



THIRD ITEM ON THE AGENDA

**322nd Report of the Committee on
Freedom of Association****Contents**

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I. Introduction

1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 25 and 26 May and 2 June 2000, under the chairmanship of Professor Max Rood.

Pending cases

2. The Committee had before it several complaints concerning the violation of freedom of association in Colombia, presented by a number of trade union organizations (Cases Nos. 1787, 1948, 1955, 1962, 1973, 2015, 2046, 2051 and 2068) – the last of these having been presented since the last examination of cases on their merits concerning Colombia by the Committee in November 1999 – and a complaint concerning the non-observance by Colombia of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), made by several Workers' delegates to the 86th Session (1998) of the Conference under article 26 of the ILO Constitution. At its meeting of November 1999, the Committee had already examined Cases Nos. 1787, 1948, 1955, 1962, 1964, 1973 and 2015 [see 319th Report, paras. 1-201, drawing interim conclusions].
3. The Committee took note of the report of the direct contacts mission which visited Colombia (Bogotá and Medellín) from 7 to 16 February 2000. The mission was made up of Mr. Cassio Mesquita Barros, a member of the Committee of Experts on the Application of Conventions and Recommendations and professor of labour law (São Paulo), and of Mr. Alberto Pérez Pérez, professor of human rights and constitutional law (Montevideo) who were accompanied by two officials from the Freedom of Association Branch of the International Labour Standards Department (see mission report annexed to this report).

Effect given to the recommendations of the Committee and the Governing Body

4. In Case No. 1925 (Colombia), which the Committee had examined in the framework of the follow-up given to its recommendations at its meetings of June 1999 [316th Report, paras. 39-42] and November 1999 [319th Report, para. 4], the Government had indicated, in a communication dated 27 September 1999, that it accepted that the information furnished by the company AVIANCA be considered as part of the Government's reply. The complainant, the National Union of Employees of AVIANCA and the Government have transmitted further information to the Committee. However, the Committee notes that in a communication dated 9 March 2000, the Government states that the company, the union and the authorities have established a tripartite committee to bring an end to the dispute. The Committee requests to be kept informed in this regard.

II. Cases examined by the Committee on Freedom of Association

CASE NO. 1787

INTERIM REPORT

Complaint against the Government of Colombia presented by

- the International Confederation of Free Trade Unions (ICFTU)**
- the Latin American Central of Workers (CLAT)**
- the World Federation of Trade Unions (WFTU)**
- the Single Confederation of Workers of Colombia (CUT)**
- the General Confederation of Democratic Workers (CGTD)**
- the Confederation of Workers of Colombia (CTC)**
- the Trade Union Association of Civil Servants of the Ministry of Defence, Armed Forces, National Police and Related Bodies (ASODEFENSA) and**
- the Petroleum Industry Workers' Trade Union (USO)**

Allegations: Murder and other acts of violence against trade union officials and members and anti-union dismissals

5. The Committee last examined this case at its November 1999 meeting [see 319th Report, paras. 5-116]. The International Confederation of Free Trade Unions (ICFTU) sent new allegations in communications dated 2 and 23 March, 4, 7, 11 and 12 April, and 3, 4 and 18 May 2000. The Single Confederation of Workers of Colombia (CUT) sent new allegations in communications dated 15 February and 19 May 2000. The Trade Union Association of Civil Servants of the Ministry of Defence, Armed Forces, National Police and Related Bodies (ASODEFENSA) sent new allegations in a communication dated 15 February 2000. The Confederation of Workers of Colombia (CTC) sent new allegations in a communication dated 14 February 2000. The Petroleum Industry Workers' Trade Union (USO) submitted a complaint in a communication dated 15 February 2000. The General Confederation of Democratic Workers (CGTD) sent new allegations in a communication dated 18 April 2000. The Government sent its observations in communications dated 10 and 16 November 1999 and 9 March and 9, 15 and 19 May 2000.
6. Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

7. At its November 1999 meeting the Committee made the following recommendations on the allegations that were still pending which, for the most part, referred to acts of violence against trade union members and various acts directed against trade unions, including acts of anti-union discrimination [see 319th Report, para. 116]:
 - (a) Concerning the allegations in regard to which the Government had reported at the March 1999 meeting or earlier that investigations and legal proceedings were under way, the Committee regrets to note that the

Government has not sent any new information on the development of proceedings concerning the individuals mentioned and urges the Government to provide information in that respect without delay.

Murders

(1) Antonio Moreno Asprilla (12 August 1995); (2) Manuel Ballesta (13 August 1995); (3) Francisco Mosquera Córdoba (February 1996); (4) Carlos Arroyo de Arco (February 1996); (5) Francisco Antonio Usuga (22 March 1996); (6) Pedro Luis Bermúdez Jaramillo (6 June 1995); (7) Armando Umanes Petro (23 May 1996); (8) William Gustavo Jaimes Torres (28 August 1995); (9) Jaime Eliacer Ojeda; (10) Alfonso Noguera Cano; (11) Alvaro Hoyos Pabón (12 December 1995); (12) Néstor Eduardo Galíndez Rodríguez (4 March 1997); (13) Erieth Barón Daza (3 May 1997); (14) Jhon Fredy Arboleda Aguirre; (15) William Alonso Suárez Gil; (16) Eladio de Jesús Chaverra Rodríguez; (17) Luis Carlos Muñoz (7 March 1997); (18) Nazareno de Jesús Rivera García (12 March 1997); (19) Héctor Gómez (22 March 1997); (20) Gilberto Casas Arboleda; (21) Norberto Casas Arboleda; (22) Alcides de Jesús Palacios Casas (11 February 1997); (23) Argiro de Jesús Betancur Espinosa (11 February 1997); (24) José Isidoro Leyton (25 March 1997); (25) Eduardo Enrique Ramos Montiel (14 July 1997); (26) Libardo Cuéllar Navia (23 July 1997); (27) Wenceslao Varela Torrecilla (29 July 1997); (28) Abraham Figueroa Bolaños (25 July 1997); (29) Edgar Camacho Bolaños (25 July 1997); (30) Félix Avilés Arroyo (1 December 1997); (31) Juan Camacho Herrera (25 April 1997); (32) Luis Orlando Camaño Galvis (20 July 1997); (33) Hernando Cuadros Mendoza (1994); (34) Freddy Francisco Fuentes Paternina (18 July 1997); (35) Víctor Julio Garzón (7 March 1997); (36) Isidro Segundo Gil Gil (9 December 1996); (37) José Silvio Gómez (1 April 1996); (38) Enoc Mendoza Riasco (7 April 1997); (39) Luis Orlando Quiceno López (16 July 1997); (40) Arnold Enrique Sánchez Maza (13 July 1997); (41) Camilo Suárez Ariza (21 July 1997); (42) Mauricio Tapias Llerena (21 July 1997); (43) Atilio José Vásquez (July 1997); (44) Odulfo Zambrano López (27 October 1997); (45) Alvaro José Tabora Alvarez (8 January 1998) (mentioned in the allegations as having disappeared); (46) Elkin Clavijo (30 November 1997); (47) Alfonso Niño (30 November 1997); (48) Luis Emilio Puerta Orrego (22 November 1997); (49) Fabio Humberto Burbano Córdoba (12 January 1998); (50) Osfanol Torres Cárdenas (31 January 1998); (51) Fernando Triana (31 January 1998); (52) Francisco Hurtado Cabezas (12 February 1998); (53) Misael Díaz Ursola (26 May 1998); (54) Sabas Domingo Socadegui Paredes (3 June 1997); (55) Jesús Arley Escobar Posada (18 July 1997); (56) José Raúl Giraldo Hernández (25 November 1997); (57) Bernardo Orrego Orrego (6 March 1997); and (58) José Eduardo Umaña Mendoza (18 April 1998).

Disappearances

(1) Rodrigo Rodríguez Sierra (16 February 1995); (2) Ramón Osorio Beltrán (15 April 1997); (3) Alexander Cardoma (14 July 1998); (4) Mario Jiménez (27 July 1998).

- (b) Concerning the allegations of murders and attempted murders in regard to which the Government reports that it has opened judicial investigations (murders: José Vicente Rincón (murdered on 7 January 1998 in Barrancabermeja); Jorge Boada Palencia (murdered on 18 April 1998); Jorge Duarte Chávez (murdered in Barrancabermeja on 9 May 1998); Carlos Rodríguez Márquez (murdered on 10 May 1998); Arcángel Rubio Ramírez Giraldo; Orfa Ligia Mejía (murdered on 7 October 1998); Macario Herrera Villota; Víctor Eloy Mieles Ospino and Rosa Ramírez; attempted murders: Virgilio Ochoa Pérez; Eugenio Sánchez and Benito Rueda Villamizar). The Committee expresses its grave concern and repudiates

these acts and requests the Government to keep it informed as a matter of urgency on the results of the investigations and prosecutions under way.

- (c) As concerns the alleged murders of trade union leaders and members regarding which the Government reports that it is awaiting specific information from the Office of the Procurator-General (Oscar Artunduaga Nuñez, Jesús Orlando Arévalo, Moisés Canedo Estrada, Gladys Pulido Monroy, Oscar David Calandón Gonzales, Oswaldo Rojas, Julio Alfonso Poveda, Pedro Alejandrino Melchor Tapasco and Manuel Avila Ruiz), the Committee observes that the communicated information does not make it possible to establish whether an investigation is under way and again urges the Government without delay to take measures to have investigations opened and to keep it informed in this respect.
- (d) Concerning the eight murder cases where the investigations have been adjourned by the competent Procurator's Office (Ernesto Emilio Fernández Pezter, murdered on 20 November 1995; Libardo Antonio Acevedo, murdered on 7 July 1996; Magaly Peñaranda, murdered on 27 July 1997; David Quintero Uribe, murdered on 7 August 1997; Aurelio Arbeláez, murdered on 4 March 1997; José Guillermo Asprilla Torres, murdered on 23 July 1997; Carlos Arturo Moreno López, murdered on 7 July 1995; and Luis Abel Villa León, murdered on 21 July 1997), the Committee asks the Government to initiate new investigations on these cases and to keep it informed in this regard.
- (e) Concerning the Ministry of the Interior's protection programme for individuals who have been threatened, the Committee notes with interest the Government's statement that it has been stepped up together with the number of trade union leaders benefiting from protection, and the risk studies carried out for individuals and trade union organization; in addition, the Committee notes that investigations have been opened into the threats against the trade unionists Alexander López M., Robinson Emilio Masso Arias, Luis Eduardo Garzón Héctor Fajardo Abril and Hernando Fernández. The Committee urges the Government to take measures to protect trade unionists and unions at risk and to keep it informed of all new measures adopted in that regard.
- (f) With regard to the death threats enumerated in the annex, the Committee urges the Government to take measures immediately to provide protection to the individuals threatened and to carry out investigations to identify the perpetrators:

Death threats

- (1) Ms. Bertina Calderón (vice-chairperson of the CUT).
- (2) The members of the executive committee of FENSUAGRO.
- (3) Pedro Barón, president of the Tolima branch of the CUT, threatened by certain members of the security forces after having participated in a protest strike on 19 July 1995.
- (4) The members of the executive committee of the Workers' Union of the Titán Corporation, Yumbo municipality, who received death threats from a paramilitary group named "Colombia Sin Guerrilla" – COSINGER (Colombia without guerrillas) on 26 October 1995 and 17 May 1996.

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- (5) The members of the executive committee of the Association of Agriculturalists of Southern Bolívar (Justo Partor Quiroz, secretary, Roque León Salgado, treasurer and Bersaly Hurtado, attorney).
 - (6) The National Executive Committee of the CUT, Messrs. Jesús Antonio González Luna (director of the human rights department) and Domingo Rafael Tovar Arrieta (director of the administrative department).
 - (7) Oscar Arturo Orozco, Hernán de Jesús Ortiz, Wilson García Quiceno, Henry Ocampo, Sergio Díaz and Fernando Cardona.
 - (8) Jairo Antonio Cardona Mejía, president of the Workers' Union of Cartago Municipality and other executives (Albeiro Forero, Gilberto Tovar, Hernando Montoya, Marino Moreno and Gilberto Nieto Patiño, councillor).
 - (9) Clara Vaquero Sarmiento, chairperson of the Trade Union Association of Civil Servants of the Ministry of Defence, Armed Forces, National Police and related bodies, who received threats on 27 March 1998.
 - (10) Pablo Emilio Calvo, vice-president of the Workers' Union of Cartago municipality, was threatened by death in a pamphlet.
 - (11) Threats were made to individuals linked to the work of the trade union movement, including the Colombian Lawyers' Commission and the José Alvear Attorneys' Collective.
 - (12) José Aníbal Quiroga, vice-president of the national committee of the Brinks company, received death threats in telephone calls urging him to abandon his trade union activities. His father also received threats.
- (g) Concerning the allegations of death threats mentioned in paragraph 107 with respect to which the Government has not sent information regarding the development of the investigations, the Committee requests the Government to send it information on the development and results of these investigations.
 - (h) Concerning the allegations of detentions, the Committee requests the Government to inform it of the results of the investigations into the detention of Luis David Rodríguez Pérez, Elder Fernández and Gustavo Minorta.
 - (i) Concerning the new and pending allegations of murders and attempted murders, disappearances, detentions, persecutions and unlawful imprisonment in respect of which the Government did not send observations, the Committee urges the Government to communicate without delay its observations on all of the allegations in the annex to this case, to take urgent measures to have investigations carried out in order to shed light on the incidents, determine where responsibility lies and punish the guilty parties, and to keep it informed of all developments in this respect. [The allegations relate to acts of violence on which the Government has sent no information or has sent inadequate information from which it is not possible to determine whether an investigation has been started. The allegations are reproduced below.]

Murders

- (1) Manuel Francisco Giraldo, member of the executive committee of the National Union of Agricultural Workers (SINTRAINAGRO), murdered on 22 March 1995.
- (2) Twenty-three workers who were members of SINTRAINAGRO, murdered on 29 August 1995.
- (3) Alvaro David, member of the workers' committee of the "Los Planes" farm, affiliated to SINTRAINAGRO, murdered on 22 March 1996.
- (4) Eduardo Ramos, trade union leader of "El Chispero" farm, Apartadó, Urabá, Antioquia, murdered on 14 July 1997.
- (5) Marcos Pérez González, member of the Electrical Trade Union of Colombia (SINTRECOL), murdered on 10 October 1998.
- (6) Jorge Ortega García, vice-president of the CUT, murdered on 20 October 1998 (Mr. Ortega García had presented new allegations connected with this case hours before his death).
- (7) Ms. Hortensia Alfaro Banderas, vice-chairperson of SIDESC, on 24 October 1998 in the municipality of Manure, César administrative district.
- (8) Jairo Cruz, president of the Union of Workers in Edible Oils, murdered on 26 October 1998 in the municipality of San Alberto, César administrative district.
- (9) On 12 February 1999, in San Diego, César administrative district, the teachers Luis Peroza and Numael Vergel were murdered after having been kidnapped and tortured by unidentified armed groups. They were members of the César Association of Teachers.
- (10) On 15 February 1999, Gilberto Tovar Escudero, official of the Workers' Union of Cartago municipality, Valle administrative district, was murdered.
- (11) On 22 March, after having disappeared on 19 March, the trade union official Albeiro de Jesús Arce Velazquez was found dead in the river Cauca close to La Virginia municipality, Risaralda.
- (12) Ricaurte Pérez Rengifo was kidnapped on 20 February in Medellín from the school where he taught and was found dead on 25 February on the outskirts of the city.
- (13) The teacher Antonio Cerón Olarte del Hulla was murdered.

Attempted murders

- (1) Gilberto Correño, leader of the Trade Union of Workers (USO), on 7 December 1996.
- (2) César Blanco Moreno, president of the executive subcommittee of the Trade Union of Workers (USO), on 11 May 1998.
- (3) On 5 April 1999, at 11 p.m. in Barranquilla, an attempt was made to murder three members of the national executive council of the

Workers' Union of the Social Security Institute: Fernando Morales, now leader of the CUT, Alberto Pardo and Esaú Moreno.

Physical aggression and police repression

- (1) Police repression against employees of public enterprises in Cartagena during a peaceful demonstration on 29 June 1995 (the Government reports that the Colombian authorities were not informed of the incident).
- (2) A police assault, causing injuries, upon trade unionists César Castaño, Luis Alejandro Cruz Bernal and Martha Janeth Laguizamon, who were participating in an information day organized by the National Association of Transit Agents (ANDAT) on 6 January 1997.
- (3) Mario Vergara and Heberto López, trade union officials of SITTELECOM, were brutally beaten by the police.
- (4) On 13 October 1998, the police violently charged SITTELECOM workers, several of whom were injured.
- (5) On 20 October 1998, in the city of Bogotá, on Carrera 7 between Calle 24 and Calle 27, riot police assaulted workers who were beginning a peaceful march to Plaza Bolívar, and on 22 October 1998, the police assaulted demonstrators who had gathered in Plaza Bolívar from all over the country.

Disappearances

- (1) Jairo Navarro, trade unionist (6 June 1995).
- (2) Rami Vaca, ECOPETROL union leader (27 October 1997).
- (3) Misael Pinzón Granados, member of SINTRAINAGRO, kidnapped by persons believed to be members of the paramilitary forces in the municipality of Puerto Wilches, Santander, on 7 December 1997. According to information supplied by the DAS, it was found that the wife of the missing individual had submitted an appeal of habeas corpus to the judicial authorities after the case had been shelved for lack of evidence on which to proceed.
- (4) Justiniano Herrera Escobar, working for the municipality of Antioquia, who formerly worked for Shellmar of Colombia, disappeared on 30 January 1999.

Detentions

- On 8 October 1998, José Ignacio Reyes, SINTELECOM member.
- On 16 October 1998, in the San Francisco area of Bolívar City, Orlando Rivera and Sandra Parra.
- During the national strike on 31 August 1999, a large number of people were detained and the whereabouts of many of them are unknown (227 persons according to the information sent by the ICFTU and 300 according to the information provided by the CUT).

Unlawful imprisonment

- Horacio Quintero and Osvaldo Blanco Ayala, workers, were detained in Tibú on 31 May 1999 by members of a self-defence group, who interrogated them to elicit whether they belonged to the Petroleum Industry Workers' Trade Union (USO). The workers declared that they only held membership. After death threats, they were released.
- (j) In respect of the allegations concerning anti-union acts at the Andino, Citibank, Sudameris and Anglo Colombiano banking corporations, the Committee invites the complainants to explain the reasons for which they did not reply to the Government invitations.
- (k) Regarding the allegations relating to violations of trade union and labour rights of trade union officials and workers of Brinks Colombia, the Committee, observing that these allegations were presented recently, requests the Government to send observations on the matter with all urgency.
- (l) Concerning the court cases pending sentence with regard to three dismissals at the TEXTILIA Ltd. company, the Committee notes that the Government reports that: (1) a verdict was issued at second instance against Arnulfo Cruz Mora, upholding the rejection of the case against the company; (2) the case brought by Mr. Germán Bulla is at the documentary stage; (3) the case brought by Mr. Darío Ramirez was declared inadmissible because of defects. In these circumstances, the Committee requests the Government to keep it informed of the results of the cases brought by Germán Bulla and Darío Ramirez.
- (m) With respect to the pending allegations in respect of which the Government has not sent information, concerning raids on headquarters, telephone tapping and surveillance of trade unionists at the premises of the Single Agricultural Trade Union Federation (FENSUAGRO) and of the executive committee of the CUT-Atlántico in the city of Barranquilla, the Committee urges the Government without delay to communicate its observations regarding these incidents, to take urgent measures to have investigations carried out, and to keep it informed of all developments in this connection. [Specifically, the allegations concerned the following matters: (1) raiding of the headquarters of the Single Agricultural Trade Union Federation (FENSUAGRO), tapping of the telephones of the trade union headquarters and the members and surveillance by armed persons of the president of FENSUAGRO, Luis Carlos Acero (the Government declares that this was not reported to the Colombian authorities); (2) on 6 February 1998, at 12.45, 15 individuals bearing weapons, exclusive to the armed forces, came to the premises of the executive subcommittee of the CUT-Atlántico in the centre of Barranquilla, broke in and pointed a revolver at Ms. Lydis Jaraba, member of the present national executive committee and the executive board of the subcommittee of the CUT-Atlántico. The individuals, who were not carrying any identification or search warrant, inspected all of the offices and then left (the Government reports that the Colombian authorities were not informed of the incident).]

B. New allegations by the complainants

8. The ICFTU (communications of 2 and 23 March, 4, 7, 11 and 12 April, and 3, 4 and 18 May 2000), CUT (communications of 15 February and 19 May 2000), CTC (communication of 14 February 2000), USO (communication of 15 February 2000), ASODEFENSA (communication of 15 February 2000) and the General Confederation of

Democratic Workers (CGTD) (communication of 18 April 2000) have presented new allegations.

9. The ICFTU, the CUT and the CGTD allege the following acts of violence:

Murders

- (1) César Herrera, treasurer of SINTRAINAGRO and former executive officer of the CUT.
- (2) Jesús Orlando Crespo García, member of the departmental board of CUT-Valle and president of the Workers' Trade Union of the municipality of Bugalagran de Valle del Cauca, murdered on 31 January 2000.
- (3) Guillermo Molina Trujillo, official of the Public Service Employers' and Workers' Trade Union, murdered on 1 March 2000 in Yarumal (north of Medellín).
- (4) José Joaquín Ballestas García, president of the La Vereda Communal Action Board, murdered on 24 March 2000 in Ciénaga de Barbacoas (municipality of Ciénaga de Chucurí and Puerto Beccio).
- (5) José Atamaco Fernández Quiñonez, member of the Workers' Trade Union of the Department of Antioquía, murdered on 29 March 2000 in the municipality of San Rafael in the eastern part of the department of Antioquía.
- (6) Hernando Stevenis Vanegas, murdered on 24 March 2000 in La Rompida, municipality of Yondó, by a paramilitary unit that set up a base from 6.30 a.m. to 3 p.m. barely ten minutes away from the Inland Waterways Base of Barrancabermejo.
- (7) Julio César Jiménez, murdered on 16 March 2000 in San Tropel, municipality of Yondó, by a paramilitary unit.
- (8) Aldemar Roa Córdoba, murdered on 26 March 2000 in San Rafael, municipality of Yondó, by a paramilitary unit.
- (9) Jhon Jairo Duarte, whose body was found floating in the Magdalena river on 28 March 2000.
- (10) Próspero Lagares, murdered on 30 March 2000 in the vicinity of the La Ganadera ranch, municipality of Yondó, by 30 paramilitary members of the AUC.
- (11) Edison Bueno, murdered on 30 March 2000 in the vicinity of the La Ganadera ranch, municipality of Yondó, by 30 paramilitary members of the AUC.
- (12) Diomedes Playonero Ortiz, member of the executive board of the Rural Workers' Association of Valle del Río Cimitarra (ACV), murdered on 31 March 2000 in the Playonero family's El Porvenir ranch by a paramilitary unit coming from the drug and cattle ranches of Puerto Berrío. The AVC states that: (1) in a radio broadcast on 4 April the paramilitary commander "Julián" said that he was in the city as part of a plan to take over Barrancabermejo, and (2) there is a state paramilitary plan to wipe out the rural workers, inhabitants and organizations of Magdalena Medio.
- (13) Margarita María Pulgarín Trujillo, a member of ASONAL, murdered on 3 April 2000 in Medellín.

- (14) Julio César Bethancurt, member of the Workers' Trade Union of the municipality of Yurubo, murdered on 3 April 2000.
- (15) Islem de Jesús Quintero, member and General Secretary of the ATT, murdered on 5 April 2000 in Pereira, department of Risaralda.
- (16) César Wilson Cortez, member of the Electrical Workers' Trade Union of Colombia (SINTRAELECOL), murdered on 2 April 2000 in the municipality of Trinidad, department of Casanare.
- (17) Rómulo Gamboa, member of the Electrical Workers' Trade Union of Colombia (SINTRAELECOL), murdered on 8 April 2000 in the municipality of Trinidad, department of Casanare.
- (18) Alejandro Avarez Isaza, unionist, murdered on 7 April 2000 in Argelia, Antioquia.
- (19) Oscar Darío Zapata, delegate of the SINALTRADIHITEXCO executive board, murdered on 8 April 2000 in Girardota, Antioquia.
- (20) Alberto Alvarez Macea, unionist, murdered on 8 April 2000, in Montería, capital of Córdoba.
- (21) James Perez Chima, unionist, murdered on 10 April 2000.
- (22) Milton Cañas, worker at ECOPETROL and member of the Petroleum Industry Workers' Trade Union, murdered on 27 April 2000 in Barrancabermeja.
- (23) Humberto Guerrero Porras, worker at ECOPETROL and member of the Petroleum Industry Workers' Trade Union, murdered on 27 April 2000 in Barrancabermeja.
- (24) Jimmy Acevedo, worker at the Nare Cement Quarry and member of the trade union SUTIMAC, murdered on 27 April 2000.
- (25) Aníbal Bemberte, worker at the Nare Cement Quarry and member of the trade union SUTIMAC, murdered on 27 April 2000.
- (26) Carmen Demilia Rivas, President of the National Association of Hospital and Clinic Workers, Cartago Section, of the Valle del Cavaz, on 17 May 2000 at the Corazón de Jesus Hospital.

Death threats

- (1) Aníbal Meneses, president of the National Trade Union of Workers of the Spinning and Textiles Industry of Colombia (SINALTRAHIHITEXCO) and of the national executive board, threatened by the Industrial Front of the National Liberation Army.
- (2) José Ricardo Toro Delgado, president of the National Association of Workers in Hospitals and Clinics (ANTHOC), threatened on 14 March 2000.
- (3) The assistant-director of the Departmental Union of Health Workers of Cesar (SISDEC) threatened in the municipality of Aguachica.

Assault on demonstrators and detentions

- (1) On 31 March 2000 anti-riot police broke into the premises of the Operations Centre of the Empresa de Acueducto de Bogotá to prevent workers belonging to the Workers' Trade Union of the Empresa de Acueducto from demonstrating. In the process the police manhandled the president of the trade union, Julio Beltrán, and the present president of the trade union, Abel Duarte, and arrested 11 workers.
 - (2) On 1 May 2000 in Medellín, the metropolitan police of the Valley of Aburrá advanced upon and arbitrarily detained 67 people participating in a commemoration march for International Labour Day. For their release, 24 of the detainees were obliged to sign a document acknowledging their responsibility for violent acts. To date, eight people are still detained, among them the trade union leader of the Departmental Association of Educators of Antioquia (ADIDA), Alberto Agueldo Rúa.
10. The CUT adds to its communication of 15 February 2000 a communication from the Colombian Teachers' Federation (FECODE) with a detailed list by name of teachers who have been murdered: 239 between 1987 and 1994; six in 1995; 52 in 1996; 35 in 1997; five in 1998; 27 in 1999. It also encloses a list of teachers who have been kidnapped and threatened. (The CUT has been asked to state whether the persons listed were union officials or members of a trade union and, if this is the case, to verify that the names have not already been included in previous lists.)
 11. The CTC alleges that union members and officials of the SINTRABRINKS organization have been arrested and tortured, and that one of the officials of the organization, Juanito Cabrera, has been murdered. It also alleges acts of intimidation by the Brinks de Colombia SA company in order to induce the workers to resign from the CTC, as well as non-compliance with the collective agreement in force.
 12. The USO has sent information on the legal situation of trade union members and officials who had been arrested and regarding whom the Government had sent its observations. It further alleges the temporary detention of the national vice-president of the USO, Gabriel Alvis, as well as the initiation of a penal investigation against 11 USO officials.
 13. In a lengthy communication, ASODEFENSA alleges that its president, María Clara Baquero Sarmiento, and two of its officials and members have again received death threats and that, despite a request to the Government, they have not been granted protection. Moreover, ASODEFENSA alleges numerous acts of anti-union discrimination (transfers, refusal to grant time off for union activities) and interference by the authorities.
 14. The CGTD alleges the dismissal on 31 March 2000 of eight officers of the Union of Workers and Public Employees of the Arauca municipality (SINTREMAR).

