



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/1989/18/Add. 1
6 February 1989

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Forty-fifth session
Agenda item 10 (c)

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY
FORM OF DETENTION OR IMPRISONMENT

QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

Report of the Working Group on Enforced or
Involuntary Disappearances

Addendum

Report on the visit to Colombia by two members of the
Working Group on Enforced or Involuntary Disappearances
(24 October - 2 November 1988)

I. INTRODUCTION

1. By a letter dated 25 March 1988, the Government of Colombia invited the Working Group on Enforced or Involuntary Disappearances to visit the country in connection with reports on disappearances transmitted to it by the Group. At its twenty-fourth session in May 1988, the Working Group decided to accept that invitation and, at its twenty-fifth session, delegated Mr. Toine van Dongen and Mr. Diego García-Sayán to carry out the visit on the Group's behalf. The visit to Colombia took place from 24 October to 2 November 1988.

2. During the visit, the two members of the mission were received by the President of the Republic, the Ministers of Defence, Foreign Affairs, the Interior and Justice, the President of the Council of State, the Attorney-General of the Nation, as well as the Attorneys-Delegate for the Defence of Human Rights, for the Armed Forces and for the National Police, the Vice-President and other judges of the Supreme Court, the Presidential Advisers for the Defence, Protection and Promotion of Human Rights, for Social Development and for Reconciliation, Rehabilitation and Normalization, the Administrative Security Department (DAS), the National Director of Criminal Investigation, the Governors of Antioquia and Valle, as well as other high officials of the executive, including the armed forces and the judiciary, both in the capital and in the cities of Medellín and Cali. The members also had the opportunity to hold hearings with a great number of witnesses, relatives of missing persons, representatives of human rights organizations and associations of relatives. They further met with dignitaries of the Roman Catholic Church and the committee of laymen of the Human Rights Commission of the Episcopal Conference, representatives of political parties, universities and educational institutions, the bar and the media. As during previous similar visits, the members endeavoured, within the short time available, to hear a variety of views on the complex situation of disappearances in Colombia from different representative segments of Colombian political, legal, religious and intellectual life. The members of the mission also visited the cities of Cali, Medellín and Girardot, the latter in connection with a forum of personeros (municipal officers) (referred to in paras. 33-34) organized by the Presidential Adviser for Human Rights, and interviewed one witness in the women's prison of Medellín.

3. The present report on the visit reflects the conversations the members of the mission had in Colombia on the situation of disappearances and aspects related thereto. Chapter II describes briefly the context of violence in which the problem of disappearances in Colombia has to be viewed; chapter III contains a description of the country's legal and institutional framework relevant to disappearances, both in its theoretical aspects and as regards the practical application of legal procedures as explained in the conversations with the relevant authorities and members of the legal profession; chapter IV describes the main characteristics of the cases of disappearances which the members of the mission were able to study in detail during the visit and provides an evaluation of the evidence received; it also contains statistical information and a graph showing the

evolution of the phenomenon based on the dates on which the cases transmitted by the Working Group so far occurred. The position of governmental authorities explained to the members during the visit is reflected in chapter V. Concluding observations and recommendations are presented in chapter VI of the report.

4. The Working Group wishes to emphasize that it received most valuable co-operation, both in the preparations for and during the conduct of the visit, in particular from the Office of the Presidential Adviser for the Defence, Protection and Promotion of Human Rights, which acted as co-ordinator for the visit. All requests for meetings with officials were accepted and most efficiently arranged by that Office and no obstacles whatsoever were encountered by the members of the mission in receiving representatives of non-governmental organizations, witnesses and relatives of missing persons. The members of the mission only regret that the senators of the conservative and liberal parties whom they had contacted were not able to accept their invitation for an exchange of views.

5. It should be borne in mind that, as a matter of principle, the Working Group on Enforced or Involuntary Disappearances discharges its mandate in a humanitarian spirit, taking a non-accusatory approach. The mission to Colombia should be viewed in the same light.

II. CONTEXT OF VIOLENCE

6. This part of the report briefly outlines the context of violence in which disappearances reported in Colombia must be considered. For, in both intellectual and practical terms, it is not feasible completely to divorce the issue of disappearances from overall violations of human rights or from the socio-political processes that have engendered them. Particularly in the case of Colombia, the complexities of the situation are such that the Working Group would not be informing the Commission on Human Rights properly unless it attempted a brief description of them, limited to those aspects which it considers necessary for a general understanding of the context only. Clearly, there is a wider area of facts and circumstances that have a bearing on the situation, yet describing them would carry the Group well beyond the bounds of its mandate.

7. Attempting to draw a composite picture of all the various factors that contribute to the spiral of violence in Colombia is particularly difficult in view of the situation prevailing in the country. First of all, any generalization about those who play a role perforce ignores significant variations in each category. Secondly, there are stark regional differences. Thirdly, alliances among the various parties are constantly shifting and evolving. In the case of Colombia, therefore, simplification would be a mistaken approach. 1/

8. For most of its recent history, Colombia has been steeped in violence. Examples abound of ruthless action by guerrillas, death squads, drug traffickers, common criminals as well as public forces, producing large numbers of victims. Indeed, the facts are astounding. For a number of years

now, homicide has been the main cause of death among adult males. ^{2/} More than 11,000 assassinations occurred during 1987. Apparently, the rate of violent deaths in Medellín, an especially turbulent city, is one every three hours. For the country as a whole, between January and October 1988, the number of violent deaths with a political connotation amounted to 3,413. In addition, some 150 killings concerned "clean-up" operations against prostitutes, beggars and vagrant children. So-called "death lists" circulate freely. In a country where, legally, over 1 million firearms are in private hands, hired killers (sicarios) are said to be easily available.

9. For at least 40 years, acute confrontation and bloodshed has been rife in Colombia. In 1948, a popular political leader, Jorge Eliecer Gaitán, was assassinated, marking the beginning of a protracted period of violence. Known as "La Violencia", it brought the country's main political parties - liberals and conservatives - into vehement conflict. It is estimated that at least 200,000 persons died as a result. Eventually, in 1958, a political compromise was found for an alternation of power between the two parties. However, this meant that other segments of political life were excluded, which subsequently led to confrontation of a different nature.

10. Important guerrilla movements emerged in Colombia, mainly in the 1960s, at the same time as in other Latin American countries. Apart from ideological motivations, many people felt that they had no place in the political culture that had become a characteristic feature of Colombian society and they opted for a life among the "subversives". Over time, the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN) came to incorporate the majority of the country's guerrillas. Allegations of fraud during the 1970 presidential elections lead to the establishment of yet another group, called the April 19 Movement (M-19). All in all, the eight guerrilla movements active in Colombia at present are estimated to have around 8,000 men under arms.

11. Undoubtedly, guerrillas have been a major source of violence in Colombia, indulging in various kinds of crimes - from outright killings to kidnapping for ransom and economic sabotage - which have affected all social strata in the country. Although many civilians have fallen victim to subversive action, members of the armed forces and the police have been its principal targets. Figures published by an important non-governmental organization in the country show 262 casualties and 249 wounded among the armed forces and the police during the first eight months of 1988.

12. In the middle of the 1970s, drugs began to play an important role in Colombia. Initially through the cultivation of marijuana, later as a result of the cocaine trade, which sought to satisfy growing demand abroad, the drug business quickly took on gigantic proportions and became a source of immense fortune and power. Experts have estimated that the influx of foreign currency resulting from the drug trade amounts to approximately 1 billion dollars per annum. So-called drug cartels resorted to new forms of organized crime, exacting a heavy social toll in terms of large-scale violence. A major gang war between these cartels, mainly fought in Medellín, has added dramatically

to the number of victims. In recent years, drug barons have engaged in wholesale purchasing of land by way of investment, often in guerrilla-controlled areas. At the same time, they have adopted increasingly mafia-like methods, which lead to even more violence. The callous murders of a Minister of Justice, Rodrigo Lara Bonilla, in 1984, and of the Attorney-General, Carlos Mauro Hoyos, one year ago, stand out as examples of the lengths to which drug traffickers will go to eliminate perceived threats. From individual murders they soon moved to collective killings.

13. When kidnapping and extortion by guerrilla movements began to include wealthy drug traffickers, a different source of violence rapidly gained importance. Following the kidnapping of his daughter by members of M-19, in 1981, one of the major drug barons responded by setting up the first paramilitary organization of significance, called "Muerte a Secuestradores" (MAS) (Death to Kidnappers). Before that, landowners had already hired body guards and formed self-defence groups to counter the insecurity caused by guerrilla operations or organized crime. Increasingly, such groups went beyond defensive action and engaged, for example, in killing peasant and labour leaders. Some of these groups later became well-equipped and closely structured entities, sometimes the size of small armies operating nation-wide, and had clear political objectives in pursuance of which they threatened or eliminated those whom they considered opponents. At present, well over 100 paramilitary or "private justice" groups have been identified, ranging from organizations such as MAS to ad hoc groups of hired killers. Over the years, the number of their victims through murder and disappearance has become incalculable. A particularly pernicious feature are veritable schools of "sicarios", which seem to have been set up in some parts of the country, such as Magdalena Medio (Departments of Antioquia and Boyacá).

14. Typically, violence from the extreme right is largely aimed at those who are seen as adversaries of the security forces and the large rural economic interests (some of which are said to be increasingly connected to drug trafficking). At times, close ties have been demonstrated between paramilitary groups and elements of the public forces, particularly in certain areas of the country. In one of several reports by the Administrative Security Department (DAS), recently discussed in parliament, a Regional Attorney, the Commander and Sub-Commander of a military base, a chief of police and a mayor were convincingly implicated in the activities of paramilitary groups and hired assassins, which included the running of a school of "sicarios". (Although the case is apparently being investigated, only the mayor has been relieved of his duties and no arrests have been made to date.) Paramilitary action is reportedly more frequent in areas under strict military control, and no confrontations have been reported between paramilitary groups and military units. On the other hand, the Government intimates that 17 such groups have been dismantled in recent months (see also paras. 49-50).

15. Similarly, DAS investigations of other incidents have unearthed links between paramilitary units and elements of the armed forces. One example is to be found in a report presented to the President in the spring of 1988 concerning a number of massacres which occurred on the plantations of "La

Honduras" and "La Negra" in Urabá and of "Mejor Esquina" in Córdoba, during 1988. The report also implicated drug traffickers in these events. Generally, collective killings have become a major problem recently. More than 32 took place from January to mid-November 1988, leaving 337 dead, most of them peasants and plantation workers.

