with its postulates or guiding principles, since there are the peremptory provisions in Articles 3 and 5, as follows:

> "Article 3. Crimes not related to the service. Notwithstanding the terms of the preceding Article, the crimes of torture, genocide and forced disappearance, understood in the terms to find in international conventions and treaties ratified by Colombia, may in no case be considered as related to the service.
>
> Article 5. Investigation and judgment of civilians. Civilians may in no case be investigated or tried by military criminal justice".

As a corollary of the above, for application in practice, there is the content of Article 19, where the guiding principles are set forth in clear and mandatory terms, and override any other provision, and must be the basis of interpretation.

Thus, we consider that the Government should repeat that the opinion of the Report incorrect, since there are procedural rules within the Military Criminal Code itself which prevent any intervention by the army in crimes of torture, and genocide or forced disappearance, and as the Report correctly says, given the interpretation of the Constitutional Court, the military criminal justice system may not investigate or try crimes against human rights or against international humanitarian law. The provisions of the present Criminal Procedure Code, and the future

Criminal Adjunct Statute, contain provisions in the rules for functional competency that it will be the ordinary courts, and the special criminal circuit courts which will try these cases by residual competency, since they will try matters not assigned to other court in, in the following cases: torture, forced disappearance, genocide, forced displacement and offences against international humanitarian law. In parallel, the Prosecution Service delegates to these courts are the end persons competent to instruct files to be opened on these crimes. (see Article 72. C of an Decree 2700 of 1991, the present Criminal Procedure Code, and Article 77.B of Law 600/2000.

Therefore, the military criminal jurisdiction may not assume a competency which is not its own – and which does not belong to it - and should it do so, there would be nullity by simple application of the law, for lack of observance of due process, given that there would be lack of competency which would deprive any procedural act or decisions of any validity.

Further, in the case of *motu proprio* award of competency by the military courts, in resorting to a competency which does not belong to them, the ordinary courts would immediately have to propose a positive collision of competency in order to take over the process. If their attempts to do so were frustrated, competency would be decided by an instance other than the senior levels of the military jurisdiction, and this would guarantee that decisions would be impartial, autonomous and independent, in order to gain the required assurance and confidence that justice is been correctly administered.

Finally, it should be noted that the police, through the Judicial Police, have powers to act on their own initiative in the preliminary phases of a criminal case, and under the co-ordination of the Prosecution Service they may, only as a matter of urgency, in a situation of flagrancy, and at the place where the events occur, take certain evidence which would necessarily be incorporated into a criminal proceedings, in order to control the validity, legality, relevance, usefulness or suitability of such evidence through the Prosecution Service. The Prosecutors would be competent to take any judicial decision as to the freedom or detention of persons captured or tried for any of these or other crimes.

With regard to the criticisms made on the definition of genocide and forced displacement, the following must be said:

With regard to restrictions of the crime of genocide, and the observations contained in the Report, the Government notes that the Constitutional Court, in Decision C-177 of 2001, (February 14) declared the expression "who is acting within the framework of the law" contained in Article 322A of Law 589/2000, and Article 101 of Law 599/2000, to be unconstitutional. The Court's reasons included the following:

"In effect, this Court has established that, far from adopting the measures to adapt legislation in harmony with the international obligations of the Colombian state, contracted in particular by signature of the United Nations Convention for the Prevention and punishment of the crime of genocide, which as noted, of the Colombian State approved in Law 28/1959, measures which required the State to defined the crime and impose severe punishment on the conduct considered as laesa humanitas*, the State has ignored the purposes of the incorporation of such measures into law, as intended, since it restricted the protection of the right to life, to personal integrity, and the freedom of the individual, by conceding it solely to the extent that, and provided that, the offending conduct affects a member of a national, ethnic, racial, religious or political group "which is acting within the framework of the law". With this expression the State sacrificed the full validity and unrestricted protection recognized by international humanitarian law and the international law of human rights, and the international treaties and conventions which codify them.*

In effect, this Court notes that contrary to the terms, principally of the mentioned Convention for the Prevention and Punishment of the Crime of Genocide, by reason of the terms of the expression questioned, Colombian criminal law has limited to incriminate the extermination of groups which act beyond the pale of the law. To this we add that the discrimination which the this expression induces, also claims to be based on a criterion which lacks precision and clarity and in this respect it must also be unconstitutional given its ambiguity and lack of definition; in other words, this means that the expression does not have the singularity of meaning to make an unequivocal definition of a type of conduct, and therefore, it is contrary to the general principle of definitions at constitutional level, and thus affects the constitutional guarantees formed by due process and the right to defense in criminal matters, and chiefly on the principle of "nullum crimen, nulla poena, sine lege previa, scripta et certa". *We repeat the in a strict sense there is no definition of any type of crime, and this is a structural element of the legal standing of a crime and its punishment, and at the same time is a guarantee of the democratic freedoms in a social state of law, whose essential purpose is to guarantee the effective protection of Human Rights."*