C. The Government's reply

15. In its communications dated 10 and 16 November 1999 the Government states, regarding the alleged occurrences in Brinks de Colombia SA, that the Public's Defence Council recently convened a meeting of the parties concerned (the company and the trade union) and the Coordinator of the Human Rights Office of the Ministry of Labour and Social Security to examine the allegations. At the meeting it was found that the trade union had not informed the Ministry, Public Prosecutor or Ministry of the Interior of its allegations. The representatives of the CTC further recognized that its vice-president, José Aníbal Quiroga and another official used the alleged threats against them to get the company to help them leave the country or, instead, pay them a large sum of money. In the end they

opted for compensation. Other members of the trade union said that they had been threatened and had asked the company for firearms to defend themselves. To date, the Brinks de Colombia trade unionists have not lodged any official complaint regarding the threats. The Ministry of Labour and Social Security offered to act as intermediary in the collective dispute, at the request of the parties concerned, and to pass on the details of the alleged threats to the Committee for the Regulation and Evaluation of Risks, at the request of the trade union.

16. Regarding Brinks de Colombia's alleged failure to respect the working day, the Government states that the Regional Director of Labour and Social Security of Cundinamarca ruled on 16 November 1998 that the working day imposed by the company complied with the provisions of its internal regulations. As to the alleged violation of the collective agreement, the Ministry of Labour asked the Regional Director of Labour to conduct an administrative inquiry into the matter. Finally, the Government states that an objective analysis of the problem suggests that labour relations in the company are inadequate and that at the heart of the matter lies a climate of mutual suspicion, but that at the beginning of February 2000 the Ministry of Labour and Social Security was asked to mediate a solution to the labour dispute and agreed to do so. Mediation will begin as soon as the parties concerned (company and trade union) indicate their willingness to resume special negotiation of the list of demands or to designate arbitrators so that the Ministry can convene an arbitration tribunal.
17. In its communication dated 9 March 2000 the Government states that, at the request of the Ministry of Labour and Social Security, 25 special investigation subunits of the Office of the Public Prosecutor have been set up (decisions Nos. 300-325 of 26 June 1999, issued by the National Directorate of the Public Prosecutor) to examine the alleged violation of the human rights of the trade union members (decision No. 814 of 29 October 1999, issued by the National Directorate of the Public Prosecutor). Once the investigation subunits had been set up in the various sections of the Office of the Public Prosecutor throughout the country, the National Directorate of the Public Prosecutor asked them to submit information on developments every two months. The reports that have so far been received from the various sections of the Office of the Public Prosecutor provide details on the judicial status of some of the relevant files, most of which have been located and reopened.
18. According to the chief of the National Human Rights Unit of the Office of the Public Prosecutor, "because the events under investigation occurred such a long time ago and because of the changes in legislation and mandate and the problem of tracing documents, finding the files has been a lengthy process. Most of them are more than five years old and there is no systematic data bank or reliable data on criminal offences in the country. Nevertheless, the Prosecutor-General has been most diligent in pursuing the investigations through the special units set up for the purpose".
19. The Government adds that, in order to facilitate the work of the National Human Rights Unit of the Office of the Public Prosecutor and of the special investigations subunits, the Ministry of Labour and Social Security seconded to the national unit members of its senior staff responsible for registering murders and disappearances in connection with Case No. 1787 of the Committee on Freedom of Association – which also appear in the data bank of the Ministry's Office of Human Rights where they are being followed up.
20. Thanks to the efforts of the Office of the Public Prosecutor, reports have been received on the appointment of special prosecutors for the following files under Case No. 1787:

Odulfo Zambrano López, file No. 9410: "By decision of 13 January 2000, the Coordinator of Penal Justice Prosecutors of the Specialized Circuit in the city of Pasto is commissioned to grant a hearing to Walberto Jiménez, who is employed in the same city in infantry battalion No. 9 'Batalla de Boyacá'. The

Directorate of the Technical Investigation Body (CTI)¹ of Barranquilla has likewise been commissioned to use its intelligence network to locate the whereabouts of Wilex del Rosario Rodríguez Gutiérrez and Miguel Velandia González.”

Esaú Moreno Martínez, file No. 12280: “By decision of 12 January 2000, María Cervantes, Carmen Cecilia Maestre Luque, Ramón Serje, María Ariza and police officer Castillo have been ordered to make sworn statements. The CTI has been commissioned to establish the correct names of a number of persons apparently involved in penal proceedings who are employees of the social security system.”

Aurelio de Jesús Arbeláez (or **Peláez**), file No. 1902, which had been filed by virtue of section 326 of the Penal Code: “By decision of 4 January of the present year the investigation has been reopened. An analysis of the file has made it possible to establish that the persons possibly responsible for his death were members of paramilitary groups in which persons known under the aliases of ‘El Filósofo’ and ‘El Zarco’, who have been committing selective murders since January 1997 in Segovia, operate in Puerto Berrío and Yondó.”

Hector de Jesús Gómez Cortés, file No. 2056: “By decision of 4 January of the present year the investigation, which had been suspended on 30 January last year, has been reopened. The CTI has been ordered to produce the findings of its investigators in accordance with the orders of the then prosecutor, in order to determine the perpetrators and motives of the murder.”

Luis David Alvarado (mistakenly listed as **Alvaro David**), file No. 4134: “By decision of 14 December of the immediately preceding year the investigation, which had been suspended since 5 December 1996, has been reopened. On 15 January of the present year the CTI received orders to compile new data in order to clarify the circumstances of this murder.”

Arturo Moreno López, file No. 3710: “By decision of 14 December of the immediately preceding year the investigation, which had been suspended since 7 November 1996, has been reopened.”

José Guillermo Asprilla Torres, file No. 4969: “Likewise, by decision of 14 December 1999 the investigation, which had been suspended since 9 June 1999, has been reopened.”

Luis Abel León Villa (mistakenly listed as **Luis Abel Villa León**), file No. 896: “According to information received from the local unit of the Office of the Public Prosecutor located in Amagá, the staff of the CTI received orders on 14 August 1997 but were unable to provide any positive information in their report. Moreover, their inquiries showed that Luis Abel León Villa did not belong to any trade union formation. The preliminary investigation was suspended on 6 May 1998 and temporarily shelved.”

Fabio Humberto Burbano Córdoba, file No. 16318: “The investigation is in its preliminary stages. The latest development was the issue of decision No. 019 of 24 May 1999 calling for evidence, including the hearing of a number of INPEC guards and the urgent submission to the investigation unit of the evidence called for earlier.”

¹ The CTI is attached to the Office of the Public Prosecutor with judicial police or investigation powers.

Jesús Arley Escobar, file No. 17438 (shown as No. 104995): “Guard and member of the INPEC trade union. A decision of 18 January of the present year ordered the submission of evidence previously requested; specifically, the CTI was requested to submit immediately mission file No. 054 of 27 August 1998 and a new mission was ordered to hear statements from guards at the Villa Hermosa prison and Palmira penitentiary. A judicial inspection was ordered by virtue of decision No. 16318.”

Libardo Antonio Acevedo, file No. 12873: “Served as president of the Regional Free Workers’ Trade Union Federation of Valle del Cauca (FESTRALVA). By decision of 11 May 1998 the investigation was suspended and shelved. The file has been requested from the Archive Section of the Joint Secretariat and is to be reopened.”

Cesar Herrera. The responsibility of his murder attributed to the FARC, which had condemned him to death. His trade union had not asked the Committee for the Regulation and Evaluation of Risks for any protection for this trade union official.

Jesús Orlando Crespo García. No request for protection was made for this trade union official. Information on the investigation is being awaited from the Public Prosecutor.

The Government encloses a document from the Ministry of the Interior on arrangements for the protection of trade union leaders which shows that, as requested by the Committee, the following trade union officials and boards have been granted protection: officials of the National Agricultural Single Trade Union Federation (FENSUAGRO) and the Workers’ Trade Union of the municipality of Cartago; two CUT officials, Jesús Antonio González Luna and Domingo Tovar Arrieta; members of the Colombian Board of Jurists of the José Alvear Restrepo Lawyers Collective; María Clara Baquero of ASODEFENSA; and José Aníbal Quiroga, vice-president of the National Board of SINTRABRINKS.

21. Finally, in its communications dated 9 March and 9, 15 and 19 May 2000, the Government sent its response to the recommendations adopted by the Committee at its November 1999 meeting on alleged violence against trade union officials and members and other anti-union practices listed in the annex to this document.

D. The Committee’s conclusions

22. *The Committee observes that the allegations pending in the present case relate mainly to acts of violence (murders, disappearances, kidnappings, physical aggression, death threats, detentions) against trade union officials and members from 1995 until recently, as well as the searching of union headquarters and anti-union dismissals.*
23. *In the first place, the Committee notes that a direct contacts mission visited the country from 7 to 16 February 2000. It wishes to thank Mr. Mesquita Barros and Mr. Pérez Pérez for their mission report.*

Violence against trade union officials and members

24. *The Committee notes the conclusions reached by the direct contacts mission on the alleged acts of violence against trade union officials and members. In particular, the Committee notes with concern the mission’s statement that:*

The scale of murders, kidnappings, death threats and other violent acts against trade union officials and members is unprecedented in Colombia’s history. The Government and trade union confederations (CUT, CGDT and

CTC) have provided widely divergent figures for the number of victims during the period 1991-99 and it is important that these divergences be clarified. That said, the figures are extremely alarming.²

The Committee requests the Government to take appropriate steps, possibly by convening a working group of independent representatives accepted by both parties, to clarify the enormous divergences in the figures given for trade union officials and members murdered over the past ten years and to keep it informed of its findings.

- 25.** *The Committee further notes that there is an extraordinarily widespread and complex climate of violence in the country that causes thousands of victims every year and that the violence affects other categories as well as trade union officials and members. Regarding the perpetrators of violence against union leaders, the Committee notes from the mission report that “the vast majority of violations are committed by the paramilitary, to a much lesser extent by the guerrillas and in some cases by the armed forces. Nevertheless, quite often the perpetrators are neither known nor whether they belong to an armed group. Moreover, regarding the participation of public officials (especially of officials of the armed forces) in the creation of self-defence or paramilitary groups and the passivity, connivance or collaboration of such officials by deed or omission vis-à-vis these groups and the violation of human rights in general that this entails, the Committee notes the mission’s statement that:*

It is, however, very serious that no thorough global investigation at the institutional level has yet been undertaken against these practices with a view to imposing sanctions, and that no radical and systematic measures have been taken to break up the self-defence groups wherever they operate and to neutralize and punish all their leaders, members and financial backers; in the mission’s opinion such measures are absolutely necessary and urgent – especially in the case of the United Self-Defence Units of Colombia whose dismantling shows no sign of any real progress.

*The Committee therefore requests the Government urgently to take measures in this respect. The Committee recalls that “freedom of association can only be exercised in conditions in which fundamental human rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed” and that “the rights of workers’ and employers’ organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected” [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, paras. 46 and 47].*

- 26.** *Regarding the protection of trade union officials, the Committee notes with interest that the mission’s statement that:*

The Government has devoted considerable human and financial resources to a programme of protection for advocates of human rights that has been extended to a number of trade union officials. This programme takes the form of

² According to the Government, 593 trade union officials and members were murdered between 1991 and 1999; according to the National Trade Union School there were 1,336 murders; other trade union sources speak of more than 2,700 murders over an unspecified period. It should be borne in mind that, according to reports of the Committee on Freedom of Association, hundreds of murders were committed between 1986 and 1990. According to the Government, nine trade union officials and 12 union members were murdered in 1999, while National Trade Union School sources speak of 19 and 50 respectively.

security systems and escorts for union officials who have been threatened (52 escorts for 41 officials and 46 escorts for 21 trade union headquarters),³ protective barriers around trade union headquarters (41), access to economic assistance and transfer abroad, etc., with a budget of 8,000 million pesos (over US\$4 million).

The Committee further observes that the mission's statement that, "although these measures have most likely prevented murders, they are judged by the trade union organizations to be insufficient" and that "the budget allocated should in any case be substantially increased and additional measures envisaged in consultation with the trade union organizations". The Committee requests the Government to take steps to have the budget allocation increased and, in consultation with the trade union organizations, to adopt additional measures to protect the life of trade union officials who have been threatened.

27. *The Committee observes that the mission emphasizes that:*

Although the reasons cannot be accurately ascertained, there has been a very substantial reduction in the number of union officials and members who have been assassinated in 1998 and 1999 compared with 1996 and 1997,⁴ but murders continue to occur regularly; for example, between November 1999 (when the case was last examined by the Committee on Freedom of Association) and the end of the mission on 16 February 2000 the Committee was informed of the murder of two union officials and several union members. There has, however, been a very considerable increase in death threats which have reached the hundreds, as well as an increase in the number of temporary kidnappings of union leaders and members, for the most part by self-defence groups and especially guerrilla organizations. There have also been attacks on trade union headquarters, and detentions, though no disappearances were reported in 1999. It is difficult to know whether this trend in the number of murders is likely to continue.

28. *The Committee observes that, since the two murders of union officials between November 1999 and February 2000 that are referred to in the mission's report, the complainant organizations have reported the murder of five more trade union officials and 19 union members, death threats against union officials and physical aggression against demonstrators. The Committee expresses its grave concern at the allegations contained in the latest communications from the complainant organizations and requests the Government to take immediate steps to initiate inquiries in order to clarify these instances of violence and to sanction those responsible and to communicate to it its observations on the matter.*

Allegations concerning violent acts that were pending from the November 1999 meeting

29. *Regarding the alleged acts of violence against trade union officials and members (murders, disappearances, physical aggression, kidnappings and death threats) which the Government had announced that it was investigating, and the allegations that were still*

³ In all, some 70 persons receive protection under various measures.

⁴ According to the Government 38 officials were murdered in 1996-97 and 13 in 1998-99; according to the National Trade Union School, the figures were 65 and 48 respectively. According to the Government, 255 union officials and members in all were murdered in 1996-97 and 35 in 1998-99; for the School the corresponding figures were 409 and 160.

pending at the end of its previous examination of the case, the Committee notes the Government's statement that it has ordered inquiries into all the allegations (see annex). The Committee requests the Government to keep it informed of the findings of all the inquiries currently under way.

30. However, although the Government states that inquiries have been initiated into the allegations in this case, the Committee regrets that in only three instances have the persons responsible for the murders been arrested and that only in ten cases a formal investigation has been opened linked to the murders of unionists. On the question of impunity, the Committee notes the direct contacts mission's statement that:

Without disregarding the numerous measures that have been adopted by the authorities to combat impunity in general, the alarming fact is that, as far as identifying the material and moral perpetrators of the murders of union officials and members, the outcome of the procedures in terms of convictions is virtually nil. Only in exceptional cases have the events been clarified, the guilty parties identified and the full rigour of the law applied, as is apparent from the information supplied by the Public Prosecutor on 105 cases before the Committee on Freedom of Association that have been investigated. To this must be added the slow progress and excessive delays in many of the judicial proceedings and the lack of public confidence in the judicial system. Although the mission is fully aware that the persons responsible for the violence employ irregular war techniques, operate secretly, resort to selective attacks and have all kinds of resources at their disposal, considerably more effort must be made to combat the extremely serious and intolerable situation of impunity which is one of the main reasons for the violence.

The Committee recalls that:

In the event that judicial investigations into the murder and disappearance of trade unionists are rarely successful, the Committee has considered it indispensable that measures be taken to identify, bring to trial and convict the guilty parties and has pointed out that such a situation means that, in practice, the guilty parties enjoy impunity which reinforces the climate of violence and insecurity and thus has an extremely damaging effect on the exercise of trade union rights,

and that "the absence of judgements against the guilty parties creates, in practice, a situation of impunity, which reinforces the climate of violence and insecurity, and which is extremely damaging to the exercise of trade union rights" [see Digest, op. cit., paras. 54 and 55]. In these circumstances, the Committee wishes to express its grave concern at the situation of impunity and requests the Government to make additional efforts of a substantial nature against the serious and intolerable situations of impunity and to keep it informed of developments.

31. Regarding the alleged death threats against (1) members of the executive board of the Titán SA workers' trade union of the municipality of Yumbo, (2) members of the executive board of the South Bolívar Agricultural and Mining Workers' Association, (3) Oscar Arturo Orozco and Hernán de Jesús Ortiz, (4) Wilson García Quiceno, (5) Henry Ocampo, (6) Sergio Díaz, (7) Fernando Cardona, (8) Aguirre Restrepo Oscar, (9) Arrango Alvaro Alberto, (10) Varrío Castaño Horacio, (11) Franco Jorge Humberto, (12) Giraldo Héctor de Jesús, (13) Gutiérrez Jairo Humberto, (14) Restrepo Luis Norberto, and (15) Jorge Eliécer Marín Trujillo, the Committee urges the Government to provide the necessary protection for these trade union leaders and stresses the need for all these threats to be reported to the Public Prosecutor. In addition, the Committee requests the Government to keep it informed of the outcome of the inquiries into the disappearances of Alexander Cardona (14 June 1998) and Mario Jiménez (27 July 1998).

32. *The Committee notes that the Government has assigned the cases of the raiding of the headquarters of the Executive Committee of the CUT-Atlántico and the aggression of a trade unionist to the Prosecutor's office to carry out an inquiry. The Committee requests the Government to keep it informed in this regard. With regard to the raiding of the premises of the FENSUAGRO and the surveillance of its President by the armed forces, the Committee notes that these allegations have not been reported to the authorities. The Committee requests the Government to ensure that an inquiry is established and to keep it informed in this regard.*

Other allegations

33. *Regarding the allegations of anti-union discrimination in the Andino Citibank, Sudameris and Anglo Colombiano banks that were still pending, the Committee observes that the complainant organizations have not sent it the observations it had requested on the subject. In these circumstances, the Committee does not intend to pursue its examination of these allegations any further.*
34. *Regarding the alleged violation of trade union and labour rights of trade union officials and workers of Brinks de Colombia SA (the complainants alleged that the working day had been increased in violation of the company's internal regulations), the Committee notes the Government's statement that: (1) the Regional Director of Labour and Social Security of Cundinamarca ruled on 16 November 1998 noting that the working day imposed by the company complied with the provisions of its internal regulations; (2) an administrative inquiry has been ordered into the possible violation of the collective agreement; and (3) at the beginning of February 2000 the Ministry of Labour and Social Security was asked to mediate a solution to the labour dispute and agreed to do so. In these circumstances, the Committee asks the Government to keep it informed of the outcome of the administrative inquiry into the possible violation of the collective agreement.*
35. *Regarding the court proceedings concerning dismissals in the Textilia Ltda. company initiated by Germán Bulla and Darío Ramírez, on which no judgement has yet been handed down, the Committee notes the Government's assurances that it will be informed of the judgements as soon as they have been handed down. In these circumstances, the Committee expects that the judicial authorities will hand down their judgements in the near future and requests the Government to communicate to it the final outcome of the said proceedings.*

New allegations

36. *Finally, the Committee requests the Government to communicate its observations without delay on all the new allegations recently presented by the ICFTU, the CUT, the CTC, the CGTD, the USO and ASODEFENSA.*

The Committee's recommendations

37. *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *The Committee notes that a direct contacts mission visited the country from 7 to 16 February 2000 and thanks Mesquita Barros and Pérez Pérez for their mission report.*

Violence against trade union officials and members

- (b) *The Committee deeply deplores the numerous murders and violent acts against unionists mentioned in this report and observes that the Government and the union centrals and confederations provide differing figures of the number of victims. The Committee requests the Government to take appropriate steps, possibly by convening a working group of independent representatives accepted by both parties, to clarify the enormous divergences in the figures given for trade union officials and members murdered over the past ten years and to keep it informed of its findings.*
- (c) *Regarding the participation of public officials (especially officials of the armed forces) in the creation of self-defence or paramilitary groups and the passivity, connivance or collaboration of such officials by deed or omission vis-à-vis these groups and the violation of human rights in general that this entails, the Committee requests the Government to order an urgent and global inquiry into these practices at the institutional level, with a view to imposing appropriate sanctions. The Committee further requests the Government to take radical and systematic steps to disband the self-defence groups wherever they operate and to neutralize and punish all their leaders, members and financial backers, especially in the case of the United Self-Defence Units of Colombia whose disbanding shows no sign of having made any real progress. The Committee asks the Government to keep it informed of developments.*
- (d) *Regarding the protection of trade union officials, the Committee requests the Government to take steps to increase the budgetary allocation that it has earmarked for a programme of protection of trade union officials and, in consultation with the trade union organizations, to adopt additional measures to protect the life of trade union officials who have been threatened.*
- (e) *The Committee expresses its grave concern at the allegations contained in new communications from the complainant organizations (the murder of six trade union officials and 19 union members, death threats against union officials, physical aggression against demonstrators and numerous detentions) and request the Government to take immediate steps to initiate inquiries in order to clarify these instances of violence and to sanction those responsible, and to communicate to it its observations on the matter.*
- (f) *Regarding the matter of impunity, the Committee, noting with concern that, as far as the material and moral perpetrators of the murders of trade union officials and members are concerned, the outcome of the procedures in terms of convictions is virtually nil and that only in exceptional cases are the facts clarified, the culprits identified and the full rigour of the law applied, requests the Government to make a substantial effort to combat the extremely serious and intolerable situation of impunity, which is one of the main reasons for the violence, and to keep it informed of developments.*

Allegations examined in November 1999

- (g) *Regarding the alleged acts of violence against trade union officials and members (murders, disappearances, physical aggression, kidnappings and death threats) listed in the annex to this report, which the Government states are being investigated and on which it will inform the Committee of developments, the Committee, while expressing its concern and deeply regretting all these incidents, requests the Government to keep it informed of the findings of all the inquiries currently in progress.*
- (h) *Regarding the alleged death threats against: (1) members of the executive board of the Titán SA workers' trade union of the municipality of Yumbo, (2) members of the executive board of the South Bolívar Agricultural and Mining Workers' Association, (3) Oscar Arturo Orozco, Hernán de Jesús Ortiz, (4) Wilson García Quiceno, (5) Henry Ocampo, (6) Sergio Díaz, (7) Fernando Cardona, (8) Aguirre Restrepo Oscar, (9) Arrango Alvaro Alberto, (10) Varrío Castaño Horacio, (11) Franco Jorge Humberto, (12) Giraldo Héctor de Jesús, (13) Gutiérrez Jairo Humberto, (14) Restrepo Luis Norberto, and (15) Jorge Eliécer Marín Trujillo, the Committee urges the Government to provide the necessary protection for these trade union leaders and stresses the need for all these threats to be reported to the Public Prosecutor. The Committee also requests the Government to keep it informed of the outcome of the inquiries on the disappearances of Alexander Cardona and Mario Jiménez.*
- (i) *The Committee notes that the Government has assigned the cases of the raiding of the headquarters of the Executive Committee of the CUT-Atlántico and the aggression of a trade unionist to the Prosecutor's office to carry out an inquiry. The Committee requests the Government to keep it informed in this regard. With regard to the raiding of the premises of the FENSUAGRO and the surveillance of its President by the armed forces, the Committee requests the Government to ensure that an inquiry is established and to keep it informed in this regard.*
- (j) *The Committee requests the Government to keep it informed of the outcome of the administrative inquiry into the possible violation of the collective agreement in Brinks de Colombia SA.*
- (k) *Regarding the court proceedings concerning dismissals in the Textilía Ltda. company initiated by Germán Bulla and Darío Ramírez, the Committee expects that the judicial authorities will hand down their judgement in the near future and requests the Government to communicate to it the final outcome of the said proceedings.*

New allegations

- (l) *The Committee requests the Government to communicate its observations without delay on all the new allegations recently presented by the ICFTU, CUT, CTC, USO and ASODEFENSA.*

Annex

Response to the recommendations made by the Committee at its November 1999 meeting [see 319th Report, para. 116]

Subparagraph (a)

Murders

Name	Date	Place	Trade union organization	Presumed perpetrators	Observations
Antonio Moreno Asprilla ¹	12.08.95	Antioquia	Sintrainagro	Self-defence groups	Prosecutor's Office, Medellín: File No.18542 (apparently for being a <i>guerrillero</i>). Involved: Over Silgado and others
Manuel Ballesta Alvarez ²	13.08.95	Antioquia	Sintrainagro	Self-defence groups	Specialist judge, Medellín: File No.18542 (apparently for being a <i>guerrillero</i> or guerrilla auxiliary)
Francisco Mosquera C.	05.02.96	Antioquia	Sintramdarien	Not indicated	Prosecutor's Office, Quibdó, "collecting evidence"
Carlos Antonio Arroyo	05.02.96	Antioquia	Sintramdarien	Not indicated	Prosecutor's Office, Medellín: File No. 23050 – "preliminary stage"
Francisco Antonio Usuga	23.02.96	Antioquia	Sintrainagro	People's committees	Prosecutor's Office, Medellín: File No. 1813
Pedro Luis Bermúdez J.	06.06.95	Antioquia	Sintrainagro	Self-defence groups	Prosecutor's Office, Medellín: File No. 1406 – "collecting evidence"
Armando Humanes Petro ³	23.05.96	Córdoba	Fecode	Self-defence groups	Prosecutor's Office, Medellín: File No. 22837. Involved: Rafael Kerguelen and Carlos Castaño Gil. Special Unit of Montería
William Gustavo Jaimes T.	28.08.95	Not indicated	Anuc-campesino	Not indicated	Prosecutor's Office, Bogotá: File No. 237279 – "preliminary stage". There was no link to trade unionism
Jaime Eliécer Ojeda	23.05.94	N.Santander	Sintraminobras	Self-defence groups	Prosecutor's Office, Cúcuta: File No. 2485 – s. 326, CPP
Alfonso Noguera Cano	04.11.94	N.Santander	Sintramunicipio	Not indicated	Prosecutor's Office, Cúcuta: File No. 7970 – "collecting evidence". The presumed author retracted
Alvaro Hoyos Pabón	12.12.95	Valle	Sinratitan	Self-defence groups	Prosecutor's Office, Yumbo: File No. 527, s. 326, CPP

Name	Date	Place	Trade union organization	Presumed perpetrators	Observations
Néstor Eduardo Galindo ⁴	03.07.97	Valle	Anthoc-Yumbo	Self-inflicted	Prosecutor's Office, Cali: File No. 79856. Links with FARC – handling explosives
Erieleth Barón Daza	03.05.97	Valle	Not indicated	Not indicated	Prosecutor's Office, Cali: File No. 104995 – “preliminary stage”
Jhon Freddy Arboleda A.	03.07.97	Antioquia	Fensuagro	Not indicated	Prosecutor's Office, Medellín: File No. 817 – “preliminary stage”
William Alonso Suárez Gil	03.07.97	Antioquia	Fensuagro	Not indicated	Prosecutor's Office, Medellín: “preliminary stage”
Eladio de Jesús Chaverra R.	03.07.97	Antioquia	Fensuagro	Not indicated	Prosecutor's Office, Medellín: File No. 817 – “collecting evidence”
Luis Carlos Muñoz Z.	03.07.97	Antioquia	Sintramunicipio	Not indicated	Prosecutor's Office, Medellín: File No. 98926 – “preliminary stage”
Nazareno de Jesús Rivera G.	03.12.97	Antioquia	Sintrafronmines	Not indicated	Military Penal Court
Héctor de Jesús Gómez C.	22.03.97	Antioquia	Not indicated	Not indicated	Prosecutor's Office, Segovia: File No. 2056. Investigation reopened on 4 Jan. 2000
Gilberto Casas Arboleda	11.02.97	Antioquia	Sintrainagro	Self-defence groups	Prosecutor's Office, Medellín: File No. 22858 – “preliminary stage”
Norberto Casas Arboleda	11.02.97	Antioquia	Fensuagro	Self-defence groups	Prosecutor's Office, Medellín: File No. 22858 – “preliminary stage”. Special prosecutor
Alcides de Jesús Palacios C.	11.02.97	Antioquia	Fensuagro	Self-defence groups	Prosecutor's Office, Medellín: File No. 22858 – “preliminary stage”. Special prosecutor
Argiro de Jesús Betancur ⁵	11.02.97	Antioquia	Fensuagro	Self-defence groups	Prosecutor's Office, Medellín: File No. 22858 – “preliminary stage”. Special prosecutor
José Isidoro Leyton M.	22.03.97	Tolima	CGTD-Tolima	Delinquents	Prosecutor's Office, Bogotá: File No. 7311. One person arrested
Eduardo Enrique Ramos M.	14.07.97	Antioquia	Sintrainagro	Not indicated	Prosecutor's Office, Apartadó: File No. 4960
Libardo Cuéllar Navia	23.07.97	Huila	Fecode	Delinquents	Penal Court 2 of Pitalito, Huila – motive: car theft/four persons have been cleared
Wenceslao Varela T.	19.07.97	Bolívar	Fecode	Not indicated	Prosecutor's Office, 25, Mompo: File No. 396
Abraham Figueroa Bolaños	25.07.97	Caquetá	Fecode	Self-defence groups	Prosecutor's Office, Human Rights Unit: File No. 253 (worked with indigenous peoples)