16. Not uncommonly, the Government's response to social instability and guerrilla insurgency has been to make use of powers granted to it under the state of siege provided for by the Constitution. The state of siege has been in force virtually without interruption during the last 40 years. Mostly through decrees, successive governments have established a body of law that has reserved an increasing role for the armed forces in the maintenance of public order. Placing the police under the Minister of Defence - traditionally a senior general of the armed forces - was one of the first measures taken in that direction, and that decision has never been reversed. In the process, protection against abuse by government forces became gradually weaker, as will be seen in the following chapters. Both counter-insurgency and action to combat drug trafficking, particularly under President Turbay Ayala (1978-1982), who declared a war on drugs, enhanced the military dimension in the conduct of state affairs. Powers granted to the armed forces under the so-called "Security Statute" and the application of military justice to civilians by "Verbal Councils of War" accentuated a trend which soon led to numerous denunciations of gross violations of human rights, including large-scale disappearances, torture and summary executions.

17. President Belisario Betancur (1982-1986) applied a generous political amnesty and introduced an ambitious peace plan, which included cease-fire agreements with the main guerrilla groups. In 1985, the process came to an abrupt end with regard to one guerrilla group as a result of an outburst of violence that has remained unparalleled to date. In November 1985, members of M-19 took over the Palace of Justice in the capital and held many members of the Supreme Court and the Council of State hostage. Eventually, the building was stormed and taken by the armed forces. The episode left close to 100 people dead, 12 of the 25 Supreme Court justices among them. Some apparent or possible survivors are now registered as disappeared.

18. Approximately three years ago, the spiral of violence prevalent in Colombia accelerated even further. The Unión Patriótica (UP) was set up, a political party which included former members of FARC and other elements from the left. At about the same time, a number of trade unions were consolidated in the Single Central Organization of Workers (CUT). In both quarters many fell victim to violence from the extreme right. UP claims that nearly 1,000 of its members have been assassinated. Among them was Jaime Pardo Leal, ex-presidential candidate and President of UP, who was killed in October 1987. The number of trade-unionists killed is put at around 200 over the last two years. While those on the political left have borne the brunt of the violence, the Liberal and Conservative Parties have not remained immune. The murder of Héctor Abad Gómez, a respected politician and human rights activist, is a case in point. More generally, human rights activists came under fire increasingly and some local human rights groups, such as the one in Medellín, were practically destroyed.

19. The judiciary in Colombia has been severely afflicted by the epidemic of violence. Many judges have been threatened, more than 50 have been killed and some have fled the country. Members of the judiciary are subject to what has been coined "the theory of the two metals: silver or lead", bribes or bullets. The resulting practice has critically impaired the system's ability to cope with the crime wave and with alleged human rights violations and the protection of Colombian citizens has diminished accordingly. Fearing for their lives, witnesses often do not appear in court proceedings and many are eliminated before they can appear. A network of specialized public order judges has been instituted to deal exclusively with terrorism and drug trafficking; consequently, they run an even greater risk.

20. Colombia is described by some as a country of lawyers and procedures ("abogados y trámites"). There is an abundance of legal rules. Typically, many killings, disappearances and other manifestations of violence are said to be "under investigation". Yet, the system shows every sign of fighting an unequal battle. In September 1988, it was announced that there were 1.6 million criminal cases pending. The Office of the Attorney-General as well as the judiciary, by their own accounts, suffer from lack of resources. At the same time, adjudication in military courts of alleged human rights violators is described as lax by most observers.

21. The resulting impunity breeds more violence. Victims or their relatives resort to self-help as confidence in the administration of justice continues to wane. Conscious that they are not likely to be penalized, perpetrators of crimes and human rights violations become increasingly bold. Especially telling is a recent nation-wide poll which showed that 68 per cent of those interviewed felt that judges could be bought, while 81 per cent were of the opinion that justice was not being meted out equitably. ^{3/} Mr. Alvaro Tirado Mejía, presidential human rights adviser, commented: "The root of the crisis of consensus is social indifference engendered by loss of confidence in the effectiveness of institutional machinery." He added that the State "is losing its ability to control social conflict, dispense justice and ensure equality of opportunity. The gigantic stain of impunity has permeated all public activities vis-à-vis the Government or among individuals. In terms of human rights, this phenomenon has regrettable detrimental effects." ^{4/}

III. INSTITUTIONAL AND LEGAL FRAMEWORK

22. Colombia's Constitution, dating back to 1886, is one of the oldest on the continent and is still operative, despite a number of changes. In May 1988, President Virgilio Barco Vargas submitted a proposal to reform the Constitution, involving changes in the structure of the State and establishing human rights as constitutional rules. It also covered the state of siege and matters pertaining to the machinery for popular participation.

23. The main international norms relating to human rights have been ratified by Colombia and now form part of its internal law. Act No. 74 of 1968 ratified the International Covenant on Civil and Political Rights (and the

Optional Protocol thereto) and the International Covenant on Economic, Social and Cultural Rights. In 1972, the American Convention on Human Rights was ratified by Act No. 16, and in 1986 the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was ratified by Act No. 70. Colombia is, under the Constitution, "a unitary republic" (art. 1). It is divided for administrative purposes into 22 Departments, 3 Intendencias, 5 Comisariás and the Special District of Bogotá. Each Department has a Governor, who is appointed by the President and is answerable to the Minister of the Interior. The Department of Caquetá has a military Governor and in the Urabá area of the Department of Antioquia law and order falls under the responsibility of an army general. For the first time in Colombia's political history, elections were held in 1988 for municipal mayors.

Structure of the State

24. In accordance with the rules of the Constitution, the State is divided into three branches: the legislative, the executive and the judiciary. Congress is made up of the Senate and the Chamber of Representatives. The President is elected by direct suffrage for a four-year period and may not be re-elected for the period immediately thereafter. The judiciary consists of the Supreme Court, the higher district courts and other courts established by law or by decrees of a state of siege, by the Council of State or by the Administrative Tribunals. There are military courts which, under the Constitution, only try "... offences which are committed by servicemen on active duty or in connection therewith" (art. 170). Over long periods, however, civilians charged with certain offences have been tried by the military courts under the decrees of states of siege, and this has always been a burning issue among lawyers and politicians.

25. Decree No. 1631 of August 1987 established "public order judges" who are competent to investigate and rule on offences covered by the Penal Code when they appear to be aimed at "... persecuting or intimidating any inhabitant of Colombian territory on the grounds of membership in any political party or other beliefs or opinions ...". Posts for 90 such judges were created under the Decree, but at the time of the visit to Colombia only 52 had been filled. The Public Order Tribunal, a court with nation-wide jurisdiction in second instance, consists of 12 members who took office on 1 June 1988. At the time of the Working Group's visit, the members of the Tribunal had no adequate means of transport or personal protection. The eight security officers assigned to the Tribunal were merely required to protect the building (see para. 108).

Ministerio Público

26. The Colombian system has a Ministerio Público headed by the Attorney-General of the Nation, assisted by Attorneys-Delegate and Regional Attorneys. The Ministerio Público supervises the official conduct of public officials and prosecutes "offences and contraventions that upset the social order" (Constitution, art. 143). The Attorney-General of the Nation is

elected by the Chamber of Representatives for a period of four years from a list of three candidates submitted by the President. The present Attorney-General has submitted a bill whereby the Attorney-General would be elected directly by the people.

27. Since it is one of the duties of the Office of the Attorney-General to supervise the conduct of public officials, it is the body to which people often turn when their relatives have disappeared or, generally speaking, when they are victims of violations of human rights by State officials. There appears to be a direct and important link between the personal qualities of the Attorney-General of the Nation and the relative efficiency of the Office. Under the impetus provided by Horacio Serpa Uribe, the present Attorney-General of the Nation, and by Carlos Mauro Hoyos, his predecessor (assassinated in 1988), some steps have been taken towards improved processing of complaints about disappearances.

28. The members of the mission noted the efforts made by the Attorney-General to ensure the proper functioning of the Office. Part of this endeavour is reflected in the role of the so-called Attorneys-Delegate. The Office is subdivided into the following branches, each headed by an Attorney-Delegate: civil proceedings, criminal proceedings, administrative supervision, court supervision, the Ministerio Público, administrative employment, the criminal police, agrarian affairs, the national police, the armed forces and, since 1986, the protection of human rights. Against this background, it was especially important that Carlos Mauro Hoyos appointed - for the first time in Colombian history - a civilian as the Special Prosecutor for the Armed Forces, in May 1987. Because of the need to be near his constituency, he has his offices at the headquarters of the armed forces. However, in practice, he is forced to rely heavily on the results of inquiries conducted by serving officers.

29. The structure is rounded off by the Regional Offices, the Section Offices, the Office of the Deputy Attorney-General and the Office of the Assistant Attorney-General. The present Attorney-General has granted broad powers to the Regional Prosecutors to cover military garrisons, something which was possible previously only with the special authorization of the Attorney-General himself or the Attorney-Delegate for the Armed Forces.

Functioning of the Office of the Attorney-General

30. Despite the fact that the Office does not act as a court, its powers are such that it can investigate acts involving State officials and it can order administrative penalties. It can, in addition, lay a criminal complaint when an offence has been committed. In their work, the members of the Office have in some places encountered serious restrictions on entering military areas, although the situation in this respect seems to have improved in recent months.

31. Nevertheless, the ability of the Office (both at the central level and among the regional offices) to conduct inquiries has been seriously undermined, since, under the terms of the new Code of Criminal Procedure

issued in 1987, it no longer has a criminal or detective police at its immediate disposal. Unlike the Administrative Security Department (DAS) and the national police - which have maintained judicial police functions on an interim basis under the Code - the Office's criminal police has in fact been dismantled. The present Attorney-General of the Nation has submitted a bill whereby the Government, using its legislative powers under Act No. 30 of 1987, would establish a so-called "Special Investigations Department of the Office of the Attorney-General" to provide the assistance needed to investigate and prosecute human rights offences.

32. The Attorney-General has also requested the central Government to increase his staff, particularly the staff in the Office for Human Rights, which, according to the Attorney-General, has only four lawyers. In a letter dated 8 October 1988 to the President of the Republic, the Attorney-General emphasized that, despite the serious situation "... nothing has been done to strengthen the work of prosecution; indeed, it has grown weaker."

Personeros Municipales

33. Just as the attorneys and public prosecutors form part of the Public Ministry the so-called personeros municipales ("municipal officers") are also part of the structure. However, they are appointed by the municipal councils and operate at municipal level; they are thus theoretically in a better position to be acquainted with the problems of the population and to supervise the conduct of State officials. The Presidential Adviser for Human Rights has been promoting a human rights training programme for these officers.

34. This major endeavour none the less has to cope with the institutional weakness of the system as a whole, which is especially apparent in regard to human rights and to violence. This weakness can affect the efficiency of the personeros, who, among other things, cannot rely on the necessary security or enforcement measures.