With regard to the crime of forced disappearance contained in the current Criminal Code, as Article 268 A, supplemented by Law 589/2000, Article 1, we dissent from the observations made in Report for the following reason: the Congress of Colombia has not assumed a passive attitude since at the same time as a discussion of draft legislation to define this conduct, there was also discussion regarding the future Criminal Code, at the initiative or insistence of the Attorney-General, and this enabled the first draft to be deferred, in order to wait at least two years for the new provisions of law which contained the type of conduct in violation of humanitarian law, known as the crimes of *laesa humanitas,* to come into effect. Thus, the Government and Congress acted with the fundamental intention of harmonizing internal legislation with international with a commitments required of the Colombian State through the various public treaties of international law, mentioning as an example the Interamerican Convention against the forced displacement of persons, in which Colombia committed itself to incorporate such criminal conduct as part of its internal criminal order.

We consider that it has been shown to the international community that there is permanent concern not only to modernize legislation but also immediately to adopt legitimate measures to prevent the violation of human rights in an appropriate manner, in particular taking account of the situation of armed conflict currently affecting this country, which makes it necessary to adapt our legislation to international instruments.

The question, and the criticism, would seem to be that an active subject was left without definition, that is, a private individual belonging to an armed group acting beyond the pale of the law.

The discussions held in Congress decided that the crime of forced disappearance committed by a public servant would be omitted. Although international treaties have established and described an active subject, international humanitarian law and international criminal law do not. Also, realities in Colombia have shown that this conduct is committed not only by agents of the State but also by private individuals.

Nonetheless, the second subsection of the same Article allows for the possibility that the public servant may be an accomplice, or that he may act with criminal intent or in as the result of involuntary solidarity, or as *socius criminis*. Since the Article contains a section which refers to circumstances of aggravation of punishment for this type of crimes, it was provided that the sentence of imprisonment would be increased from 40 to 60 years the conduct was committed by persons exercising a authority or jurisdiction (see Article 268B of the Criminal Code, supplemented by Law 589/2000, Article 1).

The definition of this conduct is in harmony with several provisions of the Constitution, such as that concerning human dignity, Article 1; ethnic and cultural diversity, Article 7; protection of the family, Article 5; the right to life, Article 11; the right not to be subjected to forced disappearance, torture or cruel, inhuman or degrading treatment, Article 12; the prohibition of slavery, enslavement, or traffic in human beings, Article 17; freedom of conscience, Article 18; freedom of cult, Article 19; free passage throughout the country, the Article 24; personal freedom, Article 28; and others.

Finally, the adoption of this Article on the crime of forced disappearance is suited to the situation in Colombia, as an independent type of crime, and incorporating elements of its structure contained in the Interamerican Convention on the Forced Disappearance of Persons, where there is not only a provision for a crime committed by an indeterminate active subject, but the crime is made all the more serious should a person with authority or jurisdiction intervene in the commission of that crime.

In conclusion, we consider that the alarming situation of violence which affects Colombia, due to the action of armed agents which generate it, has fully justified the adoption in all of these types of crime, so rigorously defined as infamous and degrading conduct, as conceived by international doctrine as crimes of *laesa humanitas*. We have responded to the vehemence with which the United Nations Commission for Human Rights has criticized Colombia for its definition of these types of criminal conduct.

The Report states that the new Criminal Code did not pay attention to the recommendation of the High Commissioner, or of the Committee for Elimination of Racial Discrimination, by making it a criminal offence. On this point, it is sufficient to state that in the various new types of crime in the statute book, and in law 589/2000, all offensive or aggressive acts of racial discrimination are covered, since this legislation does not leave the various races to be found with in Colombia unprotected, as it punishes any conduct by individuals or groups with equal severity, without distinguishing or preferring any particular race, ethnic group or religious conviction, or cultural or other preference.

Finally, the Government has repeatedly announced, and has provided in its policy for human rights and international humanitarian law, its willingness to ratify the statute of the International Criminal Court, a recommendation which also appears in the High Commissioner's Report.