Name	Date	Place	Trade union organization	Presumed perpetrators	Observations
Edgar Camacho Bolaños	25.07.97	Caquetá	Fecode	Self-defence groups	Prosecutor's Office, Human Rights Unit: File No. 251 (worked with indigenous peoples)
Félix Antonio Avilés A. ⁶	01.12.97	Córdoba	Fecode	Self-defence groups	Prosecutor's Office, Medellín: File No. 24365 (apparently perpetrator of attacks on FUNPAZCOR and GANACOR)
Juan Camacho Herrera	25.04.97	Bolívar	Sindicato minero	Not indicated	Prosecutor's Office, Human Rights Unit. Arrest warrant issued for 2 persons
Luis Orlando Camacho G.	20.07.97	Cesar	Not affiliated	Not indicated	Prosecutor's Office, Aguachica: File No. 4750 – s. 326 CPP
Hernando Cuadros M.	1994	N.Santander	Uso-Tibú	Guerrilla-EPL	Prosecutor's Office, Cúcuta: File No. 9364 – “preliminary stage”. The Attorney -General began an inquiry because of allegations of involvement of the National Police in this murder. The inquiry was archived in April 1997. Before specialized judges, a public prosecutor stated that there was evidence linking this murder to the subversive group, the EPL
Freddy Francisco Fuentes ⁷	18.07.97	Córdoba	Fecode	Guerrilla-ELN	Prosecutor's Office, Human Rights Unit: File No. 245. The Attorney-General began an inquiry to show the link between this murder and state agents. The inquiry was archived
Víctor Julio Garzón H.	07.03.97	Bogotá	Fensuagro	Self-defence groups	Prosecutor's Office, Human Rights Unit: File No. 232 – “preliminary stage”
Isidro Segundo Gil Gil	03.12.96	Not indicated	Sinaltrainal	Not indicated	Prosecutor's Office, Human Rights Unit: File No. 164 – “under inquiry”
José Silvio Gómez	01.04.96	Antioquia	Sintrainagro	Self-defence groups	Prosecutor's Office, Chigorodó: File No. 1850 – “preliminary stage”
Enoc Mendoza Riasco	04.07.97	Magdalena	Fecode	Guerrilla	Special delegation to the Prosecutor of Ciénaga
Luis Orlando Quiceno López	16.07.97	Antioquia	Sutimac	Self-defence groups of Urabá	Prosecutor's Office, Santa Bárbara: File No. 667 – “preliminary stage”
Arnold Sánchez Maza ⁸	13.07.97	Córdoba	Fecode	Self-defence groups	Specialist Prosecutor of Montería Prosecutor's Office. Murder motive: membership in the ELN

Name	Date	Place	Trade union organization	Presumed perpetrators	Observations
Camilo Eliécer Suárez Ariza	21.07.97	Magdalena	Fensuagro	Self-defence groups	Prosecutor's Office, Santa Marta, and Regional Office of Barranquilla: File No. 524/8988. Assigned to a special prosecutor
Mauricio Tapias Llerena	21.07.97	Magdalena	Fensuagro	Self-defence groups	Prosecutor's Office, Santa Marta, and Regional Office, Barranquilla: File No. 524/8988. Assigned to a special prosecutor
Atilio José Vásquez Suárez	28.07.97	Bolívar	FecodeE	Not indicated	Prosecutor's Office, Barranquilla: File No. 8578 (rector – kidnapped for extortion)
Odulfo Zambrano López	27.10.97	Atlántico	Sintraeicol	Self-defence groups	Prosecutor's Office, Barranquilla: File No. 9410
Alvaro José Taborda A. ⁹	08.01.97	Córdoba	Fecode	Self-defence groups	Prosecutor's Office, Human Rights Unit: File No. 184/609
Elkin Clavijo	30.11.97	Antioquia	Sintraporce	Guerrilla-ELN	Prosecutor's Office, Nacional: File No. 25110
Alfonso Niño	30.11.97	Antioquia	Sintraporce	Guerrilla-ELN	Prosecutor's Office, Nacional: File No. 369 – "preliminary stage"
Luis Emilio Puerta Orrego	22.11.97	Antioquia	Sintraporce	Guerrilla-ELN	Prosecutor's National Human Rights Unit
Fabio Humberto Burbano C.	12.01.98	Cauca	Aseinpec-Cali	Self-defence groups	Prosecutor's Office, Cali: File No. 16318 – "collecting evidence"
Osfanol Torres Cárdenas	31.01.96	Antioquia	Sintraempúblicas	Self-defence groups	Prosecutor's Office, Medellín: File No. 165069, s. 326 CPP
Fernando Triana	31.01.98	Antioquia	Fenaltrase-Ant.	Self-defence groups	Prosecutor's Office: verification
Francisco Hurtado Cabezas	12.02.98	Nariño	Festracol	Not indicated	Prosecutor's Office, Human Rights Unit: File No. 511, s. 326 CPP
Misael Díaz Urzola	26.05.98	Córdoba	Feduniversitarios	Not indicated	Prosecutor's National Human Rights Unit
Sabas Domingo Socadagui	03.06.97	Arauca	Not indicated	Not indicated	Special DAS Unit: File No. 2533 (apparently a crime of passion – homosexual relations)
Jesús Arley Escobar P.	18.07.97	Valle	Aseinpec	Not indicated	Prosecutor's Office, Cali: File No. 104995
José Raúl Giraldo H.	25.11.97	Antioquia	Sindicons	Self-defence groups	Prosecutor's Office, Medellín: File No. 160872, s. 326 CPP
Bernardo Orrego Orrego	06.03.97	Antioquia	A. Vendedores	Police	Polinal Medellín: File No. 751. Police officer arrested

Name	Date	Place	Trade union organization	Presumed perpetrators	Observations
Eduardo Umaña Mendoza ¹⁰	18.04.98	Bogotá	No connection with trade union movement. Independent criminal lawyer	Hired assassins	Prosecutor's Office: File No. 346. Inquiry in progress; six persons arrested. The apparent perpetrator was recently extradited from Spain

Notes:

¹ **Antonio Moreno Asprilla**, murdered in Chigorodó on 12 August 1995. According to the Prosecutor's Office of Medellín, the perpetrators were five members of a self-defence group. Motive: "apparently for being a *guerrillero*". File No. 18542.

² **Manuel Ballesta Álvarez**. File No. 18542 being handled by a specialist judge. Motive: "apparently for being a *guerrillero* or *guerrilla* auxiliary".

³ **Armando José Humanes Petro**, teacher, murdered on 23 May 1996; managed the teachers' housing cooperative. According to the report of the Police Department of Córdoba – Judicial Police and Investigations Section, Humanes Petro "was a member of the urban structure of the EPL". Rafael Gerguelen (currently under arrest) and Carlos Castaño Gil, members of a self-defence group, have been linked with this crime and charged accordingly.

⁴ **Néstor Eduardo Galindo**. According to a recent report of the Prosecutor's Office of Cali, he caused his own death while handling explosives. Had links with the FARC-EP guerrilla movement.

⁵ **Argiro de Jesús Betancur E.** Linked to an indictment for rioting brought by the Terrorism Unit of the Prosecutor's Office. File No. 2788 of 1996. Accused of "active participation in subversion".

⁶ **Félix Antonio Avilés Arroyo**, murdered on 1 December 1997. A member of the M-19. His murder is claimed by a self-defence group, ostensibly for his participation in terrorist attacks in Montería. The investigation is being conducted by the Specialist Prosecutor's Office of Montería (Police Department of Córdoba – Judicial Police and Investigation Section).

⁷ **Freddy Francisco Fuentes Paternina**, teacher. According to reports from the Police Department of Córdoba – Judicial Police and Investigation Section, "he was a member of the guerrilla group *Corriente de Renovación Socialista*". According to a public statement by the guerrilla organization known as the National Liberation Army (ELN), he was the subject of a political trial for embezzlement of funds belonging to the "Astolfo Gonzáles" Front that he had been entrusted with to carry out terrorist acts against political leaders and public corporation candidates. Fuentes Paternina was known in the "Astolfo Gonzáles" Front as "el Docto"; he was a member of the Tactical-Military Committee and of the ELN urban militias in Montería.

⁸ **Arnold Enrique Sánchez Maza**, kidnapped from his home by persons travelling in a van on 13 July 1997 and subsequently murdered. Hypothesis: paramilitary groups. Motive: member of the ELN's "Astolfo Gonzáles" Front. At the time of his murder, Sánchez Maza was unemployed and was not a member of the teaching profession (Police Department of Córdoba – Judicial Police and Investigation Section).

⁹ **Alvaro José Taborda Alvarez**, teacher, murdered on 8 January 1997. According to a police report, the self-defence groups claimed responsibility for the murder in a communiqué issued in Montería, accusing him – along with others – of responsibility for the terrorist attacks against the headquarters of FUNPAZCOR and GANACOR (POLINAL).

¹⁰ **José Eduardo Umaña Mendoza**, lawyer, murdered in Bogotá on 18 April 1998. The investigation of the Prosecutor's Office, under File No. 346, is currently in process. Six persons linked to the crime are in preventive detention. A man who was apparently the perpetrator of the crime was recently extradited from Spain. Umaña Mendoza was the defence lawyer for a group of USO union members who were under arrest for crimes unconnected with their trade union activities (rioting and terrorism). He was neither a member nor an official of a trade union.

Disappearances

- **Rodrigo Rodríguez Sierra**. Disappeared on 16 February 1995. President of SINTRAPROACEITES. Accused: member of the National Police. The Attorney-General undertook an investigation which was archived in February 1997.
- **Ramón Alberto Osorio Beltran**. Disappeared on 13 May 1997. The Attorney-General ordered the opening of the preliminary inquiry on 15 August 1997.

Subparagraph (b)**Murders and attempted murders**

Name	Date	Place	Trade union organization	Presumed perpetrators	Observations
Murders					
José Vicente Rincón ¹	07.01.98	Santander	Sintrafercol	Guerrilla-ELN	Prosecutor's Office, 1a, Barrancabermeja: File No. 12371, s. 326, CPP
Jorge Boada Palencia ²	18.04.98	Bogotá	Aseinpec	Not indicated	National Prosecutor's Office, Human Resources Unit: File No. 353, "currently in process"
Jorge Duarte Chávez ³	09.05.98	Santander	USO	Not indicated	Prosecutor's Office, 8a, Barrancabermeja: File No. 13205
Carlos Rodríguez M. ⁴	10.05.98	Atlántico	USO	Not indicated	Prosecutor's Office, Barranquilla
Arcángel Rubio Ramírez ⁵	08.01.98	Cundina-marca	Sittelecom	Not indicated	Prosecutor's Office, Fusagasugá: File No. 4825, s. 326, CPP (motive: apparently car theft)
Orfa Lijia Mejía	07.10.98	Nariño	Fecode	Not indicated	Prosecutor's Office, 22, Ipiales: File No. 330
Macario Herrera Villota	25.10.98	Huila	Fecode	Delinquents	Prosecutor's Office, Neiva: File No. 1664 (motive: theft of a taxi)
Victor Eloy Mieles Ospino and Rosa Ramírez ⁶	22.07.99	Cesar	None	Self-defence groups	Prosecutor's Office: in the process of collecting evidence. Neither he nor his wife was involved with any trade union movement
Attempted murders					
Virgilio Ochoa	16.10.98	Santander	Sintraenponal	Not indicated	Prosecutor's Office, collecting evidence
Eugeniano Sánchez	16.10.98	Santander	Sintraenponal	Not indicated	Prosecutor's Office, collecting evidence
Benito Rueda Villamizar	16.10.98	Santander	Sintraenponal	Not indicated	Prosecutor's Office, collecting evidence

Notes:

¹ **José Vicente Rincón**. The General Inspectorate – Human Rights Group of the National Police, state that their inquiries have established that the perpetrators of the crime are known under the aliases of "Pepe", "Chuzo" and "Petete" and are active members of the ELN urban militias operating in the north-west sector of Barrancabermeja (POLINAL).

² **Jorge Boada Palencia**, INPEC union official, murdered on 18 April 1998. Murder perpetrated by Hugo Toro Restrepo, alias "Bochica" (POLINAL).

³ **Jorge Duarte Chávez**, murdered in Barrancabermeja on 9 May 1998. Intelligence sources indicate that the crime was committed by persons operating under the aliases of "Andrés", "Walfran" and "Ramón" or "Ramiro", members of the ELN people's militias (POLINAL).

⁴ **Carlos Rodríguez Márquez**, murdered in Barranquilla on 10 May 1998. According to POLINAL sources, he was murdered for reasons connected with personal or family problems, as is apparent from statements by the children of his companion.

⁵ **Arcángel Rubio Ramírez Graldo**, member of the Telecom trade union, murdered in the municipality of Venecia, Cundinamarca. Investigations conducted by the Sectional Prosecutor's Office under File No. 4825, Fiscal 05. Statements have been taken from María Cenia Zuluaga, Luis Alfredo Ríos, Benigno Vela, Guillermo León Pérez, Rosalba González, Miguel Fernández and José Evert Rodríguez. According to the investigation being conducted by the Police Department of Cundinamarca – National Police Section, “an analysis of events suggests that the crime may have been committed by a gang of car thieves since, in addition to the loss of a blue Chevrolet Samurai (registration number MQC 136), other belongings of the victim such as a gold chain, cellular phone, magnetic telephone belonging to Telecom, BCH credit card, various tools from the car and from Telecom, etc., were also taken”.

⁶ **Victor Eloy Miele Ospino and Rosa Ramírez**, murdered in 1999. Miele Ospino had had to leave the country after being threatened, apparently by self-defence groups. Shortly after his return to the country he resigned from CICOLAC and settled in another area from where he had been threatened. It is not known why he returned to the area he had left, where he was unfortunately murdered with his wife. He had not been involved in any trade union activity for a long time, following his exile and resignation from the company (and therefore his trade union office).

Subparagraph (c)

Murders

Name	Date	Place	Trade union organization	Presumed perpetrators	Observations
Oscar Artunduaga Núñez	1998	Valle	Sintraemcali	Hired assassins	Prosecutor's Office, Cali: File No. 154765. Two men, one dead, the other on the run
Jesús Orlando Arévalo	14.01.99	Arauca	None, retired	ELN	First Prosecutor's Office, Arauca: File No. 2533. Collecting evidence
Moisés Canedo Estrada	20.01.99	Antioquia	No links with the trade union movement	Not indicated	Prosecutor's Office, Medellín, transferred from Amalfi
Gladis Pulido Monroy	18.12.98	Boyacá	FECODE	Guerrilla	Prosecutor's Office, Santa Rosa de Viterbo: File No. 750 ("La Libertad", municipality of La Capilla). The absence of sufficient results would be due to the fear of certain persons testifying who had knowledge of the facts
Oscar David Blandón					Prosecutor's Office, collecting evidence
Oswaldo Rojas Sánchez	11.02.99	Valle	Sintramunicipio	Sicario	Prosecutor's Office, Cali: File No. 163215. Collecting evidence. Resigned from the Protection Branch
Julio Alfonso Poveda	17.02.99	Bogotá	No links with the trade union movement	Self-defence groups	Prosecutor's Office: National Human Rights Unit: File No. 461, investigation in progress. Four persons linked to the crime
Pedro Alejandrino Melchor	06.04.99	Caldas	FECODE	Guerrilla FARC	Special Prosecutor of Manizales: preliminary stage
Gildardo Tapasco	06.04.99	Caldas	FECODE	Guerrilla FARC	Special Prosecutor of Manizales: preliminary stage
Manuel Salvador Avila ¹	22.04.99	Santander	Sintrainagro	Self-defence groups	Prosecutor's Office: information from POLINAL
Esaú Moreno Martínez	05.04.99	Atlántico	Sintraiss	Sicario	Prosecutor's Office, Barranquilla: File No. 12280

Note:

¹ **Manuel Salvador Avila Ruiz**, President of SINTRAINAGRO – Puerto Wilches Section. The Police Department of Santander – Judicial Police and Investigation Section – Homicides and Illegal Armed Groups Unit, in communication No. 3620 of 20 September 1999 responded to a 3 June 1999 request from the Office of the United Nations High Commission for Human Rights in Colombia as follows:

The victim worked at the Palmas Bucarelia Company where he was Inspector for Industrial Safety and had been elected President of SINTRAINAGRO – Puerto Wilches Section. The kidnapping and subsequent murder of Manuel Salvador Avila Ruiz occurred around 7.30 p.m. on 22 April 1999 as he was returning to Puente Sogamoso from Bucaramanga with Francisco Javier Meza Cadavid, who was also working for the Palmas Bucarelia Company at the time. At Patio Bonito on the Magdalena Medio main road from Puerto Araujo to San Alberto, they were intercepted by a dual cabin green van with no number plates in which six armed persons were travelling; when they were asked their names, one of the kidnapped persons pointed to Manuel Salvador and said "It is him", whereupon the kidnappers pushed him into the green van. He was found murdered the next day.

Investigations so far indicate that the murder was committed by the AUSAC self-defence units of Santander and el Sur del Cesar on orders from a person bearing the alias "Samuel", since the green van used by the delinquents on this occasion had been involved in other criminal acts such as the recent murder of Carlos Barón.

The investigation shows that Manuel Salvador Avila Ruiz was thought to have planned the kidnapping of ten senior engineers of the Palmas de Bucarelia, Brisas y Monterrey companies on 17 September 1997. They were held hostage by the FARC's Frente 24 for six months.

The commander of the self-defence group is Guillermo Cristancho Acosta, alias "Camilo".

The Police Department ordered an investigation and 20 statements have been collected which will be submitted to the Specialist Prosecutor's Office of Cúcuta where the relevant files have been sent. (Signed by Brigadier General Tobias Durán Quintanilla – Departmental Police Commander, Santander.)

Subparagraph (d)

Name	Date	Place	Trade union organization	Presumed perpetrators	Observations
Ernesto Emilio Fernández F.	20.11.95	Cesar	Fecode	Self-defence groups	National Prosecutor's Office, Human Rights Unit: File No. 111, "collecting evidence". The Attorney-General began an inquiry following denunciations of possible responsibility of state agents. The inquiry was archived in May 1996 due to lack of merit
Libardo Antonio Acevedo	07.07.96	Valle	FestralvaCTC	Not indicated	Special Prosecutor
Magali Peñaranda Arévalo	27.07.97	N.Santander	Sintramunicipio	Not indicated	Submitted to a special investigation
David Quintero Uribe	07.08.97	Cesar	Sintraucesar	Not indicated	Submitted to a special investigation
Aurelio de J. Arbeláez	04.03.97	Antioquia	Sintrafromines	Not indicated	Prosecutor's Office, Segovia: File No. 1902. The investigation was reopened on 4 Jan. 2000
José Guillermo Asprilla T.	23.07.97	Antioquia	Sintrainagro	Not indicated	Prosecutor's Office, Chigorodó: File No. 4969. The investigation was reopened on 14 Dec. 1999
Carlos Arturo Moreno L.	07.07.95	Antioquia	Sintrainagro	Self-defence groups	Prosecutor's Office, Apartadó: File No. 3710. The investigation was reopened on 14 Dec. 1999
Luis Abel León Villa	21.07.97	Antioquia	None	Not indicated	Prosecutor's Office, Amagá: File No. 896. The investigation has been reopened. Not a trade unionist

Subparagraphs (e) and (f)

Threats

The Government communicated information on measures of protection for some union leaders and offices which the complainant had not mentioned.

Following an inquiry, the trade union officials listed below have been granted adequate protection under the Risk Evaluation and Protection Programme for persons in a “high-risk” situation:

Yesid Camacho Jiménez, official of ANTHOC Tolima, two escorts

Luz Amparo Cahavarria, official of CUT Antioquia, two escorts

Jesús Ruiz, official of CUT Antioquia, two escorts

Over Dorado, official of CUT Antioquia, two escorts

Carlos Posada, official of CUT Antioquia, one escort

Nicolás Castro Olaya, official of CUT Atlántico, one escort

Islena Rey Rodríguez, official of CUT Meta, two escorts

Pedro Barón Gutiérrez, official of CUT Tolima, one escort

Carlos Arbey González Quintero, official of CUT Valle, two escorts

Alexander López, President of SINTRAEMCALI, two escorts

Nelson Amaya Guevara, official of CUT Valle, two escorts

SINTRA, municipality of Cartago (Valle), two escorts and one vehicle

Other persons threatened

Bertina Calderón. A government report of 15 January 1999 stated that Bertina Calderón, currently a CUT official, “has been granted protection along with the other CUT officials”. No trade union headquarters has better security than the CUT; in addition to a safety perimeter, ID checks and videos (ninth floor), a large number of escorts have been assigned to the CUT officials on its premises. The two trade union representatives on the Risk Evaluation Committee (both members of the CUT) have not made an official request for personal protection for Bertina Calderón, and the Government is not aware that any allegations have been lodged with the Prosecutor’s Office or any other state security body to the effect that she has been threatened.

According to a report submitted on 20 September, the situation of a large number of trade union organizations that have requested special protection has been carefully studied. The Risk Evaluation Committee approved the setting up of safety perimeters for 42 trade unions and for the National Trade Union School of Antioquia. The following organizations currently have a safety perimeter and protection:

National CUT – Single Workers’ Confederation, Santafé de Bogotá

National CTC – Workers’ Confederation of Colombia, Santafé de Bogotá

National CGTD – General Democratic Workers’ Confederation, Santafé de Bogotá

National FECODE – National Teachers’ Federation, Santafé de Bogotá

ASONAL JUDICIAL – National Association of Public Servants and Employers of the Judiciary, Cúcuta

ASINORT (affiliated to FECODE-CUT) – Teachers’ Trade Union Association of North Santander, Cúcuta

CUT – Single Workers’ Confederation, Cúcuta Section

ANTHOC – National Association of Hospital Workers, Ibagué

ANTHOC – National Association of Hospital Workers, Ocaña

SINTRAELECOL – Electrical Workers’ Trade Union of Colombia, Pasto

FENSUAGRO – National Agricultural Workers’ Single Trade Union Federation, Santafé de Bogotá

SINTRATELEFONOS – Telephone Company Workers’ Trade Union, Santafé de Bogotá

SINALTRAINAL – National Food Industry Workers’ Trade Union, Santafé de Bogotá

Subparagraph (g)

Threats

According to information from the Prosecutor’s Office, the situation of the investigations conducted into threats against the persons listed below is as follows:

Martha Cecilia Cadavid. File No. 25323. Investigation carried out by the Specialist Unit of the Prosecutor’s Office of Medellín.

Carlos Hugo Jaramillo. File No. 27222. Investigation carried out by the Specialist Unit of the Prosecutor’s Office of Bogotá. Shelved on 4 December 1997, no reason having been found to pursue the investigation.

José Luis Jaramillo Galeano. File Nos. 154543 and 154719. Investigation carried out by the Public Security Unit. According to the latest report, “collecting evidence”.

Rangel Ramos Zapata. File No. 161950. Carried out by the Public Security Unit of Medellín, “collecting evidence”. The study of the revaluation of the level of risk and seriousness of practical threats by Mr. Zapata undertaken by the Directorate of Protection of the Department of Administration and Security (DAS) concluded that there was no evidence of factors or situations against the liberty, life or integrity of the evaluator. Nevertheless, the Office of Security of the Department of Antioquía provided its guard with a vehicle and some weapons. The DAS section of Antioquía carried out studies of security and risk by Ramos Zapata. In 1998 it provided for two revolvers, two communication radios, two bullet-proof vests and one vehicle.

Jorge Eliécer Marín Trujillo. File No. 2851. Investigation carried out by the Prosecutor’s Office, 24. Suspended on 2 July 1998, insufficient grounds having been found to pursue the investigation.

Víctor Ramírez. File No. 7096. Investigation carried out by the Barrancabermeja Section Unit of the Prosecutor’s Office. A restraining order was issued on 21 April 1995, no grounds having been found to take any action against the persons alleged to be responsible.

As regards the other cases referred to in paragraph 107, of which the Prosecutor’s Office has taken note, no information is forthcoming on the investigations as the allegations have not been duly submitted to the Prosecutor’s Office.

Subparagraph (h)**Arrests**

Luis David Rodríguez Pérez. Neither the company (INCORA) nor the trade union (SINTRADIN) have reported his alleged arrest. Inquiries conducted by the Ministry of Labour and Social Security with the Human Resources Directorate of INCORA, “Rodríguez Pérez was separated from and compensated by the company on 1 May 1993. He was subsequently granted a pension from 25 December 1994 when he reached retirement age. He is currently receiving his pension in the municipality of Arauca where he lives”.

Elder Fernández and Gustavo Minorta. “Following inquiries into Elder Fernández and Gustavo Minorta, said to be members of ECOPETROL (USO) and to have been arrested in December 1996, both USO and ECOPETROL stated that they were unknown to them and that they had not reported any such arrest. It is therefore important that the Committee on Freedom of Association of the ILO request its source for more details”. Elder Fernández and Gustavo Minorta “are not members of USO and are not listed as being under arrest by any administrative or judicial authority”.