Presidential Adviser for the Defence, Protection and Promotion of Human Rights

35. The introduction of the post of Presidential Adviser for the Defence, Protection and Promotion of Human Rights in November 1987, was an important step. He advises the President on human rights issues, formulates policies and suggestions, represents the Government in international human rights forums and initiates co-ordination of human rights activities at the national level. The Adviser has no power to issue rulings, but has a monitoring role in human rights matters. He also promotes human rights information and education with a view to fostering greater awareness among civil servants and the population at large (see para. 118).

Inter-Agency Working Group

36. Important, too, is the recent establishment of the Inter-Agency Working Group, which covers various State agencies and establishes co-ordination

machinery to deal with the many complaints about violations of human rights received by the Under-Secretariat for International Organizations and Conferences in the Ministry of Foreign Affairs. The Inter-Agency Group has found that "... a response is required for nearly 1,000 pending cases, either in the United Nations Commission on Human Rights, the Human Rights Committee or the OAS Inter-American Commission on Human Rights, etc.". This Group handed over to the members of the mission a report on its activities which, inter alia, contains information about the current development of the investigations concerning the cases transmitted by the Working Group.

Council of State

37. The Council of State is the supreme administrative tribunal. Among other matters, it rules on claims for extra-contractual civil liability by the State. In other words, it rules on claims against the State for harm caused to individuals by State officials.

38. While the Group gathered considerable evidence indicating that few State officials (members of the police or the armed forces) have been convicted for any violation of the basic rights of the civilian, it was found that the Council of State has an interesting case law of rulings under which the State is compelled to compensate private individuals for harm caused by State officials, particularly officials of the national police or the Ministry of Defence. A high percentage of the trials end with convictions in which the action is brought against the nation through the Ministry of Defence. One of the principles enunciated by the Council of State is that the authorities are held responsible for cases of arrest, although in no instance have the military or the ordinary courts handed down criminal convictions for such acts.

Security forces

39. The security forces consist of the armed forces (Army, Navy and Air Force) and the national police. They fall within the administrative hierarchy of the Ministry of Defence. The Minister of Defence may in theory be a civilian, but in practice is almost always an officer who, in view of his seniority, has hitherto acted as Chief of Staff of the Armed Forces. Organizationally, the security forces as a whole, with the exception of DAS, are structured around the military apparatus.

Administrative Security Department (DAS)

40. As already stated, DAS falls outside the structure of the Ministry of Defence; it comes under the Office of the President of the Republic and has ministerial status as an administrative department. Its functions include intelligence, aliens, security in rural areas, the criminal police and certain aspects of public order, including GRAES (Anti-Extortion and Abduction Group).

41. Under the present Government, on the instructions of the President, DAS has carried out important work in investigating a number of serious human rights violations, as mentioned earlier (see paras. 14-15).

Military criminal courts

42. Under the Constitution a special body of law applies to military servicemen for offences committed in connection with their duties. At present civilians cannot be brought before the military courts. In March 1987 the Supreme Court of Justice declared that it was unconstitutional for civilians to be tried by military courts: an important change. This ruling by the Supreme Court was openly criticized by General Rafael Samudio Molina, the Minister of Defence at that time, in an open letter to the President (printed in El Espectador, on 13 June 1988). He said, among other things, that "... the trial of private individuals by the military criminal courts and the criminal investigation duties assigned to the armed forces and to the national police are essential, since the kind of collective crime that now afflicts the country is such that it can only be met by an institutional system of justice capable of counteracting threats and intimidation from criminal conspiracy". To the members of the mission, General Rafael Samudio Molina, then Minister of Defence, declared that it was neither in the interest nor to the advantage of the armed forces to try civilians and that such had always been his position.

43. As to trials of military servicemen under military law, a matter that is regulated by the Code of Military Justice, it lies with the Supreme Court to settle conflicts of jurisdiction between the ordinary and the military courts. The Supreme Court has affirmed that, outside official duty, crimes committed by military servicemen are to be judged by the ordinary courts. However, the view prevails in the Supreme Court that offences committed "in connection with military duties" are to be brought before the military courts.

44. In the course of the visit to Colombia, doubts were expressed on the functioning of the military courts when adjudicating with regard to members of the armed forces or national police charged with violating the rights of individuals. It is not within the Working Group's mandate to pinpoint criminal responsibility with regard to individual cases of disappearance. However, allegations concerning a general pattern of impunity do warrant the attention of the Group, as such a pattern can well lead to more violations of human rights, including disappearances.

45. Attention must be drawn to a specific feature of Colombian law: the victims of criminal acts (or, for the purposes of the Working Group, relatives of those who have disappeared) cannot become associated with military criminal trials. There is no explanation in law for this; under the criminal procedure in the ordinary courts, the victims do have such an opportunity, something which, as far as legal doctrine is concerned, is based on the desirability of obtaining sufficient information to shed light on the truth and enable the courts to determine criminal guilt.

Criminal Police

46. In the past, the criminal police was responsible for assisting in criminal investigation procedures co-ordinated by the Office of the Attorney-General, with facilities within the Office itself, DAS and the national police. Under the new Code of Criminal Procedure issued in January 1987 (Decree No. 50), the Technical Corps of the Criminal Police will discharge its functions under the guidance and with the co-ordination of the National Director for Criminal Investigation, an official of the Ministry of Justice. The Technical Corps is in the process of being formed and a criminal police force is being maintained both in DAS and in the national police. The Office of the Attorney-General has been deprived of the services of the members of the criminal police who were under its orders in the past and, consequently, the Office's powers of investigation have been seriously affected. As already indicated, the Attorney-General of the Nation has submitted a bill to the Government with a view to changing this situation.

47. Nevertheless, the criminal police retain an important role - as also emphasized by the Office of the Attorney-General - in investigating cases of disappearances. In particular, examining magistrates avail themselves of the criminal police in investigating criminal cases. In this connection, attention was drawn to article 347 of the Code of Criminal Procedure, in accordance with which:

"If the alleged offender has not been identified within a period of 60 days, the examining magistrate shall, through a procedural order communicated to the Ministerio Público and against which the only remedy shall be an action to vacate, order the suspension of investigations and refer them to the Special Branch of the Criminal Police.

The Special Branch of the Criminal Police shall reopen the investigation with a view to determining the identity of the alleged offender."

48. With regard to this provision, the Inter-Agency Working Group notes in the report referred to in paragraph 36:

"Under this measure, the majority of proceedings in progress are being referred to the Special Branch of the Criminal Police, which means that they are temporarily discontinued as the Special Branch is in the process of being organized and its staff is as yet too small to be able to deal with the large number of cases referred to it daily by the criminal investigation courts.

This transitional phase in procedure prior to the introduction of the new Code has not been endowed with the infrastructure which should be provided by the auxiliary law enforcement agencies. This is resulting in more and more cases being referred to the Special Branch of the criminal police, cases which, according to estimates by the courts themselves, it will be impossible to process quickly enough to prevent the evidence from becoming invalid, with the consequent breakdown of the investigation."

Self-defence groups

49. Self-defence groups have often emerged in order to deal with political and social violence. Some of them have become what is commonly known as "paramilitary groups" and many new groups have continued to appear. From a strictly legal viewpoint, the authorities can assign to individuals tasks and duties necessary for the implementation of national defence plans (Organic Statute concerning National Defence, Decree No. 3398 of 1965, art. 10), and more specifically, authorize individuals to possess weapons otherwise reserved for exclusive use by the armed forces (Act No. 48 of 1968). The organization of the civilian population in civilian self-defence groups is also regulated (Order No. 005 of the High Command of the Armed Forces, 1969) as part of the organization to be mobilized in anti-guerrilla activities "under the direct orders of the Military High Command". This instruction supplements the Counter-insurgency Regulations (Regulation EJC 3-10).

50. The Colombian authorities themselves recognize the existence of dozens of so-called "paramilitary groups" which, according to a large number of complaints, appear to be responsible for violations of the rights of the individual, including disappearances. The Minister of Defence and the Commander-in-Chief of the Armed Forces told the members of the mission that the aforementioned rules concerning self-defence groups are not being applied and that any "paramilitary groups" are therefore acting outside the law and not in the context of those provisions.

Anti-Terrorism Statute

51. As already indicated, the state of siege has become an institution in Colombia's present political and legal situation. In this context, the President is able to issue decree-laws under the state of siege. These decrees are subject to a subsequent ruling by the Supreme Court on their constitutionality. Under the state of siege decreed in May 1984 after the assassination of Rodrigo Lara Bonilla, the Minister of Justice, the present Government issued what is known as the "Anti-Terrorism Statute" by Decrees Nos. 180, 181 and 182.

52. Decree No. 180 establishes new offences and penalties for infringements of public safety and order, the freedom of the individual, the country's economic patrimony and attacks against public officials. It also makes provision for considerable powers for the security forces and introduces changes in criminal procedures. Two provisions in the Decree were declared to be unconstitutional by the Supreme Court of Justice, both of them relating to the powers of the armed forces, the national police and DAS. The first (art. 40 (a)) granted them the power to arrest, without a warrant, persons reported to participate in terrorist activities. The second (art. 40 (b)) granted them the power to carry out searches and raids in places "... where terrorists or persons who have committed acts that constitute an offence involving the use or possession of explosives, firearms, or any similar device are thought to meet". 5/

Powers of arrest and detention

53. According to the interpretation of certain sections of the armed forces, the declaration concerning the unconstitutionality of the provisions of Decree No. 180 does not negate the full validity of the content of article 24 of the Constitution, which authorizes anyone to arrest another person caught in flagrante delicto. They admit, however, that otherwise Decree No. 180 does not authorize the armed forces or the national police to carry out an arrest without a warrant. Although very little used to date, the provision contained in article 28 of the Constitution is potentially detrimental to the freedom of the individual. It gives the executive the power, in peace time and with the prior agreement of the Ministers, to order the arrest and detention of persons concerning whom there is a conclusive presumption that they have acted against law and order. 6/

54. More controversial is the power to detain a person in a garrison or military facility after he has been arrested (either caught in flagrante delicto or arrested with a warrant). It takes on greater significance in view of the repeated complaints to the effect that persons who have been victims of enforced disappearance have been taken to military camps. According to a broad interpretation of Decree No. 180 made by certain officers in the armed forces, a person or persons may be held for a period of up to five days in a military camp. Narrow interpretations maintain that the period of five days referred to in the Decree restricts this power to the criminal police and the law and order units that assist them.

55. In other words, the armed forces are not allowed, either independently or even with an arrest warrant, to hold an individual in a military camp or to proceed to question him. Such is the opinion of the Attorney-General of the Nation who stated that, in a case of arrest, the person apprehended should be brought immediately and directly before the official who ordered the arrest; if the person was caught in flagrante delicto, he should be imprisoned in the local gaol (or in the official establishment intended for that purpose) and he must be brought before the judge within the first working hour of the following day (Code of Criminal Procedure, art. 394). The Attorney-General stated specifically that military units had not been indicated as places or sites for the imprisonment of individuals.

56. In any case, according to some interpretations, Decree No. 180 would allow the period of administrative detention for an individual to be extended well beyond the time allowed thus far. One interpretation of articles 41 and 42 of the Decree is that those articles provide for "... the possibility that the prisoner may remain in the hands of the criminal police for a period of up to 20 days." 7/ Only after that period of time has elapsed could habeas corpus proceedings be brought.

Habeas corpus

57. Decree No. 182 is extremely important as far as the main features and limits of habeas corpus are concerned. Before the Decree was issued, habeas corpus was regulated by the Code of Criminal Procedure, under which an action

could be brought "... before any criminal judge of the locality in which the arrested person is located or before the criminal judge of the nearest municipality when the arrest has been ordered by the sole criminal judge working in the municipality" (art. 456). The application must provide a number of particulars: the reasons why it is thought that the Constitution or the law is being violated, the date of imprisonment and the place where the arrested person is being held. Pursuant to the provisions of the Code, the proceedings and the decision may in no case take longer than 48 hours.

58. In the opinion of many lawyers and human rights activists who have been consulted, the formalism of this rule and the lack of diligence on the part of judges acting in such cases are factors that inhibit greater use of habeas corpus in cases of enforced disappearance. The infrequency of applications to the courts by citizens for a writ of habeas corpus is a fact that cannot be denied.

59. Decree No. 182 has introduced substantive amendments to the law on habeas corpus which, in the view of a number of lawyers, have placed serious legal obstacles in its way. For instance, it provides that when an application for a writ of habeas corpus is made on behalf of any person involved in any of the offences specified in Decree No. 180 or in Act No. 30 of 1986 (on drug trafficking), only the highest court judge of the locality in which the person is arrested shall be competent. Since there are few judges of such standing and access to them is more difficult, this constitutes an obvious inhibiting factor which is more serious in the rural areas. Another important inhibiting factor is the judicial vacations, which all high court judges take at the same time, the result being that during this period the population is unprotected.

60. Also, the judge may take a decision only after notifying the appropriate official of the Ministerio Público within 12 hours and the official himself has 12 hours in which to issue his opinion. There was no such rule in the past. According to the interpretation of jurists such as John Jaime Posada "... the Decree does not stipulate a maximum time-limit within which the application for a writ of habeas corpus must be resolved"; others argue that the maximum period of 48 hours prescribed in the Code of Criminal Procedure continues to apply. In any case, it may be said that at the very least there is a dangerous ambiguity.

61. When the deprivation of liberty is not occasioned by terrorism or drug trafficking (the offences are defined in Decree No. 180), an alternative procedure is followed. This is particularly important since, in the event of an enforced disappearance, the relatives have no reason to suppose - because, by definition, there is no formal indictment - that the person in question has been deprived of his freedom for an offence covered by Decree No. 180 or Act No. 30. In such cases, application may be made to any judge (following the criterion in the Code of Criminal Procedure), but before proceeding he must request, within the following six hours, "... the State security organs to inform him whether any order of committal or sentence has been issued in respect of the detained person" for the offences specified in Decree No. 180

or in Act No. 30. If the answer is in the affirmative, the judge will refer the application to the higher court judge. This change is crucial, since it creates an obvious vacuum. While the judge has a period of time in which to forward his inquiry to the security agencies (six hours), the latter are not given a time-limit. This makes them especially important, since it can be argued that the judge cannot take a decision until he has received an answer from them.

62. Added to these limitations or gaps in the rules, the lack of experience in invoking habeas corpus with a view to moving against the very root of a detention which is presumed to be arbitrary would seem to make this crucial guarantee for the freedom of the individual very weak in Colombia. There is also a factor which the Working Group ascertained in interviews with relatives and human rights activists, namely, the fear of reprisals. Indeed, if a person invokes habeas corpus, he or she is obliged to indicate possible places of detention which are obviously the responsibility of one authority or another. There is a fear of both de facto reprisals as well as legal reprisals (for instance a criminal charge of libel).

63. In any event, the weakness of the institution seriously affects the working of the institutional and legal apparatus when an enforced disappearance occurs. In this area, changes in the law and encouragement of practices directed towards greater use of this important instrument of protection are advisable.

Legislative aspects of disappearances

64. Disappearances are not included in the Colombian Penal Code as a separate crime in themselves, and so they are usually incorporated in the concept of "abduction". Relatives and human rights organizations made clear to members of the Group their dissatisfaction with this legal situation since, in their view, no moral or legal parallel could be established between the offence of abduction and disappearances. The Inter-Agency Working Group states in its report on this point:

"The lack of a legal classification of disappearance sometimes renders it impossible to continue investigations on enforced disappearances unless the courts in question treat such acts as abduction. At present, the offence of abduction is being used. This enables the offence to be classified and proceedings to continue. However, this interpretation does not enjoy a consensus among the judiciary, so that there have been cases in which the judge has ordered the closure of the investigation, on the grounds that there is no such category of crime as enforced disappearance. In those cases in which an investigation has been initiated because of an abduction, some cases have been filed on the grounds of limitation, even where the individual concerned is still missing."

65. The members of the Group received from the Attorney-General a copy of a bill which the Minister of the Interior was to submit to Congress, classifying disappearance as a crime.

IV. SUBSTANCE OF REPORTS RECEIVED MAINLY FROM NON-GOVERNMENTAL
SOURCES AND ACTION TAKEN BY RELATIVES OF MISSING PERSONS
VIS-A-VIS THE AUTHORITIES

Characteristics of the reports

66. During the visit, the members of the mission received from relatives, associations of relatives of missing persons, human rights organizations and lawyers oral and written testimony and reports on cases of which the Group had had no previous knowledge and on already known cases in which additional information was provided. In consequence, the number of outstanding cases transmitted by the Group to the Government of Colombia at the time of completion of this report is 561 out of a total of 672 cases transmitted.

67. The human rights organizations which the members of the mission had occasion to meet often mentioned higher figures. Thus, some organizations gave a figure of 934 cases identified up to December 1986. The Attorney-Delegate for the Defence of Human Rights told the members of the Group that his Office had received 962 reports during the past five years; in 20 of those cases the persons concerned had been found dead and in 66 they had been found alive. Of those cases, 876 appeared to be politically motivated. Several interlocutors stated that the situation appeared to have deteriorated during the current year; 130 alleged cases were reported between 1 January and 31 August 1988, and the Attorney-Delegate stated that, between 2 September 1988 and the date of the visit, his Office had received 38 reports. The Presidential Adviser for the Defence, Protection and Promotion of Human Rights told the members of the mission that the number of disappearances might indeed have risen as a result of the general increase in violence.

68. The differences between the figures in the Group's possession and those supplied by the interlocutors mentioned are due in part to the fact that the organizations or relatives quite often do not possess all the data required by the Group in order to be able to transmit a case to the Government. The human rights organizations in particular described to the members of the mission the difficulties they sometimes encountered in compiling data and following up all the cases that came to their attention.

69. In any event, it would appear clear that the phenomenon of disappearances in Colombia has existed mainly since 1981, as shown by the following statistical analysis prepared by the Group on the basis of the cases transmitted by it: cases in 1972, 1; in 1973, 1; in 1974, 1; in 1975, 3; in 1976, 3; in 1977, 9; in 1978, 6; in 1979, 23; in 1980, 4; in 1981, 80; in 1982, 74; in 1983, 73; in 1984, 89; in 1985, 76; in 1986, 94; in 1987, 65; and in 1988, 70 (see graph reproduced at the end of this chap.).

70. According to the information received by the Group and, in particular the information emerging from an analysis of individual cases, it would appear that

disappearances do not occur exclusively in a single part of the national territory, although some Departments are particularly affected. Thus, it was found that 94 reported cases had occurred in Antioquia, 89 in Santander, 76 in Cundinamarca, 75 in Valle, 66 in Caquetá, 52 in Boyacá, 29 in Cauca, 24 in Huila, 22 in Meta, 22 in Tolima and 18 in Córdoba. The figures for the other Departments are lower. The Departments that appear to be most seriously affected correspond to those mentioned in general terms by non-governmental organizations (Antioquia, Santander, Cundinamarca and Valle).

71. The disappearances appear to occur in both urban and rural areas, although more is generally known about disappearances in urban areas. Several organizations referred to the occurrence of the phenomenon in rural areas where there is conflict between armed forces and guerrillas, and observed that it was difficult for human rights organizations to obtain information about those cases, which were rarely reported to the courts or the Office of the Attorney-General.

72. As for the identity and activities of missing persons, the Group was able to establish that in 619 cases the missing persons were men and in 53 they were women. With regard to occupations, the Group learned that the missing persons were peasant farmers or agricultural workers in 197 cases, students in 52, manual workers in 52, businessmen in 24, miners in 16 and teachers in 14. The Group was unable to establish precise data relating to membership of political, trade-union or other organizations. Nevertheless, the non-governmental organizations stated that most of the missing persons were activists in leftist parties or people's or student organizations, but, when reporting cases, relatives were very often afraid to reveal that information.

73. Concerning the forces regarded as responsible for disappearances, the Group has noted the following characteristics in the cases reported: the army was mentioned in 385 cases, of which 29 were attributed to the Intelligence Service (B-2); the police in 104, of which 51 were attributed to the Intelligence Service (F-2); security agencies in general in 35; DAS in 16; paramilitary groups in 125, of which 44 were attributed to MAS; and persons in plain clothes acting with impunity in 26. In some cases, two or more forces appeared to be involved.

74. The members of the mission repeatedly asked the representatives of human rights organizations, relatives and witnesses about those responsible for arrests and, in particular, about any grounds they had for attributing responsibility to members of the State security forces or related groups. The answer was that they based their views on the reports of witnesses, who were very often the relatives themselves or neighbours, or of persons who had been arrested with the missing person and had subsequently been released or managed to escape. The following paragraphs contain typical reports received by the Group:

(a) Two peasant farmers from the Corregimiento de San Martín, Department of Cesar (surnames and first names given) were arrested on 23 June 1988, on a

charge of collaborating with the guerrilla, by members of the army under the command of a captain (surname given) while they were in a neighbour's home. Their mother informed the members of the Group that, the day before the arrest, army units had arrived at their farm, fired shots through the roof of the house, damaged the interior and stolen a number of objects, but the family had been able to get away previously. The above-mentioned captain had later been seen by local people with some of the stolen goods in his possession. After the arrest, the two brothers were seen by an acquaintance of the family in army custody in the village of El Cobre (San Martín), where army personnel were garrisoned for several days. Inquiries at offices of the military authorities, the Attorney-General and the courts had proved fruitless;

(b) On 9 July 1987, a group of about 15 police officers, members of F-2 (surnames of some officers provided), searched without a warrant the home of a community leader (surname and first name given) in the Aguablanca district of the city of Cali, ill-treated his children and wife, and forced his wife to accompany them to her husband's workplace, where they intended to arrest him. Not finding him there, they waited for him at the bus-stop near his home, where they arrested him and forced him into a vehicle in which his wife was already being held, together with a witness who had been arrested when he had tried to warn the husband that the police were waiting for him and another person whom the police had forced to point out the family's home to them. His wife and the other two witnesses were released by judicial order five days later and stated that, at the time of the arrest, the police had shot and wounded the community leader and had later transferred him to another vehicle which had driven off to an unknown destination. They gave the registration number of the vehicle, which a lawyer belonging to the Office of the Attorney-General later found parked in the F-2 buildings of the Cali metropolitan police. Despite the numerous inquiries made, the arrest was never acknowledged.