Subparagraph (i)

Regarding the “allegations concerning acts of violence on which the Government has not sent information or has sent insufficient information for it to be established whether an investigation has been opened”, the following information is submitted:

Name	Date	Place	Trade union organization	Presumed perpetrators	Observations
Murders					
Manuel Francisco Giraldo	22.03.95	Antioquia	Sintrainagro	Self-defence groups	Prosecutor's Office, Apartadó: File No. 17684, “preliminary stage”
Luis David Alvarado	22.03.96	Antioquia	Sintrainagro	Guerrilla	Prosecutor's Office, Apartadó: File No. 4134 (listed as Álvaro David). Investigation reopened in Dec. 1999
Eduardo Enrique Ramos M.	14.07.97	Antioquia	Sintrainagro	Not indicated	Prosecutor's Office, Apartadó: File No. 4960, “preliminary stage”
Marcos Pérez González	10.10.98	Not indicated	Sintraelecól	Not indicated	Prosecutor's Office: in progress
Jorge Luis Ortega G. ¹	20.10.98	Bogotá	Sintraelecól-CUT	Not indicated	National Prosecutor's Office, Human Rights Unit: File No. 398. Several persons arrested
Hortensia Alfaro Banderas	24.10.98	Cesar	Sindesc	Self-defence groups	Prosecutor's Office, Barranquilla: File No. 11353, “preliminary stage”
Jairo Cruz	26.10.98	Cesar	Proaceites	Not indicated	Special Prosecutor of Valledupar. Case No. 13215
Luis Peroza	12.02.99	Cesar	Fecode	Self-defence groups	Prosecutor of Valledupar: in progress
Numael Vergel Ortiz	12.02.99	Cesar	Fecode	Self-defence groups	Prosecutor of Valledupar: in progress
Gilberto Tovar Escudero	15.02.99	Valle	Sintra cartago	Self-defence groups	Prosecutor's Office, in progress

Name	Date	Place	Trade union organization	Presumed perpetrators	Observations
Albeiro de Jesús Arce V.	19.03.99	Valle	Sinracartago	Self-defence groups	Prosecutor's Office: in progress
Ricaurte Pérez Rengifo	25.02.99	Antioquia	Fecode	Not indicated	Prosecutor's Office: in progress
Antonio Cerón Olarte		Huila	Fecode	Not indicated	Prosecutor's Office: in progress
Attempted murders					
Gilberto Carreño					Prosecutor's Office: in progress
Cesar Blanco Moreno	28.08.95	N.Santander	Not indicated	Not indicated	Prosecutor's Office: File No. 2239. Several statements have been collected. Special intervention by the Office of the Public Prosecutor
Fernando Morales, Alberto Pardo and Esaú Moreno	1999	Atlántico	Sintraiss	Not indicated	Special Investigation Unit of the Prosecutor's Office: in progress
Physical aggression²					
Public enterprises – Cartagena	29.06.99	Bolívar	Public enterprise trade unions	POLINAL	This case will be taken over by the Human Rights Directorate of POLINAL
Cesar Castaño, Luis Cruz and Janeth Leguizamón – ANDAT	06.01.97	Not indicated	ANDAT	POLINAL	This case will be taken over by the Human Rights Directorate of POLINAL
Mario Vergara and Heberto López	N. P.	Bogotá	SITTELECOM	POLINAL	This case will be taken over by the Human Rights Directorate of POLINAL
TELECOM workers	13.10.98	Bogotá	SITTELECOM	POLINAL	This case will be taken over by the Human Rights Directorate of POLINAL
Protest march Plaza de Bolívar	20.10.98	Bogotá	Workers	POLINAL	This case will be taken over by the Human Rights Directorate of POLINAL
Disappearances					
Jairo Navarro	06.06.95	Antioquia	Sintrainagro	Self-defence groups	Prosecutor's Office: kidnapped from the "La Playa" ranch, Carepa
Rami Vaca ³	27.10.97	Cesar	Not indicated	ELN	POLINAL: held by the ELN and freed three days later
Misael Pinzón Granados ⁴	07.12.97	Santander	Sintrainagro	Self-defence groups	Prosecutor's Office, Cúcuta: kidnapped in Puerto Wilches
Justiniano Herrera Escobar	30.01.99	Antioquia	Not indicated	Not indicated	Prosecutor's Office: in progress
Detentions					
José Ignacio Reyes ²	08.10.98	Bogotá	SITTELECOM		This case will be taken over by the Human Rights Directorate of POLINAL
Orlando Rivero and Sandra Parra ²	16.10.98	Bogotá	Not indicated		This case will be taken over by the Human Rights Directorate of POLINAL

Name	Date	Place	Trade union organization	Presumed perpetrators	Observations
Paro Cívico Nacional ⁵	31.08.99	National strike	Participants	POLINAL	File No. CIOSL:277, CUT:300. Arrested. The whereabouts of several people are unknown
Unlawful imprisonment					
Horacio Quintero and Oswaldo Blanco Ayala	31.05.99	Not indicated	USO	Self-defence groups	Held and interrogated. "Freed after having received death threats." Additional information being requested from the Prosecutor's Office

Notes:

¹ **Jorge Luis Ortega**, Vice-President of the CUT, murdered on 20 October 1998. According to the Prosecutor's Office, by decision of 15 June 1999, Ovidio Serrano Avendaño was placed under preventive detention. The data bank shows that Ortega García was threatened in writing and by telephone on 23 April 1998 (source: CUT). He was also arrested for rioting in the municipality of Mesitas del Colegio on 2 December 1994. Two former members of the National Police: Rafael Cépedes Álvarez and Edgar Armando Daza Díaz, thought to be the perpetrators of the crime, were arrested in December 1999.

² Regarding the physical aggression against and detention of **José Ignacio Reyes, Orlando Rivero and Sandra Parra**, no allegations have been submitted to the Prosecutor's Office. At the request of the Ministry of Labour and Social Security, these cases will be taken over by the Human Rights Directorate of POLINAL.

³ **Rami Vaca**, trade union official of ECOPETROL. According to the DAS, Rami Vaca and 11 employees of ECOPETROL were kidnapped on 27 October 1997 by the ELN's Frente Camilo Torres Restrepo in Los Caliches (César). All were released (National Police report, 16 September 1999).

⁴ **Misael Pinzón Granados**, trade union official of SINTRAINAGRO – Puerto Wilches Section. Kidnapped on 12 July 1996 by the AUSAC, led by Guillermo Crispancho Acosta, alias "Camilo". The Police Department of Santander has heard 23 statements and made two identikit portraits of individuals known under the aliases of "Salomón" and "Walter". These will be sent to the General Prosecutor's Office which is investigating the case under summons No. 12,458. "Walter" died in a confrontation with the ELN's "Capitán Parmenio" Front on 29 May 1999 in the municipality of Zapatoca and was identified as Mauricio Sánchez Bravo.

⁵ Under an agreement signed with the organizers of the national strike on the night of 31 August 1999, the persons arrested were released – except for those guilty of crimes, who were duly charged. This was accepted by the organizers, as shown in the record of proceedings. In the light of this agreement, the Ministry of Labour and Social Security asked the workers' confederations for a list of the detainees, who were immediately turned over to the Human Rights Directorate of the National Police. The latter immediately notified the Ministry of the police stations where the detainees were being held and of the Prosecutor's Offices where those who had been charged had been sent. The vast majority of the detainees were neither union members nor inhabitants of the districts where the disturbances took place.

According to the Human Rights Directorate of the Police in Bogotá, where the demonstration was most effective, 201 persons were briefly detained and 58 were charged, many of them being subsequently released by the local Prosecutor's Offices.

Information concerning some of the new allegations

Murders of trade union leaders:

- (1) **César Herrera**. His murder is attributed to the FARC.
- (2) **Jesús Orlando Crespo García**. Information is being awaited from the Public Prosecutor.

Subparagraph (j)

The Ministry of Labour and Social Security has not received any reply from the organizations that submitted complaints against the Andino, Citibank, Sudameris and Anglo Colombiano banking corporations in response to the Committee on Freedom of Association's request that they explain the reasons for their allegations. Any communications sent by the complainant organizations will be handled by this office.

Subparagraph (k)

[The Government has already responded to this point.]

Subparagraph (l)

The Ministry of Labour and Social Security will inform the Committee on Freedom of Association of the court cases brought by Germán Bulla and Darío Ramírez as soon as it has additional information.

Subparagraph (m)

- No information is available on the raiding of the Single Agricultural Trade Union Federation (FENSUAGRO), on the telephone tapping of its headquarters and trade union members or on the surveillance of the Federation's President, Luis Carlos Acero, by armed persons. As far as has been ascertained, these allegations have not been reported to the Colombian authorities.
- Regarding the raiding of the headquarters of the Executive Committee of the CUT-Atlántico and the aggression against Lydis Jaraba by 15 armed men on 6 February 1998, the Colombian authorities have not been requested to conduct an inquiry into any such allegations. The Government has nevertheless requested the National Prosecutor's Office to assign the case to one of its special investigation subunits for it to carry out the necessary inquiry.

CASES NOS. 1948 AND 1955

INTERIM REPORT

Complaints against the Government of Colombia

presented by

- **the Single Confederation of Workers of Colombia (CUT) and**
- **the Trade Union of Workers of the Bogotá**
Telecommunications Enterprise (SINTRATELEFONOS)

Allegations: Acts of anti-union discrimination

- 38.** The Committee last examined these cases at its meeting in November 1999 [see 319th Report, paras. 117-136]. The Trade Union of Workers of the Bogotá Telecommunications Enterprise (SINTRATELEFONOS) presented new allegations in a communication dated 9 February 2000.
- 39.** The Government sent its observations in communications dated 9 March and 9 May 2000.
- 40.** Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the cases

- 41.** In its previous examination of the cases, when it considered allegations of acts of anti-union discrimination, the Committee made the following recommendations [see 319th Report, para. 136(a), (b), (c) and (d)]:
 - With regard to the dismissals of members of the trade union organization SINTRAELECOL at a number of undertakings, the Committee urges the Government to provide information without delay on the following points: (i) the total number of workers, divided by members and non-members of SINTRAELECOL, who were dismissed at the EPSA enterprise in Cali after failing to join the voluntary severance programme; (ii) the duration and

- nature of the days of protest declared by SINTRAELECOL (total interruptions of services, partial stoppages, failure to consider the needs of the public, etc.), and which body declared these actions to be illegal and thus precipitated the dismissal of workers at the Cundinamarca Power Company; and (iii) the reasons for the dismissals of the SINTRAELECOL member at the Bogotá Power Company and of the union officers Mr. Elías Quintana and Mr. Carlos Socha at the Bogotá Telecommunications Enterprise (ETB).
- With regard to the request made to the Government during the Committee's March 1999 meeting to take measures with a view to furthering the reinstatement of the 23 members of the trade union SINTRATELEFONOS who were dismissed in November 1997 at the ETB enterprise, the Committee requests the Government to ensure the full implementation of the reinstatement order handed down by the Supreme Court in respect of 15 of the dismissed workers, and expresses the hope that the remaining trade unionists will be reinstated in the near future.
 - As regards the alleged dismissal of members of the trade union organization SINTRATELEFONOS at the ETB enterprise in January and March 1999 (five workers at the Engativá Exchange and six in the commercial division), the Committee requests the Government to investigate the matter and, if it is established that the workers in question were dismissed on grounds of their trade union membership or legitimate trade union activities, to ensure that they are immediately reinstated in their posts. The Committee requests the Government to keep it informed in this regard.
 - As regards the accusations and investigations by public bodies and the ETB covering some 800 workers, the Committee requests the Government to inform it of the specific charges against the workers named by the complainants – 500, according to the Government – by the Anti-Corruption Office. The Committee also requests the Government to keep it informed of the outcome of the investigation planned by the Ministry of Labour with a view to determining whether or not there is an anti-union campaign in the ETB enterprise.

B. The Government's reply

42. In its communications of 9 March and 9 May 2000, the Government states the following:

- Regarding the dismissal of members of SINTRAELECOL in a number of enterprises: (1) the Government attaches the findings of the administrative inquiry conducted by the Regional Labour Directorate of Cali, showing that no worker in the service of EPSA had been dismissed for not accepting the voluntary retirement plan. Seventeen workers have been dismissed since 28 February 1998, nine of them for just cause and eight after payment of compensation; only one was a member of SINTRAELECOL; (2) the duration of the work stoppage was 48 hours according to the trade union themselves, as can be seen from the official record of the work stoppages of 25 and 26 June 1997. As verified by the competent official, the work stoppage was total and therefore no services were provided to the public despite the fact that the supply of electrical power is deemed an essential public service by Act No. 142 of 1994; there were, moreover, manifest attacks against assets, individuals and state officials. The decision declaring the work stoppages illegal was issued by the Ministry of Labour and Social Security (Decision No. 001957 of 4 September 1997). This decision completed the available government channels, after which the complainants were entitled to take their case before the Administrative Disputes Tribunal; (3) Elías Quintana and Carlos Socha are not employees of ETB.

- Regarding the dismissal of 23 union members of SINTRATELEFONOS in November 1997, the Government has sent a list of the persons reinstated by the company showing the date of the decision and of their reinstatement. In the case of Martha Janeth Contreras Sánchez, Amparo Zapata Valderrama, Jorge Gustavo Albarracín Villegas, William Alberto Quevedo Ramírez, Ricardo Alberto López Hoffmann and Adelina Molina Cárdenas, the judgement of the Higher Court of the Judicial District of Santafé de Bogotá (which is attached) rejects the claim for constitutional protection on the grounds that there was no violation of due process or of the rights of the defendants by the ETB. The said rulings that Ricardo Alberto López and others are not entitled to constitutional protection could possibly be reviewed on a selective basis by the Constitutional Court to determine which is the appropriate jurisdiction. The ETB company states that it has already reinstated 22 of those who had been dismissed under an interim order of the Supreme Court of Justice. There remains the possible review by the Constitutional Court and the definitive ruling on the matter to be handed down by the labour courts.
- Regarding the dismissal of ETB workers affiliated to SINTRATELEFONOS in January and March 1999, the Government states that, as requested by the Committee, an inquiry into the dismissals has been ordered. The regional office of Cundinamarca has accordingly taken appropriate administrative action; the findings are attached to the Government's reply and show that government channels are now exhausted and that the workers are entitled to bring their case before the ordinary labour courts to settle the dispute over the dismissals. The Government notes that the company states that "regarding the dismissal of ETB workers affiliated to SINTRATELEFONOS in January and March 1999, it is important to know that the dismissals were for reasons other than membership of a trade union or the carrying out of legitimate trade union activities; as can be seen from the letters terminating the contract of employment of the workers in the commercial area (sales assistants), they were dismissed for failure to meet their obligations and for their poor output, which both the collective labour agreement and the law stipulate as grounds for an employer to terminate a contract of employment. The dismissals at Engativá resulted from changes in the structure of the office of the administrative vice-president and of the vice-president for maintenance and networks, based on a survey carried out by the Arthur Andersen company." Two of these 11 workers lodged an appeal but their claim was dismissed; one female worker filed a suit – currently pending – before the regular labour jurisdiction.
- Regarding the accusations and investigations affecting some 800 ETB workers, Act No. 200 of 1995, whereby the Single Disciplinary Code was adopted, provides that, through its various bodies, the State is the responsible party for disciplinary action, subject to the preferential power of the Office of the General Prosecutor to take disciplinary action against public servants. Section 48 of the Act provides for the constitution of a high-level unit or office as the first instance for disciplinary proceedings against public servants. Consequently, according to the law and the internal rules and regulations of the telecommunications enterprise of Santafé de Bogotá (ETB), the Anti-Corruption Office is competent to hear, judge and rule on disciplinary matters. The interim or final decisions taken are based on constitutional guarantees referred to in Act No. 200 of 1995, with due respect for the rights of the defendants. In this particular case, the Ministry of Labour and Social Security, by Decisions Nos. 002286 and 002287 of 9 October 1997 inter alia, ruled that the partial work stoppages by the ETB workers during 1997 were illegal. These administrative acts can be challenged before the Administrative Disputes Court, and the parties concerned would therefore be advised to take the appropriate action. In accordance with section 144 of Act No. 200 of 1995 and the inquiry procedure referred to in its section 138, the ETB initiated disciplinary action in connection with the alleged work stoppages of 782 public servants on 17 April, 27 and 30 May, 4, 5 and 6 June and 2

July 1997. The fact that these work stoppages that led to inquiry No. 068/97 actually occurred was established provisionally on the occasion of administrative visits to the ETB power stations affected by the said trade union activities; The events, circumstances and reports have been duly documented by the officials conducting the inquiry. The latter also verified the time sheets showing the arrivals and departure of the officials assigned to each of the company's departments and were therefore able to determine whether or not they were present to carry out their duties. In the course of the investigation and in accordance with the rights of the defendants, all the persons concerned were able to give statements freely and spontaneously. Following the examination of evidence, all 782 workers have been cleared by the inquiry and no sanction has been imposed.

C. New allegations of the complainant

43. In a communication dated 9 February 2000 SINTRATELEFONOS has sent new allegations in connection with its complaint.

D. The Committee's conclusions

44. *The Committee observes that when it examined this case at its November 1999 meeting, it had requested the Government to take action or to provide information on a number of allegations. Specifically, the Committee asked the Government to provide information on the following points: (i) the total number of workers, divided by members and non-members of SINTRAELECOL, who were dismissed at the EPSA enterprise in Cali after failing to join the voluntary severance programme; (ii) the duration and nature of the days of protest declared by SINTRAELECOL (total interruptions of service, partial stoppages, failure to consider the needs of the public, etc.), and which body declared these actions to be illegal and thus precipitated the dismissal of workers at the Cundinamarca Power Company; and (iii) the reasons for the dismissals of the SINTRAELECOL member at the Bogotá Power Company in 1997 – not mentioned by name by the complainant – and of the union officers (benefiting from trade union protection, according to the complainant) Mr. Elías Quintana and Mr. Carlos Socha at the Bogotá Telecommunications Enterprise (ETB); (iv) the specific charges against numerous ETB workers by the Anti-Corruption Office and the outcome of the investigation planned by the Ministry of Labour with a view to determining whether or not there is an anti-union campaign in the ETB enterprise. The Committee likewise requested the Government: (i) to order an investigation into the dismissal of 11 members of SINTRATELEFONOS in the ETB enterprise in January and March 1999 and, if it is established that the workers in question were dismissed on grounds of their trade union membership or legitimate trade union activities, to ensure that they are immediately reinstated in their posts, and to keep it informed in this regard; and (ii) with regard to the 23 trade union members who were dismissed in November 1997 at the ETB enterprise, to ensure the full implementation of the reinstatement order handed down by the Supreme Court in respect of 15 of the dismissed workers and expressed the hope that the remaining trade unionists would be reinstated in the near future.*
45. *Regarding the request for information on the total number of workers, divided by members and non-members of SINTRAELECOL, who were dismissed at the EPSA enterprise in Cali after failing to join the voluntary severance programme, the Committee notes the Government's statement that the administrative inquiry conducted by the Regional Labour Directorate of Cali shows that no worker in the service of EPSA has been dismissed for not joining the voluntary severance programme and that since 28 February 1998 the enterprise has dismissed 17 workers, only one of whom was a member of SINTRAELECOL. In these circumstances, the Committee does not intend to pursue the examination of this allegation further.*

46. *Regarding the request for information on the duration and nature of the days of protest declared by SINTRAELECOL (total interruptions of services, partial stoppages, failure to consider the needs of the public, etc.), and which body declared these actions to be illegal and thus precipitated the dismissal of workers at the Cundinamarca Power Company—the enterprise that supplies electrical power – the Committee notes the Government’s statement that: (1) the duration of the work stoppages was 48 hours, during which there was a total breakdown in this essential public service and manifest violence against assets, persons and state officials; and (2) the illegality of the work stoppages was declared by the Ministry of Labour and Social Security, which thereby exhausted all administrative channels. The Committee recalls that electricity supply services may be considered essential services in the strict sense of the term (i.e. services whose interruption could endanger the life, personal safety or health of the whole or part of the population), and that a strike might be the subject of restrictions or even a prohibition. That being said, the Committee stresses that “responsibility for declaring a strike illegal should not lie with the Government, but with an independent body which has the confidence of the parties involved” [see **Digest of decisions and principles of the Freedom of Association Committee** of the Governing Body of the ILO, 4th edition, 1996, para. 522]. In these circumstances, the Committee requests the Government to take steps to ensure that this principle is respected in future.*
47. *Regarding the request for information on the reasons for the dismissals of the SINTRAELECOL member of the Bogotá Power Company and of the union officers (benefiting from trade union protection, according to the complainants) Mr. Elías Quintana and Mr. Carlos Socha at the Bogotá Telecommunications Enterprise (ETB), the Committee notes the Government’s statement that Elías Quintana and Carlos Socha were not employees of the ETB enterprise. The Committee requests the complainants to supply more precise information in this respect. As regards the dismissal of a member of SINTRAELECOL at the ETB, whose name had not been provided by the complainants, the Committee requests the complainants to indicate the name of this member so that the Government may communicate its observations on this allegation.*
48. *Regarding the specific charges that the Anti-Corruption Office has brought against a large number (800, according to the complainant) of workers of the ETB enterprise, the outcome of this trial and the outcome of the Ministry of Labour’s planned investigation (with a view to determining whether or not there is an anti-union campaign in the ETB enterprise), the Committee notes the Government’s statement that the Act under which the Single Disciplinary Code was adopted calls for the establishment of a unit or office to give a first hearing to disciplinary charges brought against public servants; within the ETB enterprise the Anti-Corruption Office is empowered to hear, judge and rule on disciplinary matters; the Ministry of Labour and Social Security declared the partial work stoppages by workers in the ETB enterprise during 1997 to be illegal; the ETB enterprise initiated a disciplinary inquiry into the alleged work stoppages involving 782 public servants of the enterprise; the reality of the work stoppages was established by administrative visits; in the course of the inquiry the workers concerned were heard and, as a result, all 782 workers have been cleared and no sanctions have been imposed on the workers. The Committee, nevertheless, regrets that the inquiries had been taken as a result of a declaration by the Ministry of Labour that the work stoppages were illegal, while the final result was that no charges were retained against the public servants in question.*
49. *Regarding the request that the Government order an investigation into the dismissal of 11 members of SINTRATELEFONOS at the ETB enterprise in January and March 1999, the Committee notes the Government’s statement that: (1) the Regional Office of Cundinamarca has conducted an inquiry and concluded that administrative channels are now exhausted and that the workers are at liberty to bring their case before the judicial authorities; (2) the enterprise claims that the dismissals were on grounds other than*

membership of a trade union organization or the performance of legitimate trade union activities and were based on the workers' failure to carry out their duties and their low output (as provided for both in the collective agreement and by law) and as a result of a change in the structure of the office of the administrative vice-president and of the vice-president for maintenance and networks; and (3) two dismissed workers have filed lawsuits (tutela) which have been rejected, and a female worker has filed judicial proceedings before the regular labour jurisdiction, which is currently pending. In these circumstances, the Committee requests the Government to keep it informed on the result of the judicial proceedings filed by a female worker. Furthermore, while noting the information provided by the enterprise, the Committee requests the Government to carry out a thorough investigation into the grounds for the dismissals of the 11 members of SINTRATELEFONOS and more specifically on whether these dismissals constituted acts of anti-union discrimination.

50. Regarding the trade union members dismissed in November 1997 at the ETB enterprise (the Committee had requested the Government to ensure the full implementation of the reinstatement order handed down by the Supreme Court in respect of 15 of the dismissed workers and had expressed the hope that the remaining trade unionists would be reinstated in the near future), the Committee notes with interest the Government's statement that the enterprise has already reinstated 22 of the dismissed workers in accordance with an interim order of the Supreme Court of Justice and that the claims for protection before the Constitutional Court and the final judgements to be handed down by the labour courts in this respect are still pending. The Committee accordingly requests the Government to keep it informed of the outcome of the judicial proceedings in question.
51. Regarding the new allegations presented by SINTRATELEFONOS in connection with this complaint, the Committee observes that the allegations are of recent date and requests the Government to communicate to it its observations on the matter.

The Committee's recommendations

52. *In the light of its foregoing interim conclusions, the Committee requests the Governing Body to approve the following recommendations:*
- (a) *The Committee requests the Government to take steps to ensure that in future the principle whereby responsibility for declaring a strike illegal should not lie with the Government but with an independent body which has the confidence of the parties involved is respected.*
 - (b) *The Committee requests the complainants to supply more precise information on whether the trade union officials Elías Quintana and Carlos Socha – dismissed according to the complainants – were workers of ETB enterprise. As regards the allegations of the dismissal of a member of SINTRAELECOL from the Bogotá Power Company (whose name had not been provided by the complainants), the Committee requests the complainants to indicate the name of this member so that the Government may communicate its observations on the allegation.*
 - (c) *Regarding the dismissal of 11 members of SINTRATELEFONOS at the ETB enterprise in January and March 1999, the Committee requests the Government to keep it informed of the results of the judicial proceedings filed by a female worker. Furthermore, the Committee requests the Government to carry out a thorough investigation into the grounds for the*

dismissal of the 11 members of SINRATELEFONOS and more specifically on whether these dismissals constituted acts of anti-union discrimination.

- (d) *Regarding the trade union members dismissed in November 1997 at the ETB enterprise, the Committee requests the Government to keep it informed of the outcome of the judicial proceedings with respect to the workers in question.*
- (e) *The Committee requests the Government to communicate to it its observations on the new allegations presented by SINRATELEFONOS in connection with this complaint in a communication dated 9 February 2000.*

CASE No. 1962

INTERIM REPORT

Complaint against the Government of Colombia presented by

- **the Single Confederation of Workers of Colombia (CUT)**
- **the General Confederation of Democratic Workers (CGTD)**
- **the Public Works Trade Union (SINTRAMINOBRAS) and**
- **the National Union of State Employees of Colombia (UTRADEC)**

Allegations: Dismissals connected with restructuring, in breach of a collective agreement; dismissals in violation of trade union immunity

- 53. The Committee examined this case at its November 1999 meeting and submitted an interim report to the Governing Body [see 319th Report, paras. 137-156, approved by the Governing Body at its 276th Session (November 1999)].
- 54. The Government sent its observations in communications dated 9 March and 9 May 2000.
- 55. Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

- 56. In its previous examination of the case at its November 1999 meeting, the Committee formulated the following conclusions and recommendations concerning the allegations still pending [see 319th Report, para. 156]:
 - as regards the alleged failure to apply the collective agreement in the Municipality of Neiva, the Committee requests the Government to take the necessary measures to bring about the reinstatement without loss of pay of 155 dismissed workers in the public administration in question. If this is not practicable given the considerable time that has elapsed since the dismissals, the Committee requests the Government to take steps to ensure that the workers receive full compensation without delay;
 - as regards the alleged dismissal of officials of HIMAT (now INAT), the Committee urges the Government to take measures to bring about the

reinstatement of the dismissed union officials and, in the event that it is not practicable given the considerable time that has elapsed since the dismissals, to ensure that they receive full compensation without delay;

- as regards the ruling, criticized by the complainant, rejecting the reinstatement of SINTRAMINOBRAS officials (Hernando Oviedo Polo, Fernando Leyva Zuleta and Omar Muñoz Cabrera, who were dismissed at the end of December 1994 without the previous judicial authorization required under law), the Committee urges the Government to reply without delay to the allegation and to provide a copy of any ruling handed down in this regard.

57. Concerning the latter recommendation, the allegations of SINTRAMINOBRAS were as follows:

The union SINTRAMINOBRAS, in its communication of 14 April 1999, alleges that Mr. Hernando Oviedo Polo, Mr. Fernando Leyva Zuleta and Mr. Omar Muñoz Cabrera, who were members of the Public Works Trade Union SINTRAMINOBRAS Executive Board, were dismissed at the end of December 1994, although the Ministry of Transport had not obtained the authorization required for such action under sections 405 and 406-411 of the Labour Code. Proceedings were initiated to obtain the reinstatement of the trade unions in question and the Labour Court judge ruled that they enjoyed legal protection by virtue of their trade union office. This was confirmed by the Chamber for Civil Labour Affairs which, however, also found that the dismissals had been in keeping with the constitutional mandate and with the wishes of the Law Ministry and did not require judicial authorization.

B. The Government's reply

58. As regards the allegations concerning the Municipality of Neiva, in its communications of 9 March and 9 May 2000 the Government reiterates that Colombia is a State subject to the rule of law and the division of powers and, while there should be harmonious collaboration among the branches in order to accomplish the goals pursued by the State, each must also respect the decisions taken by the other bodies in accordance with their functions and competence. Thus, the executive branch, in this case the Municipality of Neiva, is empowered by the Constitution to restructure itself. This is what occurred in the case of the Public Works Department of the Municipality of Neiva, which abolished this Department by Agreement No. 047 of 1992 of the Municipal Council of Neiva and by Decree No. 016 of 31 January 1993. The legality of these administrative acts was reviewed by the contentious administrative jurisdiction to which the workers had brought their case, but they subsequently withdrew their action before the Huila Administrative Tribunal, which issued a decision on 11 August 1994 accepting the withdrawal of their action.

59. The workers brought actions for reinstatement before the labour courts of the city of Neiva. They appealed against the decisions rejecting their claims and the Superior Court of Neiva also rejected the claims lodged by 110 workers. One hundred of the workers filed an appeal for review (cassation) before the Supreme Court of Justice, which upheld the rulings of the court of second instance, while 14 union officers obtained payment of compensation for delay amounting to approximately 200 million pesos. Claims filed by four workers are currently before the labour courts. The ordinary labour courts and the contentious administrative jurisdiction have handed down definitive rulings in about 90 per cent of cases. It would be damaging to the juridical security of Colombia and its partners if the decisions of its judges were not respected. In view of the above and of the universally recognized division of powers, the Government cannot compel the Municipality of Neiva to disregard judicial decisions and order the reinstatement or payment of compensation that

was not claimed. In addition, the Superior Court of Neiva handed down two rulings confirming the legality of the dismissals.

60. Nonetheless, the Government emphasizes that the municipal authorities are willing to give priority to the workers dismissed as a result of restructuring in recruitment for any posts that may be created or in enterprises with which they may contract in future.
61. The Government is bound to comply with, respect and obey judicial decisions because, like any other country organized as a constitutional State, it must adhere to the principles inherent in the division of powers. It is therefore not within its present remit to agree or disagree to the reinstatement or payment of the compensation urged by the Committee, given that the workers that are now complaining to this international organization had access to all the procedures and appeals guaranteeing the exercise of their right to defence and availed themselves of them. Although their claims were rejected by the judicial rulings handed down, these have become *res judicata* and must be respected.
62. As regards the judicial decisions concerning the trade union officers of SINTRAMINOBRAS, Mr. Hernando Oviedo Polo, Mr. Fernando Leyva Zuleta and Mr. Omar Muñoz Cabrera, against the Ministry of Public Works and Transport, a final decision was handed down on 15 July 1997 in the second instance by the Superior Court of the Huila Judicial District. This decision upheld the ruling handed down by the second labour court of Neiva circuit on 21 June 1996 declaring that on 31 December 1994 the plaintiffs were protected by the constitutional guarantee of trade union immunity; released the defendant from the other claims filed against it and ruled that the non-existence of the obligation had been proved while the remaining objections had not, and that the costs would be paid by the plaintiffs. In sum, the three plaintiff union officers did not succeed in their action to obtain reinstatement on grounds of trade union immunity. Irrespective of the above, it should be pointed out that the Ministry of Public Works and Transport was under no obligation to initiate proceedings to lift trade union immunity (dismissal proceedings) in order to terminate the employment of the protected officers, since case law has repeatedly established that it is not necessary to lift immunity during the restructuring of state entities involving the elimination of certain posts held by workers protected by trade union immunity.
63. As regards the dismissals of officers of HIMAT (now INAT), these were carried out under the terms of an interim mandate of the Constitution and were therefore in conformity with the law. Nonetheless, in letter No. 30/99 of December, the office of the Minister of Labour and Social Security requested the management of INAT to pay special attention to the recommendations of the Committee on Freedom of Association. In a letter dated 13 January 2000, the Regional Directorate of Huila states the following:

In the case of the officers of the Trade Union of Officials and Public Employees of HIMAT, now INAT, Oscar De Jesús Martínez Quintero, Alvaro Rojas Tovar, Hernando Cortes Yate, Isauro Lasso Vargas and Ascencio Gutiérrez Chala, they instituted *tutela* proceedings (for the protection of constitutional rights) against the ruling dated 15 October 1997 handed down by the Chamber for Civil Labour Affairs of the Superior Court of Neiva before the Disciplinary Chamber of the Sectional Council of the Huila Judiciary on the grounds that the court had erred in law in handing down the ruling because it disregarded the principle of favourability of labour provisions (article 53 of the Constitution) and violated their fundamental rights to due process (article 29 of the Constitution), equality before the law (article 13), work (article 25) and free access to the administration of justice (article 229); the court granted protection and overturned the decision, declaring that the Chamber against which the proceedings had been instituted would institute new proceedings within a binding time limit of 48 hours in order to reach a new decision as soon as possible. Since the writ of protection was dated 1 December 1999, the final

judicial decisions are expected. The proceedings are still pending with the Superior Court. The Director of INAT stated that he would do everything in his power to reach a solution, in consultation with the workers protected by immunity and dismissed, in accordance with the new circumstances of INAT's legal status. INAT is currently carrying out the reinstatements, retirements and readjustment of compensation and the monthly list of persons to be retired is currently being prepared following the court's ruling and awaiting a reply from the Ministry of Finance concerning the attribution of resources. INAT indicates that the salaries due to the former employees have been paid. For the cases where reinstatement is not physically or legally possible, the Ministry of Labour has convened a meeting with the parties on 10 May in order to progress with the negotiations concerning the application of the court's rulings.

C. The Committee's conclusions

64. *As regards the dismissal of 155 workers of the Municipality of Neiva as part of a restructuring exercise, the Committee had considered that the collective agreement which guaranteed stability of employment of the unionized workers was violated and had requested reinstatement of the workers concerned and, if this was not practical, requested the Government to take steps to ensure that the workers received full compensation without delay [see 319th Report, para. 152]. In this respect, the Committee notes with interest that the Constitutional Court has ordered compensation to be paid to the 14 union officers dismissed, and that the municipal authorities are willing to give priority to the workers dismissed during restructuring in recruitment for any posts it might establish or in any enterprises with which it may contract in future. As regards the workers who were not union officers, the Committee notes that according to the Government, given that the judicial authorities have rejected the reinstatement of 110 workers (only four workers have claims still pending before the courts) it is not within the remit of the Government to agree or not to agree to reinstatement or payment of the compensation requested by the Committee, since the Government must respect decisions that have the authority of **res judicata**. The Committee understands the explanations put forward by the Government, but requests it to take the steps within its scope with regard to the competent authorities of the Municipality of Neiva to ensure that they pay compensation to all of the workers dismissed in violation of the collective agreement.*
65. *As regards the dismissal of the officers of HIMAT (now INAT), the Committee notes with interest that: (1) the Minister of Labour has requested INAT to give special attention to the Committee's recommendations; (2) the judicial authority granted protection to five trade union officers; (3) the salaries due to the former trade union officers have been paid; and (4) reinstatements, retirements and readjustments of compensation are now being carried out and the Ministry has convened a meeting with the parties on 10 May 2000 in order to find solutions for the cases where reinstatement is not possible. The Committee requests the Government to confirm that the four union leaders have been reinstated and paid the compensation corresponding to the period during which they were dismissed.*
66. *As regards the dismissal without prior judicial authorization of three union officers of SINTRAMINOBRAS during the course of restructuring, the Committee notes that the judicial authority ruled in an action brought by the persons concerned that they were protected by trade union immunity but that they had not succeeded in their proceedings to obtain reinstatement for reasons of national case law. In this respect, the Committee emphasizes the advisability in restructuring programmes by the State of giving priority to workers' representatives with regard to their retention in employment in case of reduction of the workforce, to ensure their effective protection [see **Digest of decisions and principles of the Freedom of Association Committee**, 1996, para. 961]. The Committee considers that it should be possible for dismissed trade union officials to have recourse to an investigation if they allege that their dismissal was due to their status or union activities;*

in this manner it may be determined with certainty whether the dismissals in question occurred as part of general measures which affected them to the same extent as other workers.

67. *Finally, the Committee observes that the organizations CUT – Huila Section and UTRADEC have presented new allegations in communications dated 29 November and 1 December 1999 and 6 January, 5 April and 1 May 2000 which have been transmitted to the Government for its comments. Considering the recent date of these allegations and the partial reply from the Government, the Committee is not in a position to examine them in this report.*

The Committee's recommendations

68. *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*

- (a) The Committee requests the Government to take the steps within its scope with regard to the competent authorities of the Municipality of Neiva to ensure that they pay compensation to all of the workers dismissed in violation of the collective agreement.*
- (b) The Committee requests the Government to confirm that it has reinstated the five union officers of HIMAT (now INAT) and that they have been paid the compensation corresponding to the period during which they were dismissed.*
- (c) Lastly, the Committee requests the Government to send detailed observations on the recent new allegations presented by the complainant organizations.*

CASE NO. 1964

REPORT WHERE THE COMMITTEE REQUESTS
TO BE KEPT INFORMED OF DEVELOPMENTS

**Complaint against the Government of Colombia
presented by
the Trade Union of Glass and Allied Workers
of Colombia (SINTRAVIDRICOL)**

*Allegations: Anti-union interference and discrimination, acts of
intimidation, and non-compliance with the terms of the collective
agreement*

69. The Committee last examined this case at its November 1999 meeting, when it submitted an interim report to the Governing Body [see 319th Report, paras. 157-169, approved by the Governing Body at its 276th sitting, March 1999].

70. The Government sent its observations in communications dated 9 March and 9 May 2000.

71. Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

72. At its November 1999 meeting, the Committee made the following recommendations on the allegations that were still pending with respect to anti-union interference and discrimination and the non-compliance with some terms of a collective agreement by the CONALVIDRIOS S.A. Company [see 319th Report, para. 169].

- (a) the Committee requests the Government to ensure that a thorough investigation is carried out into each of the allegations presented by the complainant (except for those concerning economic benefits and trade union membership dues) and to inform it in this respect without delay;
- (b) the Committee requests the Government to send its observations on the recent new allegations contained in the complainant's communication of 2 October 1999.

73. The pending allegations, as submitted by the complainant organization (SINTRAVIDRICOL), and the allegations submitted in their communication of 2 October 1999 are as follows:

- after hiring a former official of the Ministry of Labour (Regional Director of Labour and Social Security of Cundinamarca) as Human Resources Director on 4 September 1994, the CONALVIDRIOS enterprise embarked on an anti-union policy, failing to recognize the participation of the union in the joint committees (on labour relations, occupational health, sports and catering) established in the collective agreement; the Ministry of Labour was informed accordingly;
- the enterprise has embarked on an anti-union policy of reducing the union's membership, granting those who resign from the union privileges such as loans, promotions and bonuses, which is further aggravated by the fact that some of these, such as leave and housing loans, are statutory benefits for which provision is made in the collective agreement; as a result of this policy, approximately 200 members have resigned from the union; the intention is to turn the trade union into a minority organization, which under Colombian law would result in the loss of substantial guarantees, especially in terms of power to represent the workers vis-à-vis the employer; the Ministry of Labour was informed accordingly;
- the Ministry of Labour issued Decisions Nos. 0072 and 0073 of 18 January 1995 revoking previous administrative decisions registering the executive committees of the trade union. The revocation of these decisions was inappropriate and the representatives of the trade union had not been duly notified of it. Once these administrative decisions had been issued, the CONALVIDRIOS S.A. enterprise proceeded to dismiss six trade union officers, followed by 14 other trade union leaders. The person who instigated these dismissals and the above-mentioned decisions was the enterprise's Human Resources Director (a former official of the Ministry of Labour), who used all the powers vested in him, while the Ministry of Labour failed to deal impartially with the complaints concerning these matters;
- the enterprise stopped granting trade union leave for which provision had been made in the collective agreement;

- when the trade union convenes assemblies, the enterprise invents games, parties, sports and other activities, and members who speak at a meeting are dismissed the next day; members live in constant fear of losing their jobs; human rights are clearly being violated; trade union officers cannot speak to their fellow workers, and if they do they are transferred to another workstation or shift; the authorities and the Colombian judiciary have done nothing about this;
- the enterprise confiscates from the workers bulletins distributed by the trade union, thus infringing freedom of expression; on one occasion when trade union officers came to the entrance of the enterprise in order to distribute the information bulletin, the security guards set the dogs on them, threatening their lives;
- the enterprise brought criminal charges against the chairperson and the secretary of the national executive of the trade union for libel and slander but was unable to prove its accusations. To date, the union has brought over 100 legal actions (lawsuits, ordinary claims and special claims for trade union immunity and a criminal suit, which is currently being investigated by the Public Prosecutor's Office No. 68 of Santafé de Bogotá). According to the complainant, the labour courts and the labour administration authorities have been informed of all these facts, without any appropriate action being taken by the Ministry of Labour;
- the enterprise also brought criminal charges against seven officers of the Soacha local executive committee of the trade union for alleged procedural fraud, false impersonation and falsifying documents. The trade union brought criminal charges against four managers of the enterprise for trade union persecution (section 272 of the Penal Code);
- finally, the complainant attaches a copy of a judgement of the Supreme Court of Justice dated 21 January 1997, in which it is acknowledged that the CONALVIDRIOS S.A. enterprise exerted pressure on the workers in order to obtain their withdrawal from the trade union and ordered the enterprise "to refrain in future from acts aimed at preparing or processing withdrawal of trade union membership or any conduct aimed at obtaining the withdrawal of workers from membership of the enterprise trade union".
- in the enterprises of the Santa Domingo Group, it has proved impossible to elect a full executive board because the workers are frightened that the company will dismiss them the very next day (there are several instances of proceedings being initiated in defence of trade union immunity where the courts have ruled in favour of the persons dismissed and yet they were again dismissed a few days later on false charges);
- the National Assembly of Delegates was held from 20-26 September 1999 and six permits were requested well in advance, as required by agreement; however, the company only granted three and as a result the Buga section was not able to participate;
- the Buga section has been unable to elect its executive board for over three years, as the workers are too afraid to be candidates.

B. The Government's reply

74. In its communication dated 9 March 2000, the Government states that on 2 November 1999 the Ministry of Labour and Social Security ordered an administrative investigation into SINTRAVIDRICOL's allegations, including those contained in the communication of

2 October 1999. The demands on which the administrative inquiry was conducted, as requested by the interested parties, are as follows:

- dismissal of several trade union officials in 1995, 1996, 1997 and 1998;
- refusal to grant some requests for trade union leave;
- refusal to allow members to seek assistance in the event of disciplinary procedures;
- since 1994, refusal by the company to recognize or allow the functioning of certain committees provided for in the collective agreement to help resolve problems with the workers;
- refusal to allow information to be distributed among members;
- hindering the possibility for trade union officials to move around within the factories;
- refusal by the administration of CONALVIDRIOS S.A. to accept trade union officials as representatives of the union's members;
- loss of employment without the trade union members receiving the compensation stipulated in the agreement and by law.

75. The Government adds that the investigation has been carried out to verify the allegations of the complainant organization, bearing in mind that it has abandoned its original complaint only as regards the aspects relating to economic assistance and the payment of trade union dues. The special Inspection, Monitoring and Control Unit inquired into the following allegations:

- the enterprise has allegedly embarked on an anti-union policy of reducing the union's membership, granting those who resign from the union privileges such as loans, promotions and bonuses, which is further aggravated by the fact that some of these, such as leave and housing loans, are provided for in the collective agreement. As a result of this policy, approximately 200 members have resigned from the union;
- dismissal of trade union officials following a complaint submitted by the union's executive board that was resolved by Decisions Nos. 0072 and 0073 of 18 January 1995;
- when the trade union convenes assemblies, the enterprise invents games, parties, sports and other activities, and members who speak at a meeting are dismissed the next day;
- in a judgement of the Supreme Court of Justice dated 21 January 1997, the enterprise was ordered "to refrain in future from acts aimed at preparing or processing withdrawal of trade union membership or any conduct aimed at obtaining the withdrawal of workers from membership of the enterprise trade union".

76. In its communication of 9 May 2000, the Government states that the Ministry of Labour and Social Security mandated the Dinamarca Local Division to carry out the respective labour administrative inquiries related to the allegations about which the SINTRAVIDRICOL had pursued in its complaint. It was decided, through Ministerial Resolution No. 0661 of 3 May 2000, not to take any administrative measure against CONALVIDRIOS, for the following reasons: (a) the regular labour jurisdictions are the ones which have jurisdiction to decide whether workers were dismissed for just cause; (b) the complainants have not submitted evidence to support their allegations as regards the

refusals of trade union leave, the recognition of trade union organizations, the non-functioning of some committees provided for in the collective agreement, the obstacles to proper industrial relations and the violations of the right to associate. The complainants are still within the prescribed time limits to file revision or appeal proceedings should they so wish.

77. The Government specifies that SINTRAVIDRICOL has several options in defending its rights if it believes that they are in danger of being undermined: it can bring its case before the ordinary labour courts or before the penal courts in respect of the violation of freedom of association, or it can appeal for the courts' protection if its fundamental rights have been violated by CONALVIDRIOS.

C. The Committee's conclusions

78. *The Committee observes that the complainant organization in this case had alleged a number of acts of anti-union interference and discrimination by the management of CONALVIDRIOS S.A., as well as non-compliance by it of the terms of the collective agreement. In its previous examination of the case, the Committee requested the Government to order a thorough investigation into each of the allegations and to keep it informed of the findings.*
79. *The Committee notes the Government's statements that the Ministry of Labour and Social Security has carried out an administrative inquiry into the allegations presented by SINTRAVIDRICOL, and that it was decided, through Ministerial Resolution No. 0661 of 3 May 2000, not to take any administrative measure against CONALVIDRIOS since the regular labour jurisdictions are the ones which have jurisdiction to decide whether workers were dismissed for just cause, and because the complainants have not submitted evidence to support their allegations as regards the refusals of trade union leave, the recognition of trade union organizations, the non-functioning of some committees provided for in the collective agreement, the obstacles to proper industrial relations and the violations of the right to associate. The complainants are still within the prescribed time limits to file revision or appeal proceedings should they so wish.*
80. *The Committee emphasizes that the initial complaint was presented by the complainant in communications of April and May 1998 and deeply regrets that until very recently, for a period of two years during which it did not send sufficiently detailed information, the Government should have merely stated that it was up to the courts to make a decision on the dismissals of 20 trade unionists and that the complainants had not submitted evidence to substantiate their allegations. The Committee recalls that no person should be dismissed or prejudiced in his or her employment by reason of trade union membership or legitimate trade union activities, and that cases concerning anti-union discrimination contrary to Convention No. 98 should be examined rapidly, so that the necessary remedies can be really effective; an excessive delay in processing cases of anti-union discrimination, and in particular a lengthy delay in concluding the proceedings concerning the reinstatement of trade union leaders dismissed by an enterprise, constitute a denial of justice and therefore a denial of the trade union rights of the persons concerned [**Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, paras. 748-749]. That being so, the Committee stresses that the dismissed trade union leaders may launch the corresponding judicial proceedings and requests the Government to keep it informed of the results of any proceedings filed against Ministerial Resolution No. 0661 of 3 May 2000.*
81. *Finally, the Committee observes that, according to the Government, the SINTRAVIDRICOL trade union has in this case the option of bringing its case before the ordinary courts or before the penal courts on the grounds that its freedom of association*

has been violated or of seeking the courts' protection if its fundamental rights have been violated by CONALVIDRIOS S.A. In these circumstances, observing that the complainant refers to more than 100 judicial proceedings with respect to trade union rights violations on which the courts have already ruled, the Committee requests the Government to inform it of any court decision that may be or has been handed down in connection with the allegations presented by the complainant.

The Committee's recommendations

82. In the light of its foregoing conclusions, the Committee invited the Governing Body to approve the following recommendations:

- (a) Deploring the fact that, in spite of the time that has passed since the complaint was initially lodged in April 1998, the Government had not sent sufficiently detailed information, and that it merely stated that it was up to the courts to make a decision on the dismissals of 20 trade unionists and that the complainants had not submitted evidence to substantiate their allegations, the Committee stresses that the dismissed trade union leaders may launch the corresponding judicial proceedings and requests the Government to keep it informed of the results of any proceedings filed against Ministerial Resolution No. 0661 of 3 May 2000.*
- (b) The Committee requests the Government to inform it of any court decision that may be or has been handed down in connection with the allegations presented by the complainant.*

CASE NO. 1973

INTERIM REPORT

**Complaint against the Government of Colombia
presented by
the Association of Managers and Technical Staff
of the Colombian Petroleum Industry (ADECO)**

Allegations: favourable treatment of a particular trade union organization, violation of the right to collective bargaining, discrimination against members of an organization, interference by an employer and anti-union practices

- 83.** The Committee last examined this case at its November 1999 meeting [see 319th Report, paras. 170-179]. The Government sent its observations in communications dated 9 March and 9 May 2000.
- 84.** Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

85. The Committee observes that the complainant organization had alleged that in the process of collective bargaining, the trade union USO and the enterprise ECOPETROL had excluded ADECO and entered into a collective agreement (the legality of which was questioned by the complainant) which was also being applied to members of ADECO, despite the fact that the other union (USO) did not represent more than 50 per cent of the workforce at the enterprise (a legal prerequisite for negotiating on behalf of all the workers). According to the complainant, this situation had: (1) caused ADECO members to lose the acquired rights which they had enjoyed under the terms of an agreement concluded in 1997 with the management of ECOPETROL (which ADECO claims to be valid); (2) resulted in discrimination against them in terms of the entitlements and benefits enjoyed by the other workers; (3) led to the loss by ADECO of trade union safeguards such as trade union immunity, union leave, etc.; (4) forced members of ADECO to pay dues to USO; and (5) when the collective agreement was signed, led to representatives of the company putting pressure on workers to leave the union, which had resulted in a large number of resignations. In this context, the Committee recalls that in its previous examination of the case it had noted the Government's statement that the vast majority of the allegations had been examined and resolved by an administrative decision, and it had deeply deplored the fact that it could not be deduced from the information provided by the Government that the inquiry initiated by the administrative authorities had covered all the allegations made by the complainant.
86. At its November 1999 meeting the Committee accordingly made the following recommendation [see 319th Report, para. 179]:

The Committee once again urges the Government to take immediate steps to initiate an inquiry into all of the allegations made by the complainant organization ADECO and, on the basis of the information obtained, to communicate detailed observations in this respect, and to send the text of all the administrative decisions handed down to date.

B. The Government's reply

87. In its communications dated 9 March and 9 May 2000 the Government states that an administrative inquiry was done into the case. The matters which were investigated by the Ministry were: the refusal to pay ADECO members the half-yearly bonus provided for in Agreement 01 of 1997; the exclusion of ADECO from the joint occupational health committee; the reduction in the wages and social benefits of members of ADECO, such as their non-reclassification in the work schedules; and the double deduction of trade union dues. The Government states that ADECO has abandoned the other allegations presented in this case, except for those that were the subject of the administrative investigation (a copy of the decision signed by ADECO in this respect in the presence of authorities of the Ministry of Labour is attached to the Government's reply). The Ministry of Labour and Social Security with Ruling No. 00373 of 18 February 2000, decided to conclude the administrative investigation in the following terms, after having examined the four allegations of violation of freedom of association presented by the complainant organization: "States that the enterprise ECOPETROL did not violate the right of association ..." based on the fact that section 354 of the Labour Code states clearly the acts which constitute a violation of the right of association by an employer and none of these acts could be attributed to the enterprise in relation with the double deduction of union dues for the members of ADECO, one for the affiliation to this organization and the other for the benefits of the agreement. "Fined the enterprise ECOPETROL for a sum of 20 monthly minimum wages representing an amount of five million two hundred and two pesos (5,000,202.00) for illegal deduction of salary." The Government adds that an appeal

has been lodged against Ruling No. 00503 of 18 April 2000 which had confirmed the conclusions of the administrative investigation. The appeal is still pending.

88. Finally, the Government encloses a copy of the collective agreement for 1999-2000 and of the final record showing that ADECO took part in the negotiations on the agreement.

C. The Committee's conclusions

89. *The Committee recalls that in its previous examination of the case, it had urged the Government to take immediate steps to initiate an inquiry into all the allegations made by the complainant organization ADECO (specifically, the complainant had alleged that, in the process of collective bargaining, the trade union USO and the enterprise ECOPETROL had excluded ADECO and entered into a collective agreement which had: (1) caused ADECO members to lose the acquired rights which they had enjoyed under the terms of a 1997 agreement with the management of ECOPETROL – which ADECO claims to be valid; (2) resulted in discrimination against ADECO members in terms of the entitlements and benefits enjoyed by the other workers; (3) led to the loss by ADECO of trade union safeguards such as trade union immunity, union leave, etc.; (4) forced members of ADECO to pay dues to USO; and (5) when the collective agreement had been signed, led to representatives of the company putting pressure on workers to leave the union, which had resulted in a large number of resignations) and, on the basis of the information obtained, to communicate detailed observations in this respect and to send the text of all the administrative decisions handed down to date.*
90. *The Committee notes the Government's statement that: (1) on 16 January 1999, in the presence of the administrative authority, the complainant abandoned some of the allegations it had presented, while maintaining the following: non-payment to ADECO members of the half-yearly bonus provided for in Agreement 01 of 1997; exclusion of ADECO from the joint occupational health committee; reduction in wages and social benefits for ADECO members; and double deduction of union dues; (2) the Special Labour Inspection, Monitoring and Control Unit of the Ministry of Labour conducted an administrative inquiry which concluded that the enterprise ECOPETROL did not violate the right of association with regard to the double deduction of union dues but nevertheless fined the enterprise to an amount representing 20 monthly minimum wages for illegal deduction of salary; an appeal has been lodged against this decision.*
91. *In these circumstances and bearing in mind the fact that, according to the Government, a new collective agreement has been signed for 1999-2000 in whose negotiation the complainant organization ADECO took part, the Committee requests the Government to keep it informed of the outcome of the appeal lodged against the decision which followed the administrative investigation.*
92. *Finally, the Committee observes that following the direct contacts mission which took place in Colombia in February 2000, the complainant presented new allegations in a communication dated 27 March 2000, which were transmitted to the Government for its comments. Considering that these allegations were submitted very recently, the Committee is unable to examine them in the present report.*

The Committee's recommendations

93. *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*

- (a) *The Committee requests the Government to keep it informed of the outcome of the appeal lodged against the decision which followed the administrative investigation carried out by the Ministry of Labour.*
- (b) *The Committee requests the Government to send its observations concerning the new allegations presented by ADECO.*

CASE NO. 2015

INTERIM REPORT

**Complaint against the Government of Colombia
presented by
the Association of Public Servants employed by the Health
Service of the Armed Forces and National Police (ASEMIL)**

Allegations: Non-compliance with a collective agreement; challenges to trade union statutes; assault against trade union officials; illegal deductions for days of strike action; refusal to negotiate; refusal to grant time off for trade union activities; anti-union harassment

94. The Committee last examined this case at its November 1999 meeting [see 319th Report, paras. 180-201].
95. The Government sent its observations in communications dated 9 March and 9 May 2000.
96. Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

97. In its previous examination of the case the Committee regretted that the Government had not communicated its observations on a number of allegations: non-compliance with a collective agreement, challenges to trade union statutes, assault against trade union members, dismissal of trade union officials, illegal deductions for days of strike action, and refusal to negotiate. At the time the Committee made the following recommendation [see 319th Report, para. 201]:

Deploring that the Government has not communicated its observations on a certain number of allegations, the Committee requests the Government to send without delay its observations on all pending allegations.

B. The Government's reply

98. In its communications dated 9 March and 9 May 2000 the Government states that:
 - Regarding the dismissal of trade union leaders, the Minister of Labour ruled in Decision No. 00076 of 22 January 1999 that the parties were at liberty to initiate proceedings through the ordinary labour courts. Some of the officials of ASEMIL lodged an appeal (*acción de tutela*) in the matter of their dismissal on the grounds

that their work stoppages on 3, 7 and 14 April in an essential public service had been declared illegal. The Constitutional Court reviewed the case of three officials and, in the interests of due process, issued ruling SU036 of 22 January 1999 ordering that they be reinstated. In compliance with that ruling, the Ministry of National Defence issued Decisions Nos. 00246 and 00247 of 25 March 1999 ordering that Aníbal Andrés Mendoza Tovar and Eduardo Rodríguez Viaña, whose names were on the company payroll, be reinstated.

- Regarding the refusal to negotiate, the Ministry of Labour and Social Security’s regional management of Cundinamarca issued Decision No. 001323 of 15 June 1999 whereby it ruled on the various appeals that the complainant had lodged alleging the violation of freedom of association in connection with the negotiation of the list of demands presented by ASEMIL; this exhausted all government channels. (With its reply the Government enclosed the text of the decision wherein the Ministry of Labour resolves “to refrain from taking administrative action against the Ministry of National Defence”.)
- With regard to non-compliance with the collective agreement of 6 May 1997 which contained provisions on the payment of overtime, night work and work on Sundays and holidays, the non-equalization of wages and partial payment of amounts due in the event of redundancy, the Ministry of Labour conducted an investigation through the Monitoring and Control Division of the Technical Inspection and Monitoring Sub-Directorate and in a ruling dated 3 February 2000 decided that it was not competent to pursue the investigation any further. Given the type of employment relationship of the public officials concerned and the special regulations under which they are employed (Decree No. 1042 of 1978, Decree No. 1214 of 1990, Act No. 352 of 1999 and other relevant rules and regulations), the Ministry of Labour is not in a position to rule on the complaints submitted inasmuch as they relate to the alleged violation of individual rights; the Ministry can only rule on alleged violations of the collective rights of the officials employed. Nevertheless, the case has been transmitted to the Attorney-General of the Nation, who has asked the District Attorney-General to launch an inquiry.
- Regarding the challenges to ASEMIL’s statutes, the Government encloses with its reply a decision of the Ministry of Labour and Social Security of December 1999 resolving that the amendments to the statutes shall be officially registered, and a record of proceedings of the same Ministry noting that no appeal has been lodged against the said decision.