75. The Group has also learned of many cases in which persons have disappeared in unknown circumstances; there are no witnesses or no witnesses come forward, with the result that the relatives do not know the exact place or time of the arrest, who was responsible, etc. In the face of this form of disappearance, which is apparently quite frequent, the relatives and human rights organizations base their views on other indications. They say that disappearances are frequently the culmination of repeated harassment, persecution, house searches, previous arrests, earlier disappearances of friends, colleagues or relatives or accusations of links with guerrilla groups. Most of these cases have not been processed by the Group. Nevertheless, there are exceptions, as in the case described below.

76. Three peasant farmers, a father and his two sons, (surnames and first names given), members of the Patriotic Union, disappeared on 15 October 1986 while travelling between the village of La Chapa, their place of residence, and Cali, where they were intending to sell their produce. Although the exact circumstances surrounding the disappearance are not known as there were no eyewitnesses, the relatives suspect that the army was responsible, because the missing persons and other members of the family had been arrested, tortured

and threatened and their home searched on several previous occasions. The army had accused them, in particular, of being accomplices of the FARC guerrilla organization and of having stolen weapons from a farm. In addition, the family managed to ascertain that, in the area where the van in which they had been travelling was found (the doors of the van had been forced), army operations had taken place during that period. Despite the inquiries made at the local army garrison, the court and the Office of the Attorney-General, nothing further was learnt concerning their whereabouts.

77. Some officials told the members of the mission that the guerrilla movements were frequently responsible for disappearances. The human rights organizations stated that the phenomenon of abduction by guerrilla groups was certainly known but, unlike in cases of disappearance proper, these groups announced the abduction, since their aims were financial (to obtain a ransom) or political (to exert pressure in order to achieve a specific objective). In that connection, the Group received the testimony of a missing person's relatives who had received a telephone call from the kidnappers, several days after the abduction, saying that they were members of M-19 and were demanding an exchange with one of their commanders who had been arrested at about the same time.

78. The members of the mission also heard comments by a number of officials to the effect that, in certain areas, the guerrilla forces enlisted recruits by force; in addition, there were cases in which persons voluntarily collaborated with the guerrilla and which were nevertheless reported as disappearances in order to discredit the armed forces. The non-governmental organizations said that, although they were aware of such reports, they had the impression that forcible enlistment was not a habitual feature of the guerrilla organizations' method of operation. They also stated that they only submitted cases to the Group when they had conclusive circumstantial evidence of direct or indirect involvement of the security forces. That was particularly true of disappearances for which paramilitary groups were responsible. In those cases, the persons reporting the disappearance stated that such groups, although not directly linked with the security forces, frequently operated in areas under the strict control of those forces.

79. It was also alleged that the use of torture and ill-treatment against persons who had disappeared was common, as demonstrated by the testimony of the victims themselves (when they had reappeared), the testimony of witnesses or the marks left on bodies (when they had been found). In most cases the purpose of these practices appears to be to obtain information; witnesses have stated that in the course of torture sessions victims have been urged to collaborate with the army.

Situation of witnesses and relatives of missing persons

80. The members of the mission received a considerable amount of testimony concerning the reluctance of relatives and witnesses of arrests to report cases out of fear of reprisals or because of the intimidation to which they were frequently subjected. The organizations found people's unwillingness to

report cases to be an important obstacle, and even the Attorney-Delegate for Human Rights stated that persons who came to his office to report cases usually appeared to be very scared and when, occasionally, they were called back to supply further information they did not turn up. In that connection, the Group also heard comments to the effect that one of the aims of disappearance was vengeance and intimidation of the population as a whole.

81. In connection with one case, the Personero who had transmitted the report to the criminal investigation judge informed the members of the mission that the mother of the missing person had received numerous telephone calls warning her not to continue the investigation and that several witnesses of the arrest had been threatened and had had to leave the country; he also said that he himself had been followed.

82. Significance was also attached to the case of a 67-year-old lady who had been arrested, in the presence of witnesses, by members of a paramilitary group (MAS) in Puerto Boyacá on 11 June 1987 and had been missing since that date. Her relatives had no hesitation in establishing a link between her disappearance and the proceedings she had instituted for the murder - apparently by a member of a paramilitary group, in 1982 - of her son, who had been a Patriotic Union Councillor. In Medellín Women's Prison, the members of the mission visited a lady whose son had disappeared some years before and who had very actively pressed the investigation of the case, even taking it before the Inter-American Commission on Human Rights. She had been repeatedly subjected to intimidation and, at the time of the mission's visit, had been detained on what she maintained was a trumped-up charge of illegal possession of drugs.

83. The Group also received testimony concerning relatives of missing persons who had had to leave the country because of the threats and harassment to which they had been subjected.

Tracing victims

84. The members of the mission heard repeatedly from the persons interviewed that the situation in Colombia differed from that in other Latin American countries in that most disappearances seemed to culminate in the fairly rapid elimination of the individual concerned. It was not common for people to be held at detention centres for long periods, and the interval between disappearance and murder was very short. Some sources also said that any individual who could not be traced within a few days of his arrest had to be presumed dead; hence the need for immediate action by relatives. In that connection, the members of the mission received many reports of persons who had been abducted, had disappeared for a few hours or days, and had finally been found dead.

85. Some of those interviewed said that a number of missing persons might have been among the many unnamed bodies which had been found and never identified. It was stated that, with the possible exception of Bogotá, the authorities were not very diligent in attempting to identify such bodies,

which therefore ended up in common graves, and that it was necessary to improve forensic procedures in order to ensure that the bodies were duly examined before burial. While no evidence was received regarding persons who had been kept in specific secret detention centres, lawyers indicated three places which could have been used for such purposes, namely specific underground installations of the Communications Battalion in Facatativá, the Cavalry School in Usaquén, and the Intelligence and Counter-Intelligence Battalion at Charry Solano.

Steps taken by the relatives of disappeared persons to obtain action from the authorities and results achieved

86. In a large number of the cases brought to the Group's attention, the relatives, in addition to reporting the disappearance to the police and other security agencies, availed themselves of judicial machinery. The agency most frequently applied to was the Office of the Attorney-General (general office, delegates offices or regional offices). They also often applied to the courts of criminal investigation to lodge criminal complaints of abduction, as disappearance is not a recognized offence in Colombian law (see para. 64). Relatives may also apply to the mayor or personero who will notify the Office of the Attorney-General or lodge an appropriate complaint with the courts. Personeros, at least in theory, are empowered to conduct preliminary investigations.

87. Once a case has been reported to it, in writing or verbally, the Office of the Attorney-General designates an official to conduct the investigations, which consist basically of inspections of military or police establishments, prisons, hospitals, mortuaries, etc. However, according to the Attorneys belonging to the Office and officials themselves, difficulties immediately arise when complaints are very general and relatives do not know the identity of those responsible (despite which, the cases are investigated) or when complaints are lodged long after the event. If the complaint is made by a third party, the Attorney-General summons the victim's family or close acquaintances to obtain further information so as to have a more solid basis on which to proceed with inquiries.

88. Despite the investigations conducted, the general opinion in the Office of the Attorney-General appears to be that, in cases of disappearance, the results are usually negative, that the individual is actually traced in very few instances and that, in the majority of cases, no further light is shed on the matter. The lack of a criminal police unit working for the Office of the Attorney-General appears to be the main reason for this situation. Where the Attorney-General finds evidence of the possible responsibility of members of the army or the police, he institutes disciplinary proceedings. On the basis of the evidence, a decision is taken against which the only possible remedy is an action to vacate. The decision is immediately communicated to the appropriate authorities for execution, the maximum penalty being dismissal. In addition, if in the course of the proceedings evidence of a crime is found, the Attorney-General institutes the appropriate legal action before the courts.

89. The frequency with which these mechanisms are used is clear from the replies provided by the Government concerning the cases transmitted to it by the Working Group. In 193 of the 236 replies provided by the Government during the year, it was stated that the case in question was under investigation by a specific court or by the Office of the Attorney-General, or that the criminal or disciplinary inquiries had been discontinued, or that action was barred by limitation or that, pursuant to article 347 of the Code of Criminal Procedure, the case had been referred to the criminal police (see para. 47). The remainder referred to cases regarded by the Working Group as clarified. In only a small number of cases brought to the attention of the Group have investigations conducted by the courts or the Office of the Attorney-General led to the culprits being charged and sentenced, regardless of whether the individual had been found (alive or dead).

90. On the matter of penal sentences, the Working Group learned of only one instance of imprisonment of a member of DAS in relation to charges involving disappearances. In other instances, only disciplinary measures were taken against members of the national police. In one such instance, which concerned the arrest and subsequent disappearance of 12 persons in 1982, the relevant families stressed to the members of the mission that the sentence (suspension from duty for 20 to 30 days) did not correspond to the gravity of the crime, that not all those initially involved in the proceedings had been convicted and that the investigation had been carried out in respect of only three of the 12 missing persons. However, it was learned that, following an appeal, the Attorney-Delegate for Judicial Supervision had decided, in a ruling of 29 July 1988, to continue the investigation of the remaining cases of disappearance while at the same time upholding the three disciplinary sanctions.

91. The Inter-Agency Working Group itself notes in the report mentioned in paragraph 36 that few cases have been cleared up and that investigations have been under way for three or four years or have been discontinued, or are at a preliminary stage pending the formation of the special unit of the criminal Police. Consequently, in only very few cases can the authorities be said to have effectively discharged their responsibility of defending and protecting human rights.

The case of the disappearances from the Palacio de Justicia

92. This case is one of the many still under investigation, but it has special features which warrant a brief description of the circumstances which gave rise to it and the stage which investigations had reached at the time of the visit.