C. The Committee’s conclusions

99. *The Committee observes that, following its examination of this case at its November 1999 meeting, the following allegations were still pending: (1) the Ministry of Defence has not implemented an agreement signed with ASEMIL on 6 May 1997, which contained provisions regarding stability of employment, non-resort to reprisals, wages, etc.; (2) the Ministry of Defence has challenged the new statutes of ASEMIL (the complainant states that the Ministry of Labour found no grounds for such a challenge); (3) the workplaces in the Naval Hospital of Cartagena and the Central Military Hospital of Bogotá were taken over by the military during the national protest movement of 20 and 21 May 1998; (4) posters alluding to the protest movement were destroyed in the Central Military Hospital of Bogotá and trade unionists were assaulted, leaving 42 of them wounded (the complainant gives the names of six of those wounded, with details as to their injuries and the resulting degree of incapacitation); (5) members of the complainant organization’s executive board were dismissed (the complainant gives the names and posts of 14 union officials) after the strikes in the Central Military Hospital and the Naval Hospital of*

Cartagena had been declared illegal (the Constitutional Court ordered that three of the dismissed officials be reinstated); (6) more than a month's pay was docked from over 60 union members in the Naval Hospital of Cartagena and a week's wages from 200 members in the Central Military Hospital, even though the strike was only for two days; (7) the authorities of the Ministry of Defence refused to negotiate the demands of the more than 1,000 workers in the country's medical dispensaries.

- 100.** *Regarding the alleged non-compliance of the Ministry of Defence with a collective agreement signed with the complainant on 6 May 1997, which contains provisions regarding stability of employment, wages, the payment of overtime, etc., the Committee notes the Government's statement that the Ministry of Labour and Social Security carried out an investigation into a complaint on the subject and decided that it was not competent to pursue its investigation any further on the grounds that the complaints referred to alleged violations of individual rights, but that the case was nevertheless transmitted to the Attorney-General of the Nation who has launched an inquiry. The Committee recalls that it has already had previous occasion to state that "agreements should be binding on the parties" [see **Digest of decisions and principles of the Committee on Freedom of Association**, 4th edition, 1996, para. 818]. In these circumstances, the Committee urges the Government to take the necessary steps to ensure compliance with the May 1997 agreement between the Ministry of Defence and ASEMIL. The Committee also requests the Government to keep it informed of the results of the investigation carried out in this respect by the Attorney-General*
- 101.** *Regarding the alleged dismissal of 14 trade union officials on the complainant organization's executive board, the Committee notes the Government's statement that the Constitutional Court issued a ruling in January 1999 ordering the reinstatement of three of these officials and that two of them have already been reinstated. At the same time, the Committee notes the complainant's statement that, as a result of a complaint (acción de tutela) lodged subsequently to that before the Constitutional Court, all the dismissed union officials were reinstated. The Committee nevertheless observes the complainant's allegation that the said union officials have not been paid the compensation due to them for the time they were suspended from their duties. In the circumstances, the Committee requests the Government to ensure that all the reinstated union officials are paid the wages due to them without delay.*
- 102.** *Regarding the alleged refusal of the Ministry of Defence to negotiate the demands of the more than 1,000 workers in the country's dispensaries, the Committee notes the Government's statement that, in connection with an appeal lodged by the complainant, the Ministry of Labour ruled that it was not in a position to take action against the Ministry of Defence. The Committee recalls in this respect that "measures should be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements", as well as "the importance which it attaches to the obligation to negotiate in good faith for the maintenance of the harmonious development of labour relations" [see **Digest**, op. cit., paras. 781 and 814]. In these circumstances, the Committee requests the Government to endeavour to promote collective bargaining between the Ministry of Defence and the trade union organizations representing the workers in the dispensaries.*
- 103.** *Regarding the alleged challenge to the complainant's new statutes, the Committee observes that the Government has communicated to it a decision of the Ministry of Labour and Social Security ordering that the amendments to the statutes of ASEMIL should be officially registered and a record of proceedings of the same Ministry noting that no appeal has been lodged against the said decision. In these circumstances, the Committee does not intend to pursue its examination of this allegation any further.*

- 104.** *Finally, the Committee deeply regrets that, despite the dispatch of a direct contacts mission to Colombia, the Government has not communicated its observations on the following allegations that were still pending from its previous examination of the case: (1) the workplaces in the Naval Hospital of Cartagena and the Central Military Hospital of Bogotá were taken over by the military during the national protest movement of 20 and 21 May 1998; (2) posters alluding to the protest movement were destroyed in the Central Military Hospital of Bogotá and trade unionists were assaulted, leaving 42 of them wounded (the complainant gives the names of six of those wounded, with details as to their injuries and the resulting degree of incapacitation); and (3) more than a month's pay was docked from over 60 union members in the Naval Hospital of Cartagena and a week's wages from 200 members in the Central Military Hospital, even though the strike was only for two days. The Committee calls on the Government to send its observations on these allegations as a matter of urgency.*
- 105.** *The Committee observes that, during the direct contacts mission in Colombia in February 2000, the complainant organization has submitted new allegations in a communication dated 15 February 2000, which has been transmitted for comments to the Government. Given the recent date of these allegations, the Committee is not in a position to examine these allegations in the present report.*

The Committee's recommendations

- 106.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) The Committee urges the Government to take the necessary steps to ensure compliance with the May 1997 collective agreement between the Ministry of Defence and ASEMIL. The Committee also requests the Government to keep it informed of the result of the investigation made by the Attorney-General of the Nation.*
 - (b) The Committee requests the Government to ensure that all the reinstated union officials are paid the wages due to them without delay.*
 - (c) The Committee requests the Government to endeavour to promote collective bargaining between the Ministry of Defence and the trade union organizations representing the workers in the dispensaries.*
 - (d) The Committee deeply regrets that, despite the dispatch of a direct contacts mission to Colombia, the Government has not communicated its observations on the following allegations that were still pending from its previous examination of the case: (1) the workplaces in the Naval Hospital of Cartagena and the Central Military Hospital of Bogotá were taken over by the military during the national protest movement of 20 and 21 May 1998; (2) posters alluding to the protest movement were destroyed in the Central Military Hospital of Bogotá and trade unionists were assaulted, leaving 42 of them wounded (the complainant gives the names of six of those wounded, with details as to their injuries and the resulting degree of incapacitation); and (3) more than a month's pay was docked from over 60 union members in the Naval Hospital of Cartagena and a week's wages from 200 members in the Central Military Hospital, even though the strike*

was only for two days. The Committee calls on the Government to send its observations on these allegations as a matter of urgency.

- (e) *The Committee requests the Government to send its observations on the new allegations recently submitted by the complainant (refusal to grant time off for trade union activities, anti-union harassment, increasing the working day in violation of an agreement, and assignment of civilian employees to armed conflict zones).*

CASE NO. 2046

INTERIM REPORT

**Complaint against the Government of Colombia
presented by**

- **the Colombian Union of Beverage Industry Workers (SINALTRAINBEC)**
- **the Union of Pilsen Workers (SINTRAPILSEN)**
- **the Union of Metal Industry Workers APOLO**
- **the Single Central Organization of Workers (CUT – Antioquia section)**
- **the Union of Noel Workers (SINTRANOEL)**
- **the Union of Workers of the National Coffee Growers Federation (SINTRAFEC)**
- **the National Union of Bavaria SA Workers (SINALTRABAVARIA) and**
- **the National Union of Caja Agraria Workers (SINTRACREDITARIO)**

Allegations: Acts of discrimination and anti-union practices

- 107.** The present complaints were filed in communications from the Colombian Union of Beverage Industry Workers (SINALTRAINBEC), the Union of Pilsen Workers (SINTRAPILSEN) (communications dated 17 August, 21 and 30 September 1999), the Union of Metal Industry Workers APOLO (communication dated 10 September 1999), the Single Central Organization of Workers (CUT – Antioquia section), the Union of Noel Workers (SINTRANOEL) (communications dated 10 September and 27 October 1999), the Union of Workers of the National Coffee Growers Federation (SINTRAFEC) (communication dated 13 September 1999), the National Union of Workers of Bavaria SA and its subsidiaries (SINALTRABAVARIA) (communications dated November and 29 December 1999) and the National Union of Caja Agraria Workers (SINTRACREDITARIO) (communications dated 2 and 8 November).
- 108.** The Government sent its observations in communications dated 15 October and 18 November 1999, 9 March and 9 May 2000.
- 109.** Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

- 110.** In their communications dated 17 August and 21 and 30 September 1999, the Colombian Union of Beverage Industry Workers (SINALTRAINBEC) and the Union of Pilsen Workers (SINTRAPILSEN) state that the enterprise Cervecería Unión has been implementing the following anti-union practices against the SINALTRAINBEC

subcommittee since 1994: granting housing credits to members of SINTRACERVUNION (a trade union established with employer support) but not to SINALTRAINBEC members; threatening SINALTRAINBEC members with dismissal if they do not leave the union; accusing SINALTRAINBEC members of what are termed “grave” errors that they have not in fact committed; signing a collective agreement with SINTRACERVUNION that takes no account of the industrial union and its more than 1,000 members nationwide; obliging SINALTRAINBEC leaders to hold committee meetings during unpaid working hours and not granting them union leave; conducting a smear campaign accusing SINALTRAINBEC of being a “guerrilla” union. According to the complainant, as a result of these discriminatory practices the number of members at the Santodomingo factory has fallen from 265 in 1994 to 92 at present. Action was taken before the Ministry of Labour in 1998, cooperation was requested from the Public Prosecutor’s Office and a complaint was lodged with the Itagüi Prosecutor’s Office, but no response was received.

111. In its communication dated 10 September 1999, the Union of Metal Industry Workers APOLO states that the enterprise Industrias Metalúrgicas APOLO is a machine tool and metallurgy company located in Antioquia Department, Medellín. In spite of the fact that it had only one plant, the enterprise decided to split into three for the purpose of preventing workers from exercising their right to freedom of association. The enterprise replaced permanent workers with temporary staff in two of the companies, and in Guarne Municipality the fight continued to destroy the union totally (on the date of the complaint the union had 70 members compared to 350 in 1978). In 1985 the union called a strike; APOLO dismissed more than 100 fixed-term workers and replaced them with temporary staff. When a part of the company was transferred to Guarne Municipality, Antioquia, the labour contract was weakened and benefits that had been negotiated lost.
112. In their communications dated 10 September and 27 October 1999, the Single Central Organization of Workers (CUT – Antioquia section) and the Union of Noel Workers (SINTRANOEL) state that the enterprise Industrias Alimenticias Noel S.A. (a food producer in Colombia) was split in two with a view to preventing workers from exercising their union rights. They specifically allege that collective agreements have been signed since 1983 granting better working conditions to non-union members. The complainants also allege that the company opposed recognition of the union executive committee elected in 1999, on the grounds that the workers elected were not members of the union. The complainants also state that SINTRANOEL amended its statutes to become, by ministerial decree, an industrial union called SINALTRAPROAL, and that the companies have appealed the decree, claiming that since the union leaders do not belong to the same company they cannot be members of the industrial union. Lastly, the complainants state that the Noel Biscuit Company does not deduct union dues, on the grounds that it does not have a union. [The complainants also refer to unspecified matters in the distant past.]
113. In its communication dated 13 September 1999, the Union of Workers of the National Coffee Growers Federation (SINTRAFEC) states that since 1984 the enterprises National Coffee Growers Federation of Colombia and General Coffee Warehouses have unilaterally stopped deducting from non-union workers the dues owed by agreement and by law. In addition, the companies did not deduct the dues accruing to SINTRAFEC by agreement and the special dues owed by all workers for the years 1984, 1986 and 1987. SINTRAFEC brought an action before the judicial authorities, who 12 years later found against the union, seriously undermining the dignity of trade unionism and threatening the union with economic asphyxiation.
114. In its communications of November and 29 December 1999, the National Union of Workers of Bavaria SA and its subsidiaries (SINALTRABAVARIA) states that the Ministry of Labour refused to register the officers of 18 section subcommittees, even though they had been elected in accordance with the statutes. It also objects to the closure

of some of the company's plants and the resulting reduction in staff, which violates the collective agreement reached. Lastly, the union states that on the occasion of the nationwide general strike called by the labour federations on 31 August 1999, the enterprise cancelled the contracts of five workers and sanctioned 126 others from different SINALTRABAVARIA sections, even though the Government had agreed not to take measures of reprisal against workers.

115. In its communications dated 2 and 8 November 1999, SINTRACREDITARIO states that on 25 June 1999 the authorities used the forces of law and order to take over Caja Agraria offices and that on 26 June they decreed the massive dismissal of 8,000 workers and the creation of the Agrarian Bank. According to the union, following a national strike the Government issued a declaration in which it undertook not to wind up the Caja and to consult with the union on the Caja's restructuring. The union states that the 1998-99 collective agreement has been violated, specifically the clauses on employer substitution and company unity, on the prohibition of massive dismissals and the dismissal of expectant mothers, and on the guarantee of union privileges. The union adds that demonstrations by the dismissed workers were violently repressed by the police.

B. The Government's reply

116. In its communication dated 15 October, the Government states, in connection with the allegations made by SINTRAFEC, that SINTRAFEC has asked the administrative authority to suspend the complaint as the union was involved in talks with the company aimed at finding solutions to the problems posed.

117. In its communication dated 18 November 1999, the Government states, in connection with the allegations made by SINALTRABAVARIA, that Resolution No. 002169 of September 1999 authorized the partial and definite closure of the plant manufacturing aluminium containers and lids and the consequent dismissal of the workers employed there.

118. As regards the allegations made by the Colombian Union of Beverage Industry Workers (SINALTRAINBEC), the Government states that the complainant brought the actions set forth in Colombian penal legislation to remedy the presumed violations of freedom of association, and thereby obtained the following decisions: (1) resolution dated 22 December 1998 issued by the Public Prosecutor's Office, Prosecutor 121 delegated to the penal circuit judges, declaring lack of jurisdiction under section 327 of the Code of Penal Procedure; (2) resolution 6 dated January 1999 issued by the same prosecutor, rejecting the application for reconsideration; and (3) resolution dated 17 August 1999 also issued by Prosecutor 121, deciding not to apply section 328 of the Code of Penal Procedure on the grounds that there was no new evidence justifying the opening of an investigation. The resolution concerning jurisdiction and dated 22 December 1998 therefore remains valid.

119. The Government indicates that:

- the action brought on certain complaints was not successful;
- the enterprise maintains that the allegation of anti-union practices is unfounded;
- participation in collective bargaining must take place in compliance with the procedure set forth in Decree No. 1373-76, or the agreement reached is not valid;
- the enterprise denies having accused the union of being guerrillas and says it has brought no penal action against it;
- the enterprise states that it grants housing credits under the collective agreement;

- as regards threatening SINALTRAINBEC members with dismissal if they do not leave the union, the union brought an action that failed for lack of evidence;
- when there are more than two unions in one company, the procedure for collective bargaining is governed by Decree No. 1373-76, and that in this case SINALTRAINBEC did not invoke the decree for bargaining purposes and therefore was not excluded from the process but itself decided not to participate;
- the enterprise stated that it grants union leave in accordance with the law, which allows for unpaid leave provided that said leave does not disrupt the functioning of the enterprise;
- finally, there is no denunciation or complaint of anti-union practices with regard to the decrease in SINALTRAINBEC members.

Recourse was had to all possible channels of appeal.

- 120.** As regards the allegations concerning the enterprise Industrias Metalúrgicas APOLO, the Government states in a communication dated 9 May 2000 that the Ministry of Labour and Social Security of Antioquia has conducted an administrative labour inquiry into the acts brought to the attention of the Committee on Freedom of Association. The result was that the enterprise was fined 2,601,000 pesos by a resolution dated 4 May 2000 for violation of the right of freedom of association and the collective agreement, and deterioration in working conditions.
- 121.** As regards the allegations made by the Union of Workers of the National Coffee Growers Federation (SINTRAFEC), the Government states that SINTRAFEC brought a routine action before the labour courts against the National Federation and ALMACAFE, asking that they be made to pay it the amount corresponding to the regular and special dues accruing to the union by agreement and which were not deducted from the enterprise's non-union workers, who are covered by the collective agreement. The 12th Labour Circuit Court, in its decision of 15 January 1999, absolved the Federation and ALMACAFE of all liability with regard to SINTRAFEC's claims. The Labour Ministry's Office of International Affairs nevertheless asked the Division of Supervision and Monitoring to conduct an administrative labour inquiry into the alleged acts. On the basis of the corresponding legal analysis, the Division's leaders concluded that in view of the separation of powers set forth in article 113 of the Constitution, an inquiry cannot be made into the decision of a judge of the Republic and that the case came under the statute of limitations in that the union dues should have been deducted between 1984 and 1987.
- 122.** As regards the complaint presented by the Union of Noel Workers (SINTRANOEL), the Government states that according to article 333 of the Colombian Constitution, "economic activity and private initiative shall be limited only by considerations of public welfare. No one shall demand prior permission or set requirements for their exercise, unless so authorized by the law". Section 67 of the Labour Code establishes the legal framework for employer substitution, which shall not invalidate, suspend or modify existing labour agreements. On the basis of these statutory and constitutional rules, the country's enterprises and industries are free to exercise their economic activities within the limits of public welfare and the law. Industrias Alimenticias Noel S.A., exercising its right of free enterprise, split into two companies called Industrias Alimenticias Noel S.A. and the Noel Biscuit Company S.A., for economic reasons, given the requirements of globalization. In order to protect both the individual and collective rights of the workers, the Territorial Directorate of the Ministry of Labour and Social Security in Antioquia will open the relevant administrative inquiries to ensure compliance with the rules governing employer substitution.

123. The Ministry of Labour and Social Security, in Resolution No. 0018 of May 1986 on an appeal, decided as follows: “ARTICLE ONE – To recognize the primary union called the Union of Noel Workers as the union competent to discuss the list of claims filed on 27 May 1983.” “ARTICLE TWO – In accordance with the above, the enterprise is obliged to discuss the list of claims filed on 27 May 1983, and if it does not do so shall incur the fines stipulated in section 433 of the Labour Code ...” Industrias Alimenticias Noel S.A. filed for reconsideration of and appealed the resolution, which was confirmed in Resolution No. 033 of 15 August 1986. Resolution No. 0018 of 19 May 1986 was subsequently revoked by the Director-General of Labour in Resolution No. 04247 dated 13 November 1986, thus exhausting the government channel of appeal. Counsel for the Union of Noel Workers brought an action for annulment and re-establishment of the law on 10 March 1987 before the Council of State against Resolutions Nos. 0018, 0033 and 04247. The matter was resolved in a ruling dated 3 November 1993 declaring Resolution No. 04247 dated 13 November 1986 null and void. As a result, Resolution No. 00018, confirmed in Resolution No. 00033 dated 15 August 1986, must be fulfilled; the organization called the Union of Noel Workers is therefore competent to discuss the list of claims submitted on 27 May 1983. With the previous administrative and judicial decisions all legal remedies had been exhausted.
124. The Government states that Colombian labour law establishes the right to freedom of association, which must be understood from two points of view: one negative, the other positive. The first is that every individual is entitled to become a trade union member and the second is the right not to become a member or to leave the union at any time. The law also establishes different kinds of collective accords, such as the collective agreement for unionized workers (*convención colectiva*, section 467 of the Labour Code) and the collective contract for non-unionized workers (*pacto colectivo*, section 481 of the Labour Code). With a view to protecting the right to freedom of association and collective bargaining, the Labour Code, supplemented by Statute 50 of 1990, article 70, stipulates that: “If more than one-third of an enterprise’s workers belong to the union or unions, the enterprise shall not sign collective contracts or change those in force.” In terms of the complaint, the Sixth Medellín District Labour Court and the Labour Chamber of the Medellín Superior Court decided in a ruling dated 9 September 1998 not to grant the union’s action against Industrias Alimenticias Noel S.A. for presumed violation of the rights to equality, freedom of association and collective bargaining. It can therefore be said that the workers had access to the judicial processes protecting their rights to equal treatment, work and the freedom of association.
125. The Government adds that the first-level Union of Noel Workers asked the Ministry of Labour, in No. 019619 dated 27 May 1999, to register the new statutes adopted by the extraordinary general assembly of delegates on 23 May 1999. In Resolution No. 001541 of 2 July 1999, the Head of the Regulations and Union Registry Division entered the amended statutes on the register of unions. The union thus changed from being the Union of Noel Workers to an industrial union to be called in the future the National Union of Food and Dairy Products Industry Workers, or SINALTRAPOAL. Counsel for Industrias Alimenticias Noel S.A. and the Noel Biscuit Company filed statutory appeals with the deadline against Resolution No. 001541, and Administrative Act No. 02123 dated 10 September 1999 ruled on the request for reconsideration, approving the amended statutes. The technical sub-director of collective relations subsequently ruled on the request for reconsideration in Resolution No. 002408 dated 12 October 1999, revoking Resolution No. 001541 dated 2 July 1999 on the grounds that the workers meeting in assembly on 23 May 1999 were not at that time members of the Union of Noel Workers. Any change in the union’s nature had to be decided by the members of the Union of Noel Workers, workers from the Noel Biscuit Company becoming eligible for membership only once the amended statutes had been approved. The ruling has since been submitted to the Regional

Labour and Social Welfare Directorate in Antioquia, the final channel of government appeal, after which recourse may be had to litigation.

- 126.** As regards the request to reinstate the leaders of the Union of Noel Workers, elected at the general assembly of delegates held on 23 May 1999, the Government points out that in Resolution No. 103 dated 28 May 1999 the labour inspector assigned to the Labour Division of the Regional Directorate of Labour and Social Security in Antioquia ordered that the election and officers designated be entered on the register. On 27 May and 16 June 1999, counsel for the enterprises applied for reconsideration of and appealed Resolution No. 103 dated 28 May 1999, on the grounds that Messrs. Vélez, Avendaño, Díaz and Correa could not be registered since they had become employees of the Noel Biscuit Company, created on 3 May 1999 and replacing the labour agreements of personnel from Industrias Alimenticias Noel S.A. In Resolution No. 123 dated 22 June 1999, the application for reconsideration by Industrias Alimenticias Noel S.A. and the Noel Biscuit Company was granted and the previous resolution revoked, on the following grounds in particular: "From the above it may be gathered that the abovementioned men, Duvan Antonio Vélez, Rubén Darío Avendaño, Jesús María Díaz and Edgar Adolfo Correa, were not employed by Industrias Alimenticias Noel S.A. but by Noel Biscuit Company, and therefore cannot be members of a COMPANY UNION called UNION OF NOEL WORKERS."
- 127.** The Government adds that in Resolution No. 153 dated 23 July 1999 a ruling on the appeal confirmed Resolution No. 123 dated 22 June 1999, thereby exhausting the government channel of appeal. Subsequently, on 6 June 1999, the Union of Noel Workers held another general assembly of delegates and elected a new executive committee. It again requested the committee's registration from the Regional Labour Directorate of Antioquia. The request was rejected in Resolution No. 122 dated 22 June 1999, as was Resolution No. 103 dated 28 May 1999 ordering the registration of the executive committee elected in the general assembly of delegates held on 23 May 1999 by the same union and invalidated at the time of the new request as the two appeals against it were pending at that time.
- 128.** According to the Government, Mr. Juan Jovanni Pérez, the President-elect of the Union of Noel Workers, applied for reconsideration of and appealed Resolution No. 122 dated 22 June 1999. The application for reconsideration was settled in Resolution No. 182 dated 23 August 1999, which revoked Resolution No. 122 dated 22 June 1999 on all points and in its stead ordered that the election and the officers designated by the general assembly of 6 June 1999 be entered on the register of unions, thus exhausting the government channel of appeal. In conclusion, thanks to the administrative action brought earlier, the executive committee of SINTRANOEL elected on 6 June 1999 was finally registered, proving that the Government, through the Ministry of Labour and Social Security, responded in a timely manner to all the requests of the unions. Should the unions not agree with the Ministry's decisions, they can have recourse to litigation.
- 129.** According to the Government, the following trade unions are present at the Noel Biscuit Company: the Union of Noel Biscuit Company Workers, or SINTRACOMNOEL (a primary company union); the National Union of the Food and Dairy Products Industry Workers, or SINALTRALAC (a primary industrial union); and the National Union of Workers of Food and Dairy Products Producers, or ASPROAL (a primary industrial union). By virtue of section 400 of the Labour Code, modified by Decree No. 2351 of 1965, article 23: "Any workers' association or trade union has the right to request, by two-thirds vote of its members, that the respective employers deduct from the members' salaries and make available to the union, the amount of the regular or special dues owed by the workers." Since the deduction of the union dues in the enterprise concerned are not the object of a complaint to the Ministry of Labour and Social Welfare, the Territorial

Directorate of the Ministry of Labour and Social Welfare in Antioquia has been ordered to conduct the corresponding administrative labour inquiry ex officio.

130. As regards the allegations of the National Union of Caja Agraria Workers (SINTRACREDITARIO), the Government states that in order to improve understanding of the complex case of the liquidation of the Caja de Crédito Agrario and its obvious multiple consequences, the problem and the legal nature of the decisions taken must be seen in the proper perspective:

- the labour costs of the Caja Agraria (a development bank for the rural sector) were 300 per cent higher than those of the country's banking sector, and with its pension liabilities amounted to over 1.34 billion pesos;
- corruption at the Caja Agraria was on such a scale that losses amounted to practically 400,000 million pesos; 2,192 former employees (over 25 per cent of the staff) are currently undergoing investigation, over 164 cases are pending with the Public Prosecutor's Office and 42 employees were dismissed for just cause;
- in those circumstances, the Caja Agraria was viable from neither the financial, the labour nor the administrative points of view, and the deposits of over 2 million Colombians who had placed their savings with the bank were at risk. The salaries, social welfare benefits and pensions of 7,768 workers were also at risk.

131. Given the seriousness of the situation, the Government used the constitutional and legal means conferred on it by Statute No. 489 of 1998 and the new Public Administration Act to issue Decree No. 1065 of 1999, ordering that the Caja de Crédito Agrario be wound up. Article 8 of the decree provides for the suppression of all existing posts and jobs. It also provides for the payment of all forms of compensation set forth in the collective agreement, said forms of compensation exceeding those provided for in labour legislation. Severance pay and the compensation mutually agreed on under the departure plans negotiated with the union cost the Caja over 200,000 million pesos, or approximately US\$108.5 million. The Caja Agraria had to be wound up, sooner rather than later, and the process was carried out in compliance with the Constitution and domestic legislation.

132. The Government has the following specific statements on the allegations presented:

- Blackmail and threats against workers with a view to forcing them to reach arrangements or waive their rights. The complaint cites not one single case in which blackmail and threats were used. The voluntary departure plan drawn up was accepted by 1,854 workers who received 110 per cent of the severance pay provided for in the collective agreement. The arrangements were reached in the presence of the labour authorities and a record exists of each one.
- Illegal and inopportune closure of the enterprise. The closure and liquidation of the entity was based on Statute 489, or the Public Administration Act, and Decree No. 1065 of 1999; it was both constitutional and lawful. The workers left because their jobs were eliminated, with severance pay, and therefore no prior proceedings of a judicial, administrative or disciplinary nature were called for, as stipulated in article 9, paragraph 3 of Decree No. 1065 of 1999.
- Military presence in and closure of the ALEGRIAS day-care centre and eviction of 120 children. The day-care service was an extra-legal benefit under the collective agreement. When the workers left they could not continue to enjoy that benefit. In addition, the entity was being wound up. There were no evictions or cases of ill-treatment.

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- Dismissal and ill-treatment of 350 expectant mothers. Clearly, the termination of the labour contracts, including those of the expectant mothers, was not due to the pregnancy but rather to the elimination of the jobs they held because of the liquidation and dissolution of the Caja Agraria. Again, article 9 of Decree No. 1065 of 1999 stipulates that no prior judicial, administrative or disciplinary procedure was required to terminate the contracts.
 - It is true that beyond the legal and extra-legal compensation they received, the women did not receive the special compensation provided for by the law for such workers, such as the 12 weeks of maternity leave and a special 60-day indemnity to be paid if the dismissal took place in the three months following the birth. The workers nevertheless continued to benefit from the health services of the health-care enterprises to which they were affiliated. It cannot be ascertained that these workers were ill-treated. It is significant that while 350 expectant mothers were dismissed, in only one case did a worker lose her baby, in a mid-sized town (Zipaquirá) in which nothing out of the ordinary happened; the miscarriage was not the result of acts that could be attributed to employees of the Caja Agraria or of any other entity.
 - Suspension in care for 70 terminally ill patients. It is not true that the Caja Agraria, which was being wound up, deprived 70 terminally ill patients of medical care. The complaint does not give the names of the workers said to have been deprived of care. All dismissed workers will continue to be covered by social security. As is mandatory with regard to illnesses acquired before termination of the contracts and in accordance with Statute 100, or the Social Security Act, those workers, if they fulfil the requirements, will be entitled to a disability pension.
 - Abuse and brutal treatment by the police, and police handling of labour relations. It is clear to the whole country that the reaction of SINTRACREDITARIO to the liquidation of the Caja Agraria was violent in both words and acts. The police, as has been previously stated, was protecting the company's property and was therefore on the receiving end of the violence. Its response was in proportion to the events; it maintained law and order and fulfilled its legal duty to protect the life, honour and property of citizens.
 - The aim is to terminate the collective agreement. Not only had the Caja de Crédito Agrario become unviable, endangering the savings of account-holders and the benefits and pensions of the workers themselves, but in accordance with section 467 of the Labour Code, the Collective Work Agreement only covers contracts that are in force.
 - Working conditions in the new bank. The new personnel was contracted in accordance with existing Colombian labour legislation. Indeed, articles 71 ff. of Act No. 50 of 1990 allow personnel to be hired on a temporary basis in enterprises providing temporary services. According to the Bank, this procedure will be maintained for as long as the process of selecting new staff continues.
 - Contempt for, influence and undue pressure on the judicial authorities. The country's higher courts (Supreme Court, Judicature Council), courts and tribunals have examined 1,523 requests for judicial protection filed by 2,044 workers, finding in favour of the bank in 1,197, or 99.25 per cent, of the cases. The Constitutional Court has reviewed 1,158 requests for judicial protection. The accusation is therefore unfounded. To date, no Colombian judge has ordered the reinstatement of the Caja's former workers. Two cases submitted were rejected on all points by the Council of State.

- Delayed payment of benefits and pressure to reach an agreement. This statement is untrue. In accordance with Decree No. 797 of 1949, state entities have 90 working days in which to settle the claims arising out of the termination of the working relationship. SINTRACREDITARIO mentions no case in which this did not happen. The Committee on Freedom of Association must be aware that a delay in payment will result in a penalty for the entity.
- Standard of living lowered to a deplorable level. As already mentioned, the Caja Agraria's former workers received compensation above and beyond that called for by law, signifying for the Colombian taxpayer an outlay of approximately US\$131 million. For decades the Caja Agraria's former workers received 300 per cent the average Colombian wage. The collective agreements provided them with housing, education and hundreds of benefits that gave them an economic advantage over the majority of Colombians.

133. In a communication dated 9 May 2000, the Government states that two administrative labour inquiries are currently being undertaken within the Territorial Directorate of the Ministry of Labour and Social Security of Cundinamarca. The first inquiry is proceeding through the eighth inspectorate into the acts which are the subject of the complaint presented to the ILO. During the course of the said inquiry, on 8 February 2000, the allegations were transmitted to the legal representative of the Agrarian, Industrial and Mining Savings and Loans Fund. On 28 February 2000, the Caja Agraria sent a reply to the allegations made. The parties were summoned for conciliation for 2 June 2000. The Government will duly transmit the results thereof. As regards the second inquiry, initiated by a complaint presented by the trade union for the alleged refusal to negotiate the list of demands, Decision No. 00500 of 14 April 2000 was handed down, article 1 of which ruled that: "No administrative measures shall be taken against the Agrarian, Industrial and Mining Savings and Loans Fund currently undergoing liquidation, on the grounds set forth in the conclusions of this Administrative Act." An appeal was made against the said decision by the concerned parties. At present the appeal is pending.

134. As regards the complaints of the National Union of Bavaria Workers S.A. (SINALTRABAVARIA), the Government states that:

- The administrative acts rejecting the registration of the executive committees of the union sections Maltería de Bogotá, Dirección y Ventas, Colenvases, Cervecería de Bogotá – calle 22B, on the grounds that they had the same domicile as the national executive committee of SINALTRABAVARIA, were taken in accordance with existing legislation on the matter. SINALTRABAVARIA may, if it so desires, bring an administrative action to have the lawfulness of those decisions examined.
- The administrative acts ordering the closure of the Bavaria plant manufacturing aluminium containers and lids and the subsequent dismissal of its workers were issued in accordance with the procedures and rules of Colombian labour legislation.
- The Ministry of Labour and Social Security will conduct an administrative inquiry into SINALTRABAVARIA's allegations concerning the dismissals and sanctions arising from participation in the work stoppage of 31 August 1999.

C. The Committee's conclusions

135. *The Committee observes that in the present case the allegations concern acts of discrimination and anti-union practices in different enterprises.*

136. *As regards the allegations of anti-union practices by the enterprise Cervecería Unión against the SINALTRAINBEC subcommittee (housing credits are granted to SINTRACERVUNION members but not to SINALTRAINBEC members; SINALTRAINBEC members are threatened with dismissal if they do not leave the union; SINALTRAINBEC members are accused of serious errors which they in fact never committed; SINALTRAINBEC leaders are not granted leave for union purposes) and the alleged consequent fall in membership from 265 to 92 members, and the signing of a collective agreement with SINTRACERVUNION that does not take account of the industrial union SINALTRAINBEC, the Committee notes the Government's statements that: (1) the penal action brought failed; (2) the enterprise denies that it has anti-union practices and states that the housing credits for SINTRACERVUNION members were granted under the collective agreement; (3) SINALTRAINBEC did not invoke Decree No. 1373-76 for bargaining purposes and therefore excluded itself from the bargaining process; (4) the enterprise grants union leave in accordance with the law; and (5) SINALTRAINBEC brought an action that failed for lack of evidence that its members were being pressured to resign.*
137. *As regards the allegations of anti-union discrimination and other anti-union acts in the APOLO enterprise, the Committee notes that on the basis of the administrative inquiry the Government has undertaken, the enterprise was fined a sum of 2,601,000 pesos for violation of the right of freedom of association and the collective agreement as well as for a deterioration in working conditions.*
138. *With regard to the allegations concerning the enterprise Industrias Alimenticias Noel S.A., the Committee notes that the enterprise was split into two companies in accordance with the law and, according to the Government's reply, for economic reasons and not with a view to undermining workers' rights. As regards the signing of collective contracts (pactos) on working conditions with non-unionized workers, the Committee notes the Government's statement that the law allows for this kind of agreement when the union or unions do not represent more than one-third of an enterprise's workers. In this respect, the Committee recalls that the Collective Agreements Recommendation, 1951 (No. 91) provides that: "for the purpose of this Recommendation, the term 'collective agreements' means all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers' organizations, on the one hand, and one or more representative workers' organizations, or, in the absence of such organizations, the representatives of the workers duly elected and authorized by them in accordance with national laws and regulations, on the other." In this respect, the Committee emphasized that the said Recommendation stresses the role of workers' organizations as one of the parties in collective bargaining. Direct negotiation between the undertaking and its employees, by-passing representative organizations where these exist, might in certain cases be detrimental to the principle that negotiation between employers and organizations of workers should be encouraged and promoted [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 786]. The Committee asks the Government to take measures to amend the legislation accordingly. As for the enterprise's challenge to the modification of the statutes of SINTRANOEL for its conversion to SINTRAPROAL, the Government states that the government channel of appeal has not been exhausted and that litigation is still possible, and the Committee therefore requests the Government to inform it of the decisions made in that respect. As for the enterprise's appeal concerning the administrative decision of 28 May 1999 ordering the registration of the executive committee of the Union of Noel Workers, the Committee notes that according to the Government: (1) the appeal is based on the fact that some of the leaders were no longer employed by Industrias Alimenticias Noel (and were therefore no longer members of the Noel company union) but by the company created as a result of the split, the Noel Biscuit Company; (2) a second "adapted" executive committee (elected following the corresponding union assembly) was*

also rejected, but admitted and subsequently registered by the administrative authority pursuant to an application for reconsideration. Furthermore, the Committee notes the Government's statement that it has ordered an inquiry into the Noel Biscuit Company's failure to deduct union dues and requests that it be informed of the results.

- 139.** As regards the complaints that the National Federation of Colombian Coffee Growers had failed to deduct union dues of SINTRAFEC members since 1984, the dues of all workers accruing by agreement and the special dues owed by all workers, the Committee notes that, according to the Government, the judicial authorities have rejected the union's claim and that the union has requested the suspension of the complaint on the grounds that talks are being held with the enterprise with a view to finding a solution. In view of the circumstances, the Committee asks the Government to keep it informed of developments in the situation.
- 140.** As regards the allegations by SINALTRABAVARIA concerning: (1) the refusal to register the officers of 18 section subcommittees, in spite of the fact that they had been elected in accordance with the statutes; (2) the closure of plants and the consequent reduction in personnel, in violation of the collective agreement; and (3) the dismissal of 5 workers and the sanctioning of 126 others during the general strike ordered by the labour federations on 31 August 1999, the Committee notes that according to the Government: (i) the administrative acts rejecting the registration of the section executive committees on the grounds that they had the same domicile as SINALTRABAVARIA's national executive committee were issued in compliance with existing legislation and that SINALTRABAVARIA can bring an administrative action to have their lawfulness examined; (ii) the administrative acts ordering the closure of the Bavaria S.A. aluminium container plant and the consequent dismissal of its workers were issued in compliance with the norms and procedures set forth in Colombian labour law; and (iii) the Ministry of Labour and Social Security will launch an administrative inquiry into SINALTRABAVARIA's allegations concerning the dismissals and sanctions arising from participation in the work stoppage of 31 August 1999. With respect to this case, the Committee deplores the authorities' refusal to register the officers of the 18 SINALTRABAVARIA sections on the grounds that they have the same domicile as the executive committee. The Committee emphasizes that the designation of a section's domicile is an internal union matter and therefore asks the Government to register the officers concerned. The Committee further requests the Government to communicate its observations, on the basis of the forthcoming inquiry, regarding the dismissals and sanctions inflicted on workers for their participation in a strike at a Bavaria company, but wishes to emphasize at the outset that sanctions should only be inflicted in the event of violence or failure to provide the minimum services.
- 141.** As regards the complaints concerning the Caja de Crédito Agrario (massive dismissals, presumed violation of the collective agreement, abusive and brutal treatment by the police in demonstrations, etc.), the Committee observes that, according to the Government's reply, the complaints arose in the framework of the process of liquidation and suppression of posts and jobs at the Caja, after it had been observed that losses were in the millions and that corruption had reached serious levels. The Caja was therefore no longer viable from the financial, labour or administrative points of view, which is why the Banco Agrario was created. According to the Government, the process was carried out in compliance with the law, and of the 1,523 requests for judicial protection before the Constitutional Court, the Court found in the Bank's favour in 1,197, or 99.25 per cent of the cases. The Committee underlines the complexity of the case and asks the Government to communicate the results of administrative inquiries and of present or forthcoming decisions concerning the allegations, and which involve violations of trade union rights or of the collective agreement.

142. Finally, the Committee observes that SINTRACREDITARIO sent new allegations in a communication dated 7 February 2000 which were transmitted to the Government for its observations. Given the recent date of these allegations, the Committee is not in a position to examine them in this report.

The Committee's recommendations

143. In the light of its foregoing interim conclusions, the Committee requests the Governing Body to approve the following recommendations:
- (a) As regards the allegations concerning the enterprise *Industrias Alimenticias Noel S.A.*, the Committee asks the Government: (1) in respect of the signing of collective contracts (pactos) on working conditions with non-unionized workers, to take measures to amend legislation in line with the principles enunciated in its conclusions; (2) to keep the Committee informed of present and future judicial and administrative decisions in respect of the enterprise's refusal to recognize SINTRANOEL's modified statutes, converting it to an industrial union, SINALTRAPROAL; and (3) with regard to Noel Biscuit Company's failure to deduct union dues, to inform the Committee about the results of the forthcoming inquiry.
 - (b) As regards the complaints that the National Federation of Colombian Coffee Growers has failed to deduct union dues from SINTRAFEC members since 1984, to deduct dues owed by all workers by agreement and to deduct special dues, the Committee, observing that according to the Government the union has asked for the complaint to be suspended on the grounds that talks are being held with the enterprise with a view to solving the problems, requests the Government to keep it informed of developments in the situation.
 - (c) As regards the complaints of SINALTRABAVARIA, the Committee: (1) deplores the authorities' refusal to register the officers of 18 SINALTRABAVARIA sections on the grounds that they have the same domicile as the executive committee and asks the Government to register those officers; and (2) asks the Government to communicate its observations, on the basis of the forthcoming inquiry, on the dismissals and sanctions inflicted on workers for having participated in a strike at the Bavaria enterprise on 31 August 1999.
 - (d) As regards the allegations concerning the *Caja de Crédito Agrario*, the Committee underscores the complexity of the case and requests the Government to inform it of the results of the administrative inquiries and of present and forthcoming decisions concerning the allegations, and which involve violations of trade union rights or of the collective agreement. The Committee also asks the Government to inform it of its observations on the recent new allegations presented by SINTRACREDITARIO.

CASE No. 2051

INTERIM REPORT

Complaint against the Government of Colombia

presented by

- **the EVERFIT-INDULANA Clothing Workers' Trade Union of Colombia (SINTRA EVERFIT-INDULANA) (currently SINTRATEXIL)**
- **the National Textile and Clothing Industry Trade Union (SINTRATEXCO) and**
- **the General Confederation of Democratic Workers (CGTD)**

Allegations: Creation of cooperatives to the detriment of trade union organizations; dismissal of workers who do not accept new employment in the cooperatives

- 144.** The complaint is contained in a communication from the EVERFIT-INDULANA Clothing Workers Trade Union of Colombia (SINTRA EVERFIT-INDULANA) and the National Textile and Clothing Industry Trade Union (SINTRATEXCO) dated 14 September 1999. The General Confederation of Democratic Workers (CGTD) associated itself with the complaint in a communication dated 17 November 1999. The Government sent its observations in a communication dated 9 March and 9 May 2000.
- 145.** Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

- 146.** In their communication dated 14 September 1999 SINTRA EVERFIT-INDULANA and SINTRATEXCO state that Confecciones Colombia Ltda. began in 1996 to operate associative labour cooperatives with workers from other textile companies. This led, as it were, to a process of "delabourization", with the members of the cooperatives appearing as the owners rather than as workers bound by an employment contract. The complainants claim that the cooperatives are a sham, since they are managed by the employers and since the workers work in the same place, with the same chiefs and with the same machinery as those still with Confecciones Colombia Ltda. Specifically, the complainants state that in 1996 the company had 1,750 workers and two trade union organizations (which together had 440 members), and that the same year saw the creation of associative labour cooperatives – which come under a different set of regulations from the labour legislation – that virtually put an end to collective employment. In 1997 the company's fixed-term workers were offered contracts with the cooperatives (with a 15 per cent cut in wages and the loss of their acquired rights under the collective agreement); those who did not accept were dismissed. In October 1997 the membership of the complainant organizations dropped to 380; in September 1998 the company had 490 directly employed workers (of which 177 were members of the complainant organizations) and 1,200 workers belonged to the cooperatives; in February 1999 the enterprise ordered a mass dismissal of cooperative workers. At the time of the complaint the company had 300 directly employed workers, of whom 168 were covered by the collective agreement and 134 were members of the complainant organizations, the rest of the company consisting of 1,000 workers in the cooperatives. According to the complainants, the creation of the associative labour cooperatives in Confecciones Colombia Ltda. has had disastrous consequences for the workers and their unions.

B. The Government's reply

147. In its communication dated 9 March 2000 the Government states that, as soon as it received the complaint, it ordered a follow-up inquiry which led to the adoption of Decision No. 158 of May 1999. The facts that led to the adoption of the decision were: (a) the presumed illegal operation of the cooperatives; (b) non-compliance with section 70 of Act No. 79 of 1998 – the framework act for cooperatives; (c) violation of cooperative rights and of the principles of solidarity; (d) violation of article 143 (equal pay for equal work) of the Labour Code; (e) violation of section 6 of Act No. 79 of 1998; (f) the operation of cooperatives within the premises of Confecciones Colombia Ltda.

148. The Government states that:

- regarding point (a), the cooperatives were found to be operating legally, as they meet the legal requirements and have been duly authorized by DANSOCIAL;
- regarding point (b), there is no violation of section 70 of Act No. 79 of 1988 so long as it is the cooperative that set the disciplinary standards, pays for the work or engages in any procedure provided for in the rules and regulations governing associative work approved by the Ministry by Decision No. 130 of November 1995;
- regarding point (c), there is no violation of cooperative values or of the principles of solidarity, given that the legislation in Colombia explicitly provides for the existence of relations for the provision of services, whether as associated workers, employees, professional services, etc., provided only that it meets with constitutional and legal requirements;
- regarding point (d), associative labour cooperatives come under special regulations governing relationships with their members, which differ from the Labour Code. Furthermore, section 9 of Decree No. 468 of 1990 stipulates that “associative work cooperatives that comply with the law shall regulate working arrangements with their members within the framework of a social protection, social security and compensation scheme set out in the statutes of the cooperatives and in the rules and regulations adopted thereunder”;
- regarding point (e), a temporary loan and restitution contract exists between the associative work cooperatives and EVERFIT-INDULANA for the use of its premises. Decision No. 158 of 25 May 1999 accordingly orders that no measures should be taken against the associative labour cooperative known as “Participemos, Coodesco y Cootescom” and that the claimant shall be free to initiate proceedings through the ordinary courts in respect of the alleged infringement of section 6 of Act No. 79 of 1998.

149. In its communication of 9 May 2000, the Government indicates that it initiated an administrative investigation concerning the allegations of employment offer in the cooperatives and the massive dismissals which took place in February 1999.

C. The Committee's conclusions

150. *The Committee observes that the complainants allege that in 1996 Confecciones Colombia Ltda. began operating associative labour cooperatives with workers from other textile companies. The result was, as it were, a process of “delabourization”, with the members of the cooperatives appearing as their owners rather than as workers bound by an employment contract. Specifically, the complainants allege that: (1) the cooperatives are a sham, since they are managed by the employers and since the workers work in the same*

place, with the same chiefs and with the same machinery as those still with *Confecciones Colombia Ltda.*; (2) in 1997 the company's fixed-term workers were offered contracts governed by the labour legislation in the cooperatives (with a 15 per cent cut in wages and the loss of their acquired rights under the collective agreement) and that those who did not accept were dismissed; (3) in February 1999 the company ordered a mass dismissal of cooperative workers; and (4) the creation of the associative labour cooperatives in *Confecciones Colombia Ltda.* has had disastrous consequences for the workers and their trade union organizations (according to the complainants, in 1996 the two trade union organizations together had 440 members out of a total of 1,750 workers while at the time of the complaint the company had 300 workers, of whom 168 were covered by the collective agreement and 134 were members of the complainant organizations, the rest of the company consisting of 1,000 workers in the cooperatives).

151. *Regarding the allegation that the cooperatives are a sham, the Committee notes the Government's statement that the legislation allows for the existence of a relationship for the provision of services and that a loan and restitution contract exists between the associative labour cooperatives and EVERFIT-INDULANA that allows for the provision of services in the company by the members of the cooperatives being cooperatives that are completely independent of the company. As to the allegation that the company workers were threatened with dismissal if they did not accept employment in the cooperatives, and with regard to the mass dismissals, the Committee notes the Government's statement that it initiated an administrative investigation. The Committee requests the Government to ensure that this investigation is thorough and that it covers all of the allegations made in this case and to transmit the results thereof.*

152. *Similarly, so that it can rule on this case in full knowledge of the facts, the Committee requests the complainants and the Government to inform it whether workers in the cooperatives have the right to join trade unions.*

The Committee's recommendations

153. *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*

- (a) The Committee requests the Government to ensure that the investigation it has initiated is thorough and covers all of the allegations made by the complainants, including those related to: (1) the offer of employment in the cooperatives for the fixed-term workers of *Confecciones Colombia Ltda.* under threat of dismissal; and (2) the mass dismissals in February 1999. It also requests the Government to transmit the results thereof.*
- (b) The Committee requests the complainants and the Government to inform it whether workers in the cooperatives have the right to join trade unions.*

III. Complaint concerning the non-observance by Colombia of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), made by the delegates to the 86th (1998) Session of the Conference under article 26 of the Constitution of the ILO

- 154.** The texts of this complaint, of the Government's replies, and of the various decisions made in this respect by the Committee on Freedom of Association and the Governing Body appear in the 319th Report of the Committee, paragraphs 202-219, approved by the Governing Body at its 276th Session (November 1999).
- 155.** At its November 1999 meeting, the Committee on Freedom of Association submitted to the Governing Body the following recommendations concerning the complaint filed under article 26 of the ILO Constitution by various delegates to the 86th Session (1998) of the Conference, relating to Colombia's non-observance of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98):

The Committee notes the contents of the complaint submitted pursuant to article 26 of the Constitution of the ILO and the Government's reply thereto. The Committee deplores that no significant progress in the cases pending before it has taken place and trusts that the Governing Body will take this into account when coming to its decision on whether a commission of inquiry should be established or not [see 319th Report, para. 219].

- 156.** The Governing Body debated these questions at its November 1999 meeting. During the debate the Chairman of the Governing Body read an agreement, dated 16 November 1999, concluded between the representatives of the Government of Colombia and the representatives of the workers of Colombia in which the Governing Body was requested as follows:
- (1) To postpone until the June 2000 session of the Governing Body the decision on whether or not a commission of inquiry should be established for Colombia.
 - (2) In the meantime, to urge the Director-General to appoint a direct contacts mission to evaluate the situation in Colombia with respect to freedom of association, particularly as regards the cases currently before the Committee on Freedom of Association. The Government of Colombia commits itself to grant this mission the necessary guarantees for it to visit the country for the amount of time and on the number of occasions necessary to fulfil its mandate.
 - (3) This mission will be made up of two independent experts appointed by the Director-General and will have the support of the International Labour Office.
 - (4) The mission will have a deadline of 15 May 2000 to perform its duties, but it will submit a progress report to the Committee on Freedom of Association at the March session of the Governing Body.

- (5) The mission report will be considered by the Committee on Freedom of Association at its May 2000 meeting, when it will make the relevant recommendations to the Governing Body.
- (6) In June 2000 the Governing Body will decide on whether or not to establish a commission of inquiry. The Governing Body will take into account the information provided by the mission and by the Committee on Freedom of Association when it takes the decision on whether or not to establish a commission of inquiry for Colombia.
- (7) The appointment of the direct contacts mission does not in any way restrict the ILO's supervisory bodies (CFA and CE) which will continue to assess the cases and the situations, and neither does it restrict the submission of new complaints, representations or observations.

157. Having noted the contents of this agreement, the Governing Body:

- (a) noted the recommendation made by the Committee on Freedom of Association in paragraph 219 of its 319th Report;
- (b) agreed that it would decide whether or not to establish a commission of inquiry for Colombia in June 2000. Making the decision at that time would enable the Governing Body to take into account the information provided by the direct contacts mission and the Committee on Freedom of Association.

158. The direct contacts mission took place in Colombia (Bogotá and Medellín) from 7 to 16 February 2000. In accordance with the decision of the Director-General of the ILO, it was made up of Mr. Cassio Mesquita Barros, a member of the Committee of Experts on the Application of Conventions and Recommendations and professor of labour law (São Paulo), and of Mr. Alberto Pérez-Pérez, professor of human rights and constitutional law (Montevideo) who were accompanied by two officials from the Freedom of Association Branch of the International Labour Standards Department (see annex: Mission report).

The Committee's recommendation

159. *The Committee considers that it is now up to the Governing Body to decide whether it is appropriate to establish a commission of inquiry. In this respect, the Committee wishes to draw the Governing Body's attention to the final observations and conclusions of the direct contacts mission report and to the recommendations of the Committee in the pending cases and, in particular, in Case No. 1787.*

Geneva, 2 June 2000.

(Signed) Max Rood,
Chairperson.

Points for decision: Paragraph 37; Paragraph 106;
Paragraph 52; Paragraph 143;
Paragraph 68; Paragraph 153;
Paragraph 82; Paragraph 159.
Paragraph 93;

Annex

Report on the direct contacts mission carried out in Colombia (Bogotá and Medellín) from 7 to 16 February 2000 (article 26 complaint and Cases Nos. 1787, 1948, 1955, 1962, 1964, 1973, 2015, 2046 and 2051)

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I. Introduction

At its meeting in November 1999, the Committee on Freedom of Association presented a number of recommendations to the Governing Body concerning particular cases of violations of freedom of association still pending (including many cases of violence against trade unionists) and the complaint presented under article 26 of the ILO Constitution by various delegates at the 86th Session of the International Labour Conference in 1998. That complaint concerned the non-observance by Colombia of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), involving violence against trade unionists, impunity and the existence of legislation that violated both Conventions (the text of the complaint and of the cases still pending is reproduced in the Committee's 319th Report).

At its November 1999 meeting, the Governing Body took note of an agreement dated 16 November 1999 between representatives of the Government of Colombia and representatives of Colombian workers requesting the Governing Body to send a direct contacts mission to the country.

Having noted the contents of this agreement, the Governing Body "agreed that it would decide whether or not to establish a commission of inquiry for Colombia in June 2000" and that "making the decision at that time would enable the Governing Body to take into account the information provided by the direct contacts mission and the Committee on Freedom of Association".

The direct contacts mission took place in Colombia (Bogotá and Medellín) from 7 to 16 February 2000 and, in accordance with the decision of the Director-General of the ILO, was made up of Mr. Cassio Mesquita Barros, a member of the Committee of Experts on the Application of Conventions and Recommendations and Professor of Labour Law (Sao Paulo), and of Mr. Alberto Pérez Pérez, Professor of Human Rights and Constitutional Law (Montevideo). They were accompanied by Messrs. Alberto Otero and Horacio Guido from the Freedom of Association Branch of the International Labour Standards Department.

According to the agreement concluded between the Government and the Colombian trade union confederations, the mission's mandate was to "evaluate the situation in Colombia with respect to freedom of association, particularly as regards cases currently before the Committee on Freedom of Association", to submit a progress report to the Committee on Freedom of Association at its March 2000 meeting and to present a complete report for consideration at its May 2000 meeting.

Bearing in mind the content of the complaints submitted under article 26 of the ILO Constitution and the cases pending before the Committee on Freedom of Association, the mission decided to focus its activities on the following aspects: (1) reminding the authorities and individuals it met of the deep concern expressed by the Committee on Freedom of Association and the Governing Body about the acts of violence suffered by numerous trade union leaders and trade unionists and to identify the measures being taken by the authorities to remedy the situation; (2) obtaining as much information as possible about the pending allegations submitted in the various cases currently before the Committee; (3) emphasizing the importance of bringing legislation fully into line with Conventions Nos. 87 and 98 – which was one of the issues raised in the complaint made under article 26 of the Constitution of the ILO – and of supporting the measures already undertaken in this connection by the authorities and promoting other possible ways of

making legislation fully compliant; and (4) obtaining information about the exercise of trade union rights and practical problems in this regard.

The mission accordingly interviewed over 200 individuals, including the following: the President of Colombia Andrés Pastrana Arango; Vice-President Gustavo Bell Lemus; Dr. Gina Magnolia Riaño Barón, Minister of Labour and Social Security; Dr. Guillermo Fernández de Soto, Minister of Foreign Affairs; Dr. Néstor Humberto Martínez Neira, Minister of the Interior; Dr. Luis Fernando Ramírez Acuña, Minister of National Defence; Dr. Rómulo González Trujillo, Minister of Justice; Dr. Mauricio Cárdenas, Director, National Department of Planning; members of the two Houses of Congress; magistrates from the Supreme Court of Justice, the Constitutional Court, the Council of State and the Superior Council of the Judicature; the Procurator-General of the Nation; the Ombudsman; the Deputy Attorney-General of the Nation (replacing the Attorney-General then on holiday); as well as other personalities and more than 100 representatives of trade union organizations and confederations and employers' organizations.