93. On 6 November 1985, a group of guerrillas belonging to the M-19 movement occupied the Palacio de Justicia in Bogotá, which housed the Supreme Court and the Council of State. Almost all the justices of the Court and the members of the Council of State were taken hostage, together with a large number of employees and officials in the building. A number of private citizens and casual visitors were also seized. The building was immediately surrounded

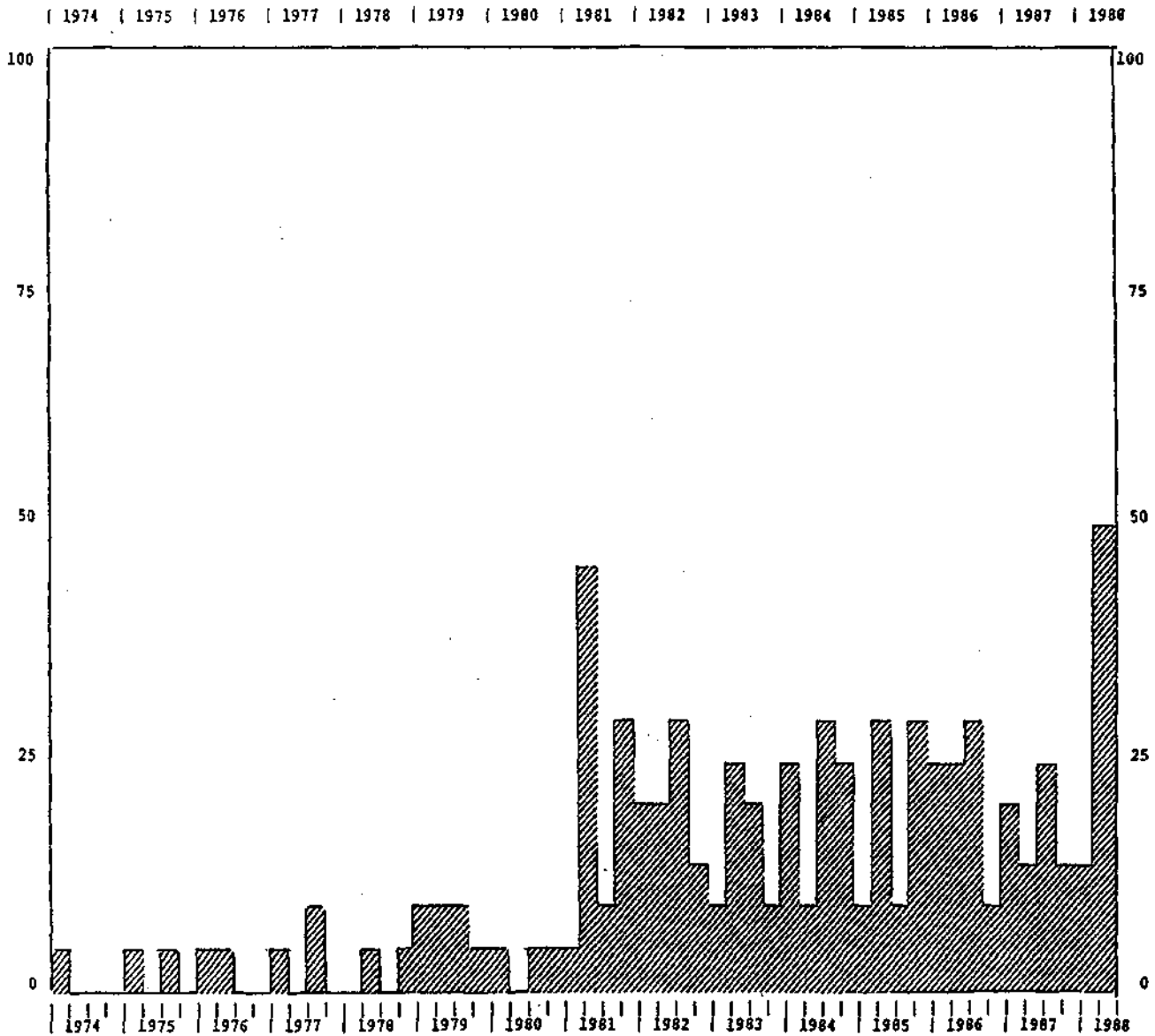
by military and police units and a heavy exchange of fire began, continuing into the afternoon of 7 November 1985. The final death-toll was about 100. In addition, eight cafeteria employees, three visitors and three members of the guerrilla group disappeared during the operation and nothing has been heard of them since.

94. On 13 November 1985, under the state of siege régime, the Government set up a Special Court of Investigation to determine the facts of the Palacio de Justicia incident. In its report, the Court divided the missing persons into two groups, the first comprising the cafeteria employees and the casual visitors, and the second the members of the guerrilla group. With regard to the first group, the Court presumed that those missing were dead, but did not explain why none of the bodies had been found or identified from among the unnamed bodies taken to the Forensic Service.

95. Upon completion of the Special Court's investigation, the case was referred to Bogotá Higher Court No. 14 in respect of the first group, and to the Criminal Military Court in respect of the second group. Subsequently, Court No. 14 instructed the 30th Itinerant Court of Criminal Investigation in Bogotá to continue the investigation of the circumstances of the Palacio incident, including the case of the missing persons. On 11 October 1988, the Court declared the investigation closed and the case ready for indictments.

96. The Office of the Attorney-General began its investigation into the circumstances of the Palacio de Justicia case in November 1985. It subsequently received testimony and made inspections of military and police installations, but without any positive result. On 8 July 1988, the Attorney-General set up a new Special Commission, comprising five members under the chairmanship of the Deputy Attorney-General, to investigate the case of the disappeared persons. The latter informed the members of the Group that some fairly convincing testimony had been received regarding some of the missing persons, to the effect that they had been seen after having been taken from the Palacio. The Deputy Attorney-General also stated that the Commission's report would be submitted, when ready, to the Attorney-General and, if the culprits had been identified, charges would be drawn up and proceedings instituted.

QUARTERLY NUMBER OF DISAPPEARANCES IN COLOMBIA
OVER THE PERIOD 1974 - 1988



V. POSITION OF THE GOVERNMENT AND INFORMATION PROVIDED
BY OFFICIAL SOURCES

97. During their visit to Colombia, the members of the mission had occasion to meet the highest authorities of the State. They were granted an audience by the President of the Republic, Mr. Virgilio Barco Vargas, and met the Ministers of Defence, Foreign Affairs, the Interior and Justice. The members of the mission were also received by the President of the Council of State, the Supreme Court, the Attorney-General of the Nation, the Attorneys-Delegate for Human Rights, for the Police and for the Armed Forces, the National Director for Criminal Investigation, the Presidential Advisers for Human Rights, Social Development and Reconciliation, Rehabilitation and Normalization and the Chief of the Administrative Security Department (DAS). In Medellín and Cali, the members met the Governors of the Departments of Antioquia and Valle and high officials of the Executive, including the local commanders of the army, the police and DAS, as well as regional attorneys and members of the judiciary.

98. The following paragraphs contain a summary of the major points conveyed to the members of the mission by the highest representatives of the State. A number of explanations of a more technical character provided by the authorities are reflected in other parts of the report, in particular chapter III, where their significance, placed in the respective contextual framework, will be better understood.

99. The President of the Republic granted the members of the mission an extensive audience, for which the Group wishes to express its deep appreciation. He stressed that his Government was committed to finding democratic solutions to the problem of violence in the country, the complexity of which the members of the mission had been given ample opportunity to study during their visit. The problems of terrorism and drug trafficking combined with common crime made the situation extremely complicated, as various functional alliances between those groups existed, in particular between drug dealers and the guerrilla. More recently, drug dealers had bought large farming estates in areas controlled by the guerrilla and had organized their own private security forces. This had led to clashes between the drug mafia and the guerrilla thus increasing the spiral of violence. His Government was sparing no effort in fighting the violence in the country, with a view to defending Colombia's tradition of democratic rights and liberties which was the oldest in Latin America. Unfortunately, not all steps taken so far had brought about the desired results.

100. The President mentioned in that connection the creation of the Office of the Presidential Adviser for Human Rights and the independence from the executive enjoyed by the Attorney-General and the judiciary. He also stressed that the armed forces were doing a highly professional job and were inspired by a genuine commitment to democracy. However, it was impossible to rule out abuses totally given the fact that the ranks of the army were recruited through general conscription.

101. The President also referred to the complete freedom enjoyed by the Colombian media. Even on the day of a general strike (which occurred during the visit), television could show interviews with members of the guerrilla. Newspapers had every right to criticize the Government and the armed forces openly, a right of which the Communist Party press availed itself frequently.

102. His Government had also taken a number of measures to tackle the root causes of the current situation. The President referred in that connection to the programmes developed by his Government for fighting absolute poverty and for an improvement of the educational system as well as to the agrarian and urban reform.

103. The Minister for Foreign Affairs emphasized that in all democratic countries the security forces had to play an important role. There were few States in Latin America where the security forces were under such strict control as in Colombia and there was also hardly any other State which had to confront simultaneously and in such dramatic proportions the problems of drug trafficking, terrorism and common crime. This simultaneous fight took place under the most absolute democratic control and without repressive reactions.

104. The Minister of the Interior expressed the view that the peace efforts of the previous administration had failed as they had not received an adequate response from the guerrilla. The current Government had nevertheless pledged to respect certain agreements with the biggest guerrilla group, FARC, and had maintained channels of communication by means of a "red telephone" established in the Office of the Presidential Adviser for Reconciliation and Rehabilitation. Together with the peace initiative recently proposed, that had shown the Government's evident desire to find a political solution to the problem of violence in the country. He also stated that the Government was tolerant and open-minded with regard to civil protests, such as strikes, demonstrations and peasant marches, some of which had been directly inspired by the guerrilla. The latter had, in certain instances, assassinated those authorities who had tried to respond to popular demands. Nevertheless, the Government upheld its policy of peace and reconciliation, as exemplified by the activities of the three Presidential Advisers, the restructuring of the Office of the Attorney General (see paras. 31-32), the reform of the system of personeros and the project for constitutional reform which would, inter alia, take into consideration the declarations of human rights of the Organization of American States and the United Nations.

105. The problem of violence was particularly grave in areas of colonization, such as Caquetá, Meta, Guaviare and Arauca where there were conflicts over landownership and administrative services were almost non-existent. It was in those areas that all kinds of abuses were committed by the guerrilla, the drug mafia and the big landowners. In that connection, the Minister referred to two recent cases of financing of guerrilla forces by drug dealers. One of the most serious situations existed in the Department of Córdoba, caused by particularly violent activities of the guerrilla and "sicarios" financed by landowners. In Urabá (placed under the responsibility of an army general) the difficulties were the result of a violent confrontation between entrepreneurs and trade unions infiltrated by elements of the guerrilla. In the Departments

of Santander and Norte de Santander, the guerrilla group ELN exercised considerable influence due to payments received from oil producing multinationals in recompense for not attacking their installations. In the Department of Caquetá (placed under a military governor) and others, the violence, in particular mass killings of peasants, was largely due to drug trafficking.

106. The Minister then explained the historic reasons for which the police had been placed under the authority of the Minister of Defence (see para. 111). As a result, the Minister of the Interior had no executive means at his disposal to guarantee public order. He had to concentrate on questions of co-ordination and orientation, but depended on other authorities for implementation.

107. On the question of paramilitary groups which he would more appropriately name "groups exercising private justice", he confirmed that 17 such groups had recently been dismantled, although many more continued to operate. Their activities and links depended to a large degree on local factors.

108. The Minister of Justice also emphasized the complexity of the situation in which the violence created by subversion and the reaction thereto was further exacerbated by the activities of drug traffickers. In such a climate the role of the Minister of Justice could be compared to that of a swimming coach in a shipwreck. Overwhelming constraints affected the entire system of the administration of justice, in particular the public order judges competent to deal with questions of terrorism. The latter were constantly exposed to intimidation and death threats and, despite the higher salaries they were offered, it was difficult to fill all vacant posts.

109. The current Government had increased the funds attributed to his Ministry; but they were still only 3 to 4 per cent of the national budget. One of the main problems, although not a new one, was congestion in the courts. In order to solve it, the Ministry had two objectives in mind: to strengthen human and material resources and to modify the rules of procedure to accelerate the administration of justice. He mentioned, as an example, the so-called "juicios voluntarios", normally dealt with by civil judges within a period which might last up to six years. Some of those cases, however, were now being settled by public notaries in only six months.

110. In connection with the phenomenon of disappearances, the Minister recognized the gravity of the problem; according to the reports he had received, in many cases the victims reappeared dead. He supported the Attorney General's project aimed at introducing a specific offence regarding disappearance in the Penal Code (see para. 65).

111. The Minister of Defence, accompanied by the Commander-General of the Armed Forces (who also presides over the highest military court), explained his Ministry's jurisdiction over the armed forces and the national police, the latter having been placed under the Minister of Defence following the armed struggle between the two major political parties in the country in which the police, then dependent on the Ministry of the Interior, had taken sides.

He stressed that the national police having been placed on the same level as the armed forces, was no longer exposed to political pressures as it enjoyed the same treatment as the armed forces, namely the right to be judged by a military court and exclusion from the right to vote. The Minister of Defence was nominated by the President and could also be a civilian (in fact he has traditionally been the highest-ranking general of the armed forces) (see para. 39).

112. With regard to the competence of military tribunals, the Minister stressed that they could only judge offences perpetrated during active service or related to the service. The armed forces had never believed in judging civilians and, therefore, welcomed the recent ruling of the Supreme Court in that regard (see para. 42). As with the ordinary judicial system, recourse procedures existed in the military jurisdiction as well. He also pointed out that a new Code of Military Penal Procedure was being prepared.

113. The Minister cited the following factors as responsible for the current violence in Colombia: the conflict between the State and the guerrilla (he stressed that it was not the security forces but the State as a whole which was challenged by the insurgents), the activities of drug traffickers and their frequent connections with the guerrilla ("narco-guerrilla") and the practices of hired killers (sicarios). On the question of self-defence groups, the Minister stated that their establishment was legal in principle (see paras. 49-50). Legal control over self-defence groups was in practice made impossible by the more than a million private firearms in the hands of civilians. Such arms could be acquired legally through the armed forces upon request and even arms for the exclusive use of the military (armas de uso privativo de las fuerzas armadas) could in certain cases be sold to private individuals (currently some 3,000 to 5,000).

114. As for paramilitary groups, the Minister pointed to the difficulties in identifying them, as they were acting in total secrecy, some of them only as a transitory phenomenon, and were thus even more difficult to combat than the guerrilla. As far as the security forces were concerned, both the guerrilla and the paramilitary groups must be considered as being outside the law and must be prosecuted. However, judges were not always fulfilling their duties in that respect, as experience had shown that several persons captured by the forces of public order, especially when they were linked to drug trafficking, had been released by judges a few hours after their detention.

115. On reports on possible irregularities committed by the armed or police forces, he declared that such allegations were thoroughly investigated. However, in one such case, the ordinary court had absolved the accused, thus creating the sensation of impunity. In another case, the accused officer had been convicted to 24 years' detention by a military tribunal. With regard to the competence of military patrols to detain persons, the Minister stated that it was limited to cases of flagrancy or quasi-flagrancy. However, there were exceptions under the Anti-Terrorism Statute (see paras. 52-53) which were much more restrictive than similar provisions in comparable legislation in European countries.

116. The Attorney-General of the Nation referred to the current situation as one of a "dirty war" characterized by all kinds of violations of human rights, in particular killings, disappearances and general intimidation of the population. The insurgents were becoming increasingly radical and counter-revolutionary reaction had given rise to private justice groups which committed comparable atrocities. Violations were also committed by the police and the armed forces. However, in those cases, according to the investigations carried out by his Office, it was often not possible to establish a link between the perpetrator and the institution as such and superior orders could rarely ever be proved.

117. He described the functions, competence and organization of the Office of the Attorney-General as reflected in paragraphs 26 to 32 and expressed strong regret that in 1987 the Office had lost control over the criminal police (see para. 31). That measure had reduced his Office's capacity for investigations, in particular in cases of disappearances, since the many cases denounced could hardly be investigated effectively by the few attorneys placed at his disposal without the help of the criminal police. He had, therefore, asked that a small corps of criminal police be restored to his Office.

118. The three Presidential Advisers emphasized that, by establishing their offices, President Barco had clearly indicated his Government's priority areas, namely human rights, national reconciliation and social development. The Presidential Adviser for the Defence, Protection and Promotion of Human Rights expressed the view that, with better co-ordination of all State institutions concerned with the monitoring of human rights, the weaknesses of the current system could be overcome. His Office, besides being responsible for the formulation of policy suggestions in the field of human rights and the representation of the Government in international human rights forums, was in charge of providing the necessary momentum for such co-ordination. In that connection, the following issues had already been addressed with the competent authorities: the problem of impunity of human rights violators; the creation of a human rights data bank, as an important indirect means of control and pressure which would enable his Office to follow the various stages of investigation and legal proceedings in each case; the organization of preventive action through timely intervention with governors and local authorities; the dissemination of information and promotional human rights activities through the organization of seminars and training courses, in particular for teachers and the military; and radio and television programmes. In specific cases of serious allegations, his Office could request the co-operation of DAS which was also directly answerable to the President of the Republic.

119. The Presidential Adviser for the Defence, Protection and Promotion of Human Rights attached particular importance to a project developed by his Office to revitalize the institution of personeros (see paras. 33-34). In that connection, he invited the members of the mission to attend a regional meeting of personeros in Girardot, which was part of a series of similar meetings in various parts of the country, designed to serve as a forum for an exchange of views on the various problems encountered by personeros in the

exercise of their functions and on their possible solution, with the active participation of the Presidential Adviser and the Attorney-Delegate for Human Rights. The members of the mission were impressed by the courage and commitment to the cause of human rights displayed by the participating personeros, and the openness with which they addressed the various problems. Some of them also entered into direct contact with the members of the mission giving them valuable information on specific cases of disappearance and the phenomenon in general.

120. The Presidential Adviser for Reconciliation, Rehabilitation and Normalization explained that his mandate essentially comprised the formulation of policies and projects in those areas. Within the ambit of reconciliation, it was the Government's policy to bring State agencies closer to the community all over the country. Furthermore, the Government was committed to pursuing the dialogue with the guerrilla (in particular FARC). However, in contrast to the previous Government which had entrusted that task to an independent commission, the current Government had established direct contacts with the guerrilla through his Office, with the principal objective of reincorporating them into civil life. This formula had the advantage of enabling the Government to make binding commitments and the disadvantage of certain limitations concerning the areas in which commitments could be made.

121. The rehabilitation plan prepared by his Office concentrated on development projects in some 300 selected municipalities in areas of acute poverty, isolation or where the presence of the State was particularly deficient. According to the needs of each region, public services projects, in particular regarding the transport and communications system and the water supply, and the improvement of productivity and access to credit facilities were supported under the plan; all decisions were taken by departmental and municipal councils in an autonomous manner.

122. The Presidential Adviser for Social Development mentioned the following priority areas in the Government's fight against absolute poverty: basic health services for all, including decentralization of the system and increase of social security; a comprehensive programme for children comprising homes, health services, nutrition and child care; improvement of basic education, including the fight against illiteracy (currently 12 to 14 per cent); and improvement of the habitat.

VI. CONCLUSIONS AND RECOMMENDATIONS

123. The Working Group is grateful to the Government of Colombia for its invitation to visit the country, during what are no doubt trying times. The Group highly appreciates the exemplary measure of co-operation extended to the members of the mission. In fact, the Government has opened its doors to quite a number of human rights missions from very different provenance. 8/ The position of the Government in this regard would seem to reflect the expectation that scrutiny of the country's human rights record will be essentially aimed at contributing to improvement of the situation. The

present report, at any rate, should be read in that light.

124. Decidedly, one of the main destabilizing factors in Colombian society today is the drug trade. Among the many pernicious features of the narcotics mafia is that it thrives on civic unrest. A stable social climate would make trafficking less viable. This may be one important reason why the drug cartels have been systematically fomenting a situation of generalized violence in the country. Yet, they are not its only source. Unfortunately, long before drug barons became as powerful as they are today, violence was already prevalent in the everyday life of Colombians. For decades, guerrillas have engaged in violent strife. Although subversive action has afflicted all segments of Colombian society, members of the public forces have been particularly hard hit. However, allegations of human rights violations by the latter (torture, summary or arbitrary executions and disappearances) have reached the United Nations under various procedures over a considerable period of time. "Private justice", whether carried out by self-defence groups, death squads or occasional hired killers, has produced countless victims of assassination and disappearance, notoriously on the political left. Finally, of course, deaths also result from common crime, not surprisingly in a country with so many firearms in private hands.

125. The links among the various actors on the scene of violence can hardly be identified in an integrated manner. They may be episodic or constant, local or widespread. For example, while some death squad actions are evidently linked to drug traffickers or elements of the army, others are carried out in pursuance of independent political goals or simply for monetary gain. The country's eight guerrilla movements may have a different modus operandi among and even within themselves, according to circumstances: in some areas they may be closely associated with drug interests, whereas in others, traffickers and subversives are fighting one another.

126. In view of the complexities of Colombian society, attributing responsibility for disappearances in a comprehensive way is extremely difficult. The difficulty is exacerbated by the fact that, even when abductions were actually observed by witnesses, the latter are often too afraid to testify or even to report the case. Frequently, abductions are carried out with surgical precision, leaving no trace whatsoever, while in many cases, the perpetrators wear civilian clothes. Paramilitary groups are often mentioned as the abductors, yet their links with elements of the armed forces could not be established with certainty across the board. For guerrillas, abductions - other than for ransom - do not seem to constitute an attractive method of eliminating adversaries. Assassination pure and simple, whether followed by clandestine disposal of the body or not, appears to be more characteristic of the way they operate. All in all, having carefully weighed the material available, the Working Group is of the view that, in the majority of the cases it has transmitted, circumstantial evidence strongly suggests or precise information clearly demonstrates involvement of units of the armed forces or security services in enforced or involuntary disappearances.

127. One of the marked features of disappearances in Colombia is their short-term nature. In many cases of illegal arrest or abduction, the body of the victim is found a few hours or days afterwards, invariably tortured, often mutilated. Technically, such cases would be considered "clarified" in the Working Group's parlance even before they could be properly denounced, but they may, of course, qualify as cases of summary or arbitrary execution and torture. Here again, the difficulty of separating these issues in a given situation is evident.

128. The Working Group does, however, have reports on cases of disappearance in which the fate and whereabouts of the missing person continues to be uncertain for a longer period of time, as described in chapter IV. By all standards, their number is significant. At present, there are 561 cases pending before the Working Group, 21 per cent of which are stated to have occurred during the last two years. The Office of the Attorney-General lists 962 cases for the past five years. Non-governmental sources in the country put the minimum overall figure at around 500 cases and the probable number at approximately 1,000. More precise estimates are difficult to obtain. The climate of fear that prevails in much of the country makes family members reluctant to contact the authorities. In addition, poor communications deep in the countryside make formal denunciation problematic. The total number of cases ever transmitted by the Working Group on Colombia (672) must also have been affected by these aspects. Be that as it may, even if the highest numbers quoted are accepted, disappearances are exceeded by outright killing as a method of repression.

129. Given the magnitude of Colombia's predicament, opening up real prospects for change constitutes a Herculean task. The steps taken by the present Government to stem the tide of violence are ambitious. In its view, one of the root causes of violence is poverty. Of the country's 30 million people, 45 per cent are destitute, while 7.4 million belong to the category of the absolute poor. ^{9/} In line with this view, the Government has launched a comprehensive "Plan against Poverty". At the political level, President Barco announced a "Peace Plan" in September 1988. It includes three main points, namely, détente, transition and the incorporation of the guerrilla in democratic life. Likewise, a major overhaul of the Constitution is under way, which may decisively change the country's singular political culture. The first direct elections for Colombia's mayors, in March of this year, were part of the same process. At the institutional level, the three Presidential Advisers (described in chapters III and V) constitute striking features of the Government's commitment to change the country's destiny. The activities undertaken by the Presidential Adviser for Human Rights in terms of education and public information are of particular relevance in the context of the present report. The revival of a network of personeros who, at the municipal level, fulfil a function comparable to the ombudsman, is certainly its most comprehensive project, although it has still to be put to the test. These human rights endeavours merit sustained support by all sectors of the administration, the legislature as well as the public at large. In particular, the efforts of the Presidential Adviser on human rights adequately

to train members of the public forces in the law governing the conduct of their work would be strengthened by assistance from the international community.

130. To many observers, the emphasis in Government policy is on long- and medium-term approaches rather than on short-term solutions to problems of violence. They expect a more assertive attitude on the part of the Government in leading the country in accordance with the rule of law. In particular, they are disappointed that more vigorous action is not taken to dismiss and prosecute government officials deemed responsible for human rights violations. However, they agree that, given the odds and despite the efforts of government agencies, fundamental changes in the structure of violence are not likely to be achieved overnight.

131. Not only violence but also the level of impunity which, by the Government's own account, prevails in Colombia, appear to have debilitated confidence in public institutions substantially and to have contributed appreciably to the decline of belief in peaceful solutions for Colombia's social conflicts. That is not only lamentable in itself; it may also accelerate the spiral of violence even further, as people may be tempted to take the law into their own hands and play the roles of judge and executioner themselves. Thus, coping with the problem of impunity may well be one of the major challenges the Colombian Government has to meet. As a corollary, the Government appears to be faced with a clear need to ensure the adequate functioning of State institutions that have a bearing on the maintenance of public order and the protection of the individual. As these are closely connected to the Working Group's mandate, they deserve more detailed comment.

132. In any country where the military has a prominent position in the conduct of State affairs and added responsibilities to combat social turmoil, extra care must be taken to ensure that the rule of law prevails. Colombia is no exception. By a series of decrees, issued under the state of siege by successive Governments, more and more powers have been granted to the armed forces and security services in the maintenance of public order.

133. The present Government has instituted security legislation specifically geared to combating terrorism, as described in chapter III. The legislation has reinforced the trend highlighted in the preceding paragraph. It has dramatically widened the circle of those whom the security measures affect. As a consequence, the legal protection of individual citizens against abuses by public forces appears to have diminished. Thus, a body of law has been created, whose ambiguities may well be conducive to the phenomenon of disappearances per se. A thorough review of police powers wielded by the armed forces and security services would seem to be necessary, with a view to providing better guarantees for the human rights of individual citizens. In this connection, members of the mission were impressed with the argument from various sources to the effect that the police force should be separated from the armed forces and placed under the responsibility of the Ministry of the Interior.

134. Habeas corpus procedures, designed to question the legality of arrest and detention before a judge, had, for a long time already, been subject to stringent formal requirements which made it difficult for individual citizens to avail themselves of this remedy effectively. Under a recent decree, described in chapter III, paragraphs 57 to 63, additional procedural obstacles have made habeas corpus proceedings almost impossible in cases of disappearance. Pertinent legal and institutional measures should restore habeas corpus to its proper place.

135. Undoubtedly, the most embattled part of the State's institutions is the judiciary, as was stated in chapter II. The establishment of "public order judges" by the present Government may certainly be conducive to success in combating drug trafficking and subversive action, although only time will tell to what extent. In addition, the new system may ease the pressure on the other judges, entrusted with adjudication of ordinary offenders. Meanwhile, the Government might give further consideration to enhancing the physical protection of members of the courts and to strengthening their resources.

136. Although as a matter of principle the Working Group never engages in the question of responsibility for disappearances in individual cases, it is, on a more general level, interested in the question whether, as a rule, those responsible are being prosecuted to the full extent of the law. That interest, incidentally, is fully in keeping with General Assembly resolution 33/173 and based on concern for prevention of disappearances. Members of the mission did not leave convinced that military criminal justice was functioning in a manner commensurate with the gravity of the allegations leveled against military officers as regards human rights abuses. Convictions have been few, and sentences, with two or three exceptions, light. Of course, disappearance as such does not figure as a crime in the Military Penal Code; as yet, it does not in any other country either. Nor does the Code include crimes such as homicide and torture. Evidently, it was written for the battlefield, not for the administration of justice in times of peace. The absence of opportunities for civilians to become associated with the proceedings, points in the same direction. A major revision of the Code was said to be in progress. Meanwhile, the attitude of the armed forces high command towards disappearances allegedly caused by its subordinates would gain in clarity through a publicly stated resolve to prosecute human rights violations with all necessary rigour. Such resolve would need to be reaffirmed through explicit instructions to all members of the public forces. Furthermore, a statement of this nature might not only express full commitment on behalf of the armed forces and the police to the defence of human rights as recognized in the Colombian Constitution, but also reject in unequivocal terms disappearances and other unlawful acts by paramilitary groups.

137. As for the administration of justice for civilians, the members of the mission were struck by the fact that sophisticated machinery appeared to be in place for bringing to trial those held responsible for human rights violations. Theoretically, incorporation of disappearance as a separate crime in the common Penal Code - as promoted by the Attorney-General - would improve

the possibilities for effective prosecution. Clearly, however, the accomplishments of the institutions involved seem to be surpassed by the exigencies of the situation. Furthermore, there are only scarce resources available for establishing the fate and whereabouts of the missing persons themselves. Given the short-term nature of many disappearances, only a prompt and effective search can provide any hope that irreparable harm to the victim may be prevented. For the longer the time that elapses following arrest or abduction, the smaller the prospect of the missing person ever reappearing alive. In fact, the primary institution on which such a task would naturally fall is the Office of the Attorney-General as described in chapter III. Yet, by its own account, the Office is in dire need of resources. The criminal police, formerly under its jurisdiction, was moved to that of a different institution last year. Although that decision was considered justified by some government officials from a managerial point of view, it should perhaps have given rise to compensatory measures to fill the vacuum. The Office deserves to be strengthened with a view to its independent and effective functioning.

138. Members of the mission were deeply impressed by the courageous attitude of human rights activists in Colombia. In providing legal aid and other kinds of assistance to victims of violence, they fill a need that is not otherwise attended to by the State. They have to work under often extremely hazardous circumstances. Many of them have died. They deserve more acknowledgement, support and protection from the Government than appears to have been provided thus far.

139. The position of Colombia is not an enviable one. Over the last 40 years, the ravages of social conflict have incessantly tested the country's resilience and diverted its energy away from endeavours that might have served the welfare of the nation as a whole. Colombia deserves the support of the international community in overcoming its present predicament. In any event, the future will be arduous.

Notes

1/ For a comprehensive monograph on the subject, reference is made to a report presented to the Minister of the Interior by a commission under the auspices of the National University of Colombia, entitled "Colombia: violencia y democracia" (1988). The report was described by President Barco as compulsory reading for anyone who wished to analyse the causes of violence in Colombia.

2/ "Plan de lucha contra la pobreza absoluta y para la generación de empleo", December 1986 - June 1987, p. 5.

3/ Instituto SER de Investigación, "Jueces y justicia en Colombia", October 1987.

4/ Statement in El Encuentro Nacional "La lucha contra la impunidad: avances y dificultades", 19 September 1988.

5/ In December 1988, Decree No. 2490 was published, amending in part Decree No. 180 by establishing life imprisonment as the penalty for persons committing homicide as members of an armed group which is "not legally authorized". This raises questions as to which armed groups would be authorized. Also under this Decree, ordinary courts will deal with the offences of rebellion and sedition.

6/ In December 1988, the Government announced that it might make use of the powers granted to it under article 28.

7/ John Jaime Posada O., "La desnaturalización del hábeas corpus" Tribuna Penal, No. 6, Medellín 1988.

8/ Attention is drawn to the report of the Special Rapporteur on the question of torture on his visit to Colombia in 1987 (E/CN.4/1988/17/Add.1) and to a report by Philippe Cahier on a "direct contacts" mission to Colombia carried out on behalf of the International Labour Organisation in August/September 1988 (ILO document GB.241/5/7, annex II).

9/ In 1987, average per capita income was \$US 1,181 and gross national product a little under \$US 36 million. Although mortgaged with a foreign debt of about \$US 15 billion, the national economy is considered healthy, with inflation exemplary compared to other countries in the region at approximately 26 per cent annually.