II. Basic information on Colombia and its political structures

In 1993, according to the census at that time, the Republic of Colombia had 37,664,711 inhabitants. Its current population exceeds 41.5 million and the urban population represents 75 per cent of that total. The surface area of the country is 2,070,408 km², the total land area being 1,141,748 km². Marine areas total 928,670 km², with 3,208 km of coastline. The country has land borders of 2,219 km with Venezuela, 1,645 km with Brazil, 1,626 km with Peru, 585 km with Ecuador and 266 km with Panama. Colombia is the only country in South America with Pacific and Atlantic coasts. In relation to the rest of South America, Colombia is: (a) the fourth largest country in terms of territory; (b) the third largest in terms of population; (c) the second in terms of population density; (d) the fourth in terms of gross domestic product (GDP); (e) the seventh in terms of per capita GDP; (f) the fourth in terms of industrial production; (g) the third in terms of agricultural and livestock production; (h) the sixth largest in terms of mining production; (i) the first in terms of production of potatoes, emeralds, coal and beer.

Colombia is a member of the Andean Community, the Rio Group and the Latin American Economic System (SELA). It is also a member of the principal international organizations.

Article 1 of the Constitution provides that "Colombia is a lawful societal State organized in the form of a unitary republic, decentralized, with the autonomy of its territorial units, democratic, participatory, and pluralistic, based on respect of the human dignity, on the work and solidarity of the individuals who belong to it, and the prevalence of the general interest". The current Constitution was adopted in 1991 and is a broad charter providing many accessible means of applying to courts for protection in the area of human rights, including *tutela* proceedings in cases of violations of fundamental rights.

The Constitutional Court is the competent body responsible for reviewing judgements given by judges on *tutela* proceedings. It has extended the scope of such proceedings through a body of case law broadening the category of rights which can be covered by proceedings of this type. The Court has adopted an approach which allows *tutela* proceedings in order to protect rights that are *related* or connected to the "fundamental" rights referred to specifically in article 86 of the Constitution.

The legislature comprises the Senate and the House of Representatives, which together form the Colombian Congress. The basic function of Congress is to amend the

Constitution, adopt laws and exercise political control of the Government. All its members are elected directly by the people for a period of four years. The Senate has 100 members elected at national level, while the members of the House of Representatives are elected by district. Two benches are reserved in the Senate for representatives of indigenous communities. Both the Senate and the House of Representatives have their own human rights commissions. Congress can grant extraordinary powers to the President to issue decrees which have force of law for a period of up to six months where this is deemed necessary and in the public interest.

The executive branch is headed by the President of the Republic, who acts as Head of State, Head of Government and supreme administrative authority. The executive is made up of the other ministers and the directors of the administrative departments. In accordance with article 188 of the Constitution, the President is required not only to observe and enforce the Constitution and laws of Colombia, but also to safeguard the rights and liberties of all Colombians. The President has a term of office of four years and cannot be re-elected.

The President's Office includes the President's Advisory Board for the Defence, Protection and Promotion of Human Rights. This body examines complaints of human rights violations dealt with by other bodies.

Under the Constitution, the administration of justice in Colombia is the responsibility of the following bodies:

– The Supreme Court of Justice

The Supreme Court is the highest court of ordinary jurisdiction. The Court itself elects its 23 judges from lists of candidates submitted by the Superior Council of the Judicature. The judges serve for a period of eight years. Members of the Court meet in plenary sessions and in separate chambers to hear appeals in civil, criminal and labour cases.

The Supreme Court of Justice acts as an appeal court, but is also competent to investigate and rule on infringements by particular authorities. It also acts as the court of cassation for cases such as those brought before the military courts.

– The Council of State

The Council of State is the highest jurisdictional authority in matters relating to administrative disputes. It also acts as the Government's advisory body on matters of administrative law. Twenty-six judges are elected to serve on the Council of State from lists of candidates submitted by the Superior Council of the Judicature. The judges serve for a period of eight years.

The Administrative Disputes Court examines applications to annul government decrees on grounds of unconstitutionality which do not come within the competence of the Constitutional Court. It also examines complaints of illegality of administrative acts at the national level by any of the branches of government or by private entities carrying out public functions. The third division of the Court deals with matters relating to direct compensation for acts or failures by the Government which result in harm to individuals. These include cases in which the State appears as defendant for human rights violations committed by its agents.

– The Constitutional Court

The Constitutional Court is the body within the Colombian judicial system which has constitutional jurisdiction. The Court's judges are elected by the Senate for an eight-year term of office under the terms set out by the President, the Supreme Court and the Council of State.

The Constitutional Court has a number of functions, including the following: (1) ruling on allegations by citizens that proposed amendments to the Constitution are unconstitutional by virtue of procedural errors; (2) deciding whether a call for a referendum or a constituent assembly for the purpose of amending the Constitution is compatible with the Constitution, where procedural errors have been made; (3) ruling on allegations made by citizens that laws or decrees with the force of law are unconstitutional for procedural or substantive reasons; (4) ruling on the constitutionality of government decrees following a declaration of a state of emergency; (5) ruling on the constitutionality of bills which according to the Government are unconstitutional for procedural or substantive reasons; (6) reviewing the decisions of lower courts concerning actions undertaken to protect certain constitutional rights (*tutela* proceedings); (7) ruling on the constitutionality of international treaties.

– The Office of the Attorney-General

The Office of the Attorney-General comprises the Attorney-General, delegate attorneys and other officials. The Attorney-General is elected by the Supreme Court of Justice from a list of candidates submitted by the President for a four-year term of office. The Attorney-General is part of the judicial branch and enjoys administrative and financial autonomy.

The Office of the Attorney-General is empowered to adopt measures, either acting on its own initiative or following complaints, to investigate offences and charge suspects before the competent courts and tribunals within the ordinary and regional courts. This does not apply in the case of offences which come under the jurisdiction of the military courts.

Within the Attorney-General's Office there are a number of bodies that work closely on human rights cases. The Human Rights Unit is responsible for formulating charges before regional courts in particularly important cases of human rights violations.

– The Superior Council of the Judicature

The Superior Council of the Judicature is another institution created by the 1991 Constitution. It is divided into the Administrative Division and the Disciplinary Jurisdictional Division. The former consists of six judges, two of whom are elected by the Supreme Court, one by the Constitutional Court and three by the Council of State. The Disciplinary Jurisdictional Division comprises seven magistrates elected by Congress.

The Superior Council of the Judicature fulfils many administrative and institutional functions connected with the courts and the administration of justice. For example, it draws up lists of candidates for appointment to the judiciary, rectifies errors committed by members of the judiciary or the legal profession in the exercise of their profession, monitors the activities of law practices and drafts the proposed budget for the judicial branch. The Superior Council of the Judicature is empowered to resolve disputes concerning the powers of different jurisdictions. This function becomes important in cases pertaining to human rights when the Superior Council is required

to decide whether a case comes under the jurisdiction of the ordinary courts or the military courts.

– The military criminal courts

Article 221 of the Constitution states that, “offences committed by members of the armed forces when on active service and in connection with that service shall be heard by courts martial or military tribunals, in accordance with the provisions of the Military Penal Code”. This applies to members of the national police as well as members of the armed forces (the army, navy and air force), which together constitute the country’s security forces.

At the same time, the Constitution also establishes “supervisory bodies” which do not come under any of the three main branches of government. These bodies are the Public Ministry and the Office of the Comptroller-General of the Republic. The Comptroller-General supervises the administration of public funds. The Public Ministry is responsible for analysing the human rights situation in Colombia.

The Head of the Public Ministry is the Procurator-General, elected by the Senate for a period of four years from a list of candidates submitted by the President, the Supreme Court and the Council of State. The Procurator-General and his representatives have a wide range of responsibilities including the protection of human rights and the defence of the Constitution and laws of Colombia. The work of the Public Ministry and the Procurator-General is divided between the Procurator-General’s Office and that of the Ombudsman.

The Office of the Procurator-General is responsible for carrying out disciplinary inquiries and imposing sanctions on agents of the State, whether civilians or members of the armed forces. It has the power, for example, to investigate human rights violations and where necessary to order the discharge of members of the armed forces, the national police or any other body responsible for such violations.

The Procurator-General’s Office may also intervene in judicial or administrative proceedings, including those in the military courts, where this is necessary to ensure that human rights are respected. In practice, this allows the Office to request charges to be brought against additional individuals in criminal cases, to request the initiation or closure of investigations, formulation of charges, etc., under ordinary or military criminal law.

The Office of the Procurator-General is empowered to carry out investigations and impose disciplinary sanctions on judicial bodies that are found to have acted inappropriately in the course of criminal proceedings, either in the ordinary courts or the military courts.

The Office of the Ombudsman (People’s Advocate) works under the direction of the Procurator-General. The Ombudsman is elected for a period of four years by the House of Representatives from a list of candidates submitted by the President and is responsible for promoting and protecting human rights. He or she is accordingly responsible for education, training and publicity on human rights issues, and also has the power to invoke *habeas corpus* and initiate *tutela* proceedings.¹

¹ See the 1999 Report of the Inter-American Commission on Human Rights.

III. Government communications given to the mission

The Government's first reply

Colombia has one of the most solid democratic traditions of all Latin American countries. However, while it has been progressively consolidating its democratic institutions, the country has been afflicted by large-scale internal armed conflict which for more than 40 years has affected social development in many different ways. In addition, there are many different manifestations of ordinary criminality.

The Government acknowledges the seriousness of the situation facing the country in the area of human rights and international humanitarian law and is willing to consider any contributions which the international organizations might make in the search for a solution to these problems.

It must be emphasized that a considerable proportion of Colombia's human, financial, technical and physical resources are currently devoted to combating violence, the internal armed conflict and drugs trafficking, which have diverted attention and resources away from the task of combating social and economic inequalities. The State is now bearing the cost involved in eliminating the various contributory factors which have created a climate of violence which is structural and has many complex causes requiring immense efforts aiming far beyond short-term solutions.

For these reasons, the current Government of Colombia has sought to tackle these problems through a coherent set of policies and initiatives aimed at finding an effective solution.

It is these considerations that lie behind the government initiatives now under way in various national and international arenas and aimed at resolving the country's internal conflict, namely, the peace process that is taking place with the participation and representation of the various parties involved, and the diplomatic peace offensive.

Similarly, the State, through its various competent authorities, is meeting its commitment, at both the national and regional level, to protecting and enforcing the fundamental rights of the population, including workers. The rights include fundamental rights at work, and especially freedom of association.

With regard to freedom of association, the Colombian State has developed a number of initiatives which constitute significant advances, even in the view of the ILO's supervisory bodies. The first of these was the 1991 Constitution which incorporated the international labour Conventions ratified by Colombia into domestic legislation, and made the right to work one of the fundamental rights. Subsequently, when Act No. 50 of 1990 was enacted, the Committee of Experts on the Application of Conventions and Recommendations acknowledged that Colombia was an example of progress with regard to Conventions Nos. 87 and 98. But the Government has gone further. In the past five years, Colombia has enacted a number of laws and decrees which extend the coverage of labour safeguards. They include Act No. 278 of 1996 establishing the Permanent Consultative Committee on Wages and Labour Policies, in accordance with article 56 of the Political Constitution; the law extending trade union privilege to public employees, removing the limitation that had existed under section 416 of the Substantive Labour Code and implementing article 39 of the Constitution; and the adoption of Decree No. 801 of 1998, allowing minority trade unions the option of applying to an arbitration tribunal during collective talks (a matter of

great interest, given the considerable involvement of such trade unions in collective talks).

Lastly, 1998 also saw the enactment of Act No. 411 approving the Labour Relations (Public Service) Convention, 1978 (No. 151), and in 1999, with the adoption of Act No. 254, approval was given to the Collective Bargaining Convention, 1981 (No. 154); the Act is currently being examined by the Constitutional Court.

The Government hopes that the international community and Colombian society will endeavour to understand the complex structural problems of national violence and social conflict in all their aspects. These problems can only be solved through concerted action to improve the capacity of state institutions and social organizations to seek and implement effective measures and mechanisms. It hopes above all that they will grasp that those solutions will not be found overnight but only through long-term cultural, social and economic transformation.

The Government also hopes that the presence of the ILO direct contacts mission in the country will improve the general knowledge and understanding of these complex problems and that it will lead to agreements on cooperation, support and technical assistance mechanisms in those thematic or organizational areas where the greatest weaknesses are currently found.

Preliminary reflections on the issue of violence and human rights

Colombia is faced with a conflict of enormous dimensions unleashed by forces that are both well-armed and economically powerful. It has been taking whatever action is reasonably possible and appropriate in an effort to keep the violence under control, using the means available to it as a State based on the rule of law.

By reaching political peace agreements with the principal, politically motivated, groups behind the violence, the State would be in a position to provide better safeguards with regard to the fundamental rights of all sections of the population – rights which are violated as a consequence of the internal armed conflict.

As regards the actual nature of the violence in Colombia, its dimensions and manifestations, it is clear that the problem is extremely complex and difficult to comprehend. It cannot be understood in the light of the experience of other societies.

The overall context of violence resulting from the country's internal armed conflict is the fundamental frame of reference within which specific acts of violence against trade union members and leaders in Colombia must be viewed. This subject has been of particular concern to the ILO.

Colombia is afflicted by distinct types of violence which the authorities are obliged to deal with simultaneously. They are, firstly, violence linked to ordinary criminality and delinquency. Secondly, there is casual, everyday violence. Thirdly, the country is affected by violence caused by drug-trafficking groups. Fourthly, there is political violence.

Given the facts which have been brought to the attention of the ILO, the most serious manifestation of violence is the internal armed conflict, since it is in the context of that conflict that the majority of crimes occur and because that conflict has the potential to destabilize the State and its democratic institutions.

Understanding the armed conflict in Colombia is therefore crucial to any understanding of violent crime.

A general overview of the situation gives a figure of 2,960 reported incidents for every 100,000 inhabitants (1997 figures), of which 84.6 per cent are of a criminal nature. The internal armed conflict claimed 16,625 lives between 1985 and 1996, and of that figure 27.4 per cent were civilians, 26.5 per cent members of the armed forces and 46.1 per cent armed insurgents.

The groups mainly responsible for this political violence are guerrilla organizations that have been active for more than 30 years, as well as so-called "self-defence" organizations often incorrectly referred to as "paramilitary" groups.

One of the main guerrilla organizations is the grouping known as the Revolutionary Armed Forces of Colombia – Peoples' Army (FARC-EP), which has been active since 1966 and has 66 armed "fronts" and 12,000 armed members. The National Liberation Army (ELN) has been active since 1965 and has 35 "fronts" or columns and around 4,300 armed members. The Popular Liberation Army (EPL) has 330 members and only four fronts.

The self-defence groups have 5,000-6,000 armed members. These are private law-enforcement groups organized, illegally and entirely against the country's interests, by certain minority groups in response to the activities of the guerrilla groups. These self-defence groups are among the worst offenders in terms of human rights violations.

In total, if other illegal armed groups not referred to here are included, there are around 22,000 armed combatants confronting the State in a conflict characterized by the use of non-standard military tactics. Apart from the considerable military power of these groups, they also have considerable economic resources at their disposal. The collective income of the guerrilla groups alone between 1991 and 1996 was around US\$1.8 billion, a figure equivalent to 1.1 per cent of Colombia's gross domestic product (GDP) during the same period.

The relationship between the general climate of violence and the specific issues which we are examining with the ILO is rooted in the fact that the trade union members and leaders concerned are victims of a situation created by the armed conflict and by the activities of armed groups operating outside the law. The attacks suffered by trade unionists are violations of international humanitarian law and have taken place during actions that have harmed the entire civilian population.

This conclusion is supported by documents submitted by the Government of Colombia, both with regard to the internal armed conflict and with regard to all the specific cases investigated by the ILO. Nevertheless, the Government is aware that there have been isolated instances of members of the armed forces becoming involved in violations of fundamental rights, including the right to life and the right to physical integrity.

We must make it absolutely clear that it is not a policy of the Colombian State to violate human rights. On the contrary, Colombia has given abundant proof of its total commitment to human rights and international humanitarian law.

What is more, in those isolated cases in which members of the armed forces have been involved in such violations, the necessary measures have been taken to bring those responsible to justice. Indeed, the Government will not even tolerate negligence or inefficiency on the part of members of its armed forces in combating outlawed armed groups, or any omission in defending the civilian population against attacks by those groups.

Policies and achievements of the Colombian Government in combating the armed conflict, violence, human rights abuses and impunity

The policy and process of peace

The foundations of peace

The Government's peace policy is based on five fundamental principles, namely:

- Systematic negotiations with rebel groups as part of the national reconciliation process.
- The launching of a new, participatory vision of development, the "Plan Colombia", which targets the poorest areas and which will be supported by the Investment for Peace Fund financed through peace bonds, international contributions and special credits.
- Coordinated talks on a series of social, political and economic reforms to improve the quality of life of Colombians.
- Enforcement of the right to life and other human rights, given that peace and human rights are interdependent.
- Promoting a culture of peace as a continual, permanent, collective and dynamic historical process by which citizens transform their relations with their social and natural environment.

Restoration of the state monopoly of armed force: Precondition for a peaceful society

In order to bring about peace, the State must restore its monopoly of arms through administrative measures and legislative reforms. Civil society cannot continue to be in thrall to the armed conflict.

The existence of private law enforcement groups is fundamentally incompatible with the principle according to which the State has a monopoly of armed force, and the groups in question constitute a major factor in the war. For this reason, peace will not be possible unless their guns are silenced. This is a problem quite distinct from the peace negotiations with the guerrilla groups and is the exclusive responsibility of the State.

Advances in the peace process

The election campaign by President Pastrana focused on the issue of peace and his promise to enter into negotiations with the armed groups. The current Government began its peace mission with a profound sense of responsibility towards the people to live up to that commitment. For their part, the guerrilla groups took a significant step forward by recognizing the legitimacy of the new Government and announcing their willingness, subject to conditions that vary from one group to the other, to take part in talks. It should be noted that the Government is conducting talks quite independently with each of the two major guerrilla groups, the FARC and the ELN. The process began during the military conflict and was not conditional on achieving a ceasefire.

The main advance in the peace process has undoubtedly been the overwhelming support for that process which has been expressed in a variety of ways by civil society, communities and every social sector throughout the

country. That support has taken the form of peaceful demonstrations and protests against the armed conflict.

Throughout 1999 in the country's major cities, large-scale demonstrations against violence took place under the slogan "No Más" ("No more!"). The aim of these activities was to put a stop to the crimes perpetrated by the outlawed groups. This united show of resolve by a pluralistic society reached its high point on 24 October, the day which also saw the beginning of talks with the FARC, when 10 million Colombians throughout the country and in a number of cities abroad marched to demand an end to the violence.

Talks with the FARC-EP

Among the areas of significant progress now being made in implementing the peace agenda, which is the Government's highest priority, the following can be highlighted:

Direct talks have taken place on a number of occasions between the Head of State and FARC leaders, and a "détente zone" has been established for the purpose of ensuring that those involved in the peace process enjoy the security, trust and credibility needed for peace talks to advance. This does not in any way undermine national sovereignty. On the contrary, these initiatives reaffirm the role of the State in efforts to bring about coexistence between the different social groups.

The national Government has acknowledged the political character of the FARC. That acknowledgement in no way alters the nature of the insurgency under the terms of international law. This is widely accepted and recognized by the international community.

Starting with a process of coordination between the various institutions of the State responsible for projects and programmes in areas affected by violence, the Government's policy seeks to bring about a state presence which will promote the social and economic development so vital to these areas.

The Government presented an agenda of work and received counterproposals from the FARC-EP. The two agendas to a significant degree coincide with and complement one another, and gave rise to the "Common Agenda for Change towards a new Colombia". This 12-point plan was approved by the spokespersons of the parties concerned and has served as the basis for talks.

During the course of the negotiations, agreement was reached on a national committee for dialogue and negotiation. This would be the highest decision-making body in this area, and would have five members from each side.

In October 1999, dialogue with the ELN was resumed in Cuba, thanks to the release of a number of hostages from civil aircraft and of a number of individuals who had been taking part in a religious ceremony in Cali. These preliminary talks are aimed at re-establishing the right conditions for negotiations with the ELN, on the assumption that the situation of civilian hostages will be resolved and that it will be possible to implement the "National Convention".

The “Plan Colombia”

Description

The “Plan Colombia for Peace, Prosperity and Strengthening the State” is a central pillar in the Government’s plan to bring about genuine social justice and prosperity for the nation through strategies and specific objectives to which the current Government is committed and in which the whole of society will participate. That Plan was presented to the international community in October 1999.

The “Plan Colombia” is based on a general premise: “Our major task as a Government is to build a better and safer country for the current generation and future generations and to make the State a more effective force for peace, prosperity and national progress.” This principle underlies all the general goals and specific programmes of the Plan within Colombia’s institutional framework. They can be summarized under the following headings:

Strategies

These are interrelated and linked to form a coherent whole within the “Plan Colombia”:

- an economic strategy aimed at creating jobs and generating the economic resources needed to modernize the economy, improve access to foreign markets, facilitate free trade agreements and attract foreign investment;
- a fiscal and financial strategy based on austerity measures to promote economic activity and restore the country’s image abroad;
- a peace strategy aimed at achieving a negotiated agreement with the guerrilla groups based on territorial integrity, democracy and human rights;
- a national defence strategy centred on the modernization and restructuring of the armed forces and police. The aim of the strategy is to safeguard the rule of law, the security of all the country’s inhabitants, the welfare of the community as a whole and full respect for human rights;
- a judicial and human rights strategy to reaffirm the rule of law, improve the efficiency of the justice system and in particular to guarantee equal and impartial justice for all persons living on Colombian soil;
- an anti-drugs strategy, implemented in collaboration with the international community, which will attack every link in the chain of narcotics trafficking from production to consumption, and will tackle its disastrous social and economic impact in terms of addiction, money laundering and violence;
- an alternative development strategy aimed at the country’s agricultural sector, especially small producers. The strategy will promote agricultural and other cost-effective economic activities for rural workers. The Plan includes a number of different infrastructure projects to improve access to those areas where violence is greatest and state authority at its weakest;
- a strategy for social participation with the purpose of raising collective awareness. This element in the Plan seeks to encourage the commitment of the entire community and its participation in the fight against those phenomena that cost the country most, such as corruption and violence. This is a crucial part of the Plan in that it aims to create a mature collective awareness of the way society is constructed and develops;

- a human development strategy which will ensure adequate social protection for all the country's citizens. Particular attention will be devoted to the treatment and prevention of drug addiction;
- an international strategy which will reaffirm the principles of responsibility and reciprocity in the fight against drugs trafficking, based on a global understanding of the problem and the commitments and actions needed to eradicate it.

Progress made

As regards the budget for the Plan, Colombia will earmark US\$4 billion of its own resources out of a total budget of US\$7.5 billion. The rest is to be provided by the international community through the donors' committee which will meet in June in the host country, Spain.

These resources will be supplemented by a US\$1.6 billion aid package which should be approved by the United States Congress following talks.

The National Department of Planning, with the assistance of the Inter-American Development Bank, is formulating programmes which will give priority to finding substitute crops, assisting displaced persons and victims of violence, improving justice and protecting human rights. The Bank has approved an initial payment of US\$600 million for the Emergency Social Fund.

Through its representatives in Colombia, the United Nations is endeavouring to create a link between aid and the promotion of human rights, development and peace, matters of great interest to the United Nations and most European countries.

National Human Rights Policy

Presentation

This policy was a commitment accepted by the Government in its current National Development Plan "Change to Build Peace", which took on concrete form in the "Policy of Promotion, Respect and Safeguards for Human Rights and the Application of International Humanitarian Law, 1998-2002".

In this context, the Government has laid the bases for an integrated human rights plan extending beyond the Government's period of office to safeguard the most fundamental human rights (the right to life, physical integrity and liberty), protection of which is an absolute imperative, as well as the civil, economic, social and environmental rights that follow from these. To that end, the Government must encourage the creation of strategic alliances between the State, civil society organizations and local, national and international NGOs with a view to:

- promoting a culture of respect for human rights;
- reducing violations of fundamental rights and international humanitarian law; and
- taking action to combat impunity.

In order to give greater priority to this policy, the Government has entrusted the Vice-President's Office with the tasks of inter-institutional coordination and boosting the activities of the various state bodies responsible for promoting, protecting and defending human rights.

Objectives

- **Respect:** to ensure that the human rights of all those living in the country are respected. In particular, the Government is seeking to create, maintain and strengthen appropriate and effective mechanisms for monitoring the activities of those agents of the State who, by virtue of their duties, are most likely to be involved in activities which might infringe fundamental rights.
- **Promotion:** to ensure that the fundamental rights are publicized, known, understood and assimilated by all the country's inhabitants. Similarly, the Government proposes to work with civil organizations to establish common ethical standards on which the fundamental common values of a modern and democratic State are based.
- **Guarantees:** the Government is seeking to safeguard the exercise of the fundamental rights in two complementary areas – action by the authorities in response to threats or violations of fundamental rights, and creating or re-establishing the conditions for proper enforcement of those fundamental rights.
- **Compensation:** to provide specific tools to deal with the consequences of human rights violations.
- **Humanizing the conflict:** until agreements are reached by the authorities to consolidate the peace process, to humanize the conflict and achieve full respect for international humanitarian law.

Areas of work

- Combating armed outlawed groups
 - combating the armed uprising;
 - combating kidnapping;
 - combating the self-defence groups;
 - joint measures against the self-defence groups and rebel groups: strengthening the commitment of the law enforcement authorities in the struggle against outlawed armed groups; seeking humanitarian agreements; combating drugs trafficking and dismantling its social support networks; and establishing an early warning system.
- Improving the security of human rights defenders and persons who are threatened. This will include measures to give an impetus to coordinated mechanisms for promoting and protecting human rights, such as the Inter-Institutional Commission on Workers' Rights.
- Assistance to persons displaced by violence.
- Specific measures to promote international humanitarian law, including:
 - protection of women and young people in situations of armed conflict;
 - elimination of anti-personnel mines.
- Promoting the administration of justice:
 - combating impunity;

- the legislative agenda.
- National Plan of Action on human rights and international humanitarian law.

For the purpose of formulating policy on human rights and international humanitarian law, the National Permanent Commission for Human Rights and International Humanitarian Law has been set up and will be chaired by the Vice-President of the Republic in his capacity as High Counsellor for Human Rights.

In order to reinforce the culture of respect for human rights, the Vice-President will implement a major educational project on the subject of human rights and international humanitarian law, as well as a multimedia-based communication and dissemination strategy to publicize the activities and achievements of the state authorities in these areas.

A National Consultative Committee has been set up to promote consultation between the different state authorities responsible for providing basic services to the community and to promote a coherent, integrated and participatory policy in the area of human rights and international humanitarian law.

The Special Committee for Promoting Investigations into Human Rights Violations is responsible for developing and strengthening follow-up and monitoring mechanisms, and will help to improve the management of investigations using an inter-institutional workplan.

The Observatory on Human Rights and International Humanitarian Law has been established to consolidate, produce and analyse information on the human rights situation. The Observatory will be supported by an expanded Human Rights Network, which existed previously within the High Council for Human Rights. The latter will broaden its mandate with the construction of a National System of Information on Human Rights and International Humanitarian Law.

Progress made

The Office of the Vice-President has proposed a number of distinct tasks defined within the general priority areas. They include the following.

Combating outlawed groups

Support has been given to the Attorney-General's Office in investigating and monitoring violations of international humanitarian law by rebel groups. A national coalition against kidnappings has been set up under the Programme for the Defence of Personal Freedom.

A proposal has been put forward for the creation of a Coordination Centre for Combating the Self-defence Groups. This will involve a number of different authorities including the Ministry of Defence, and the Offices of the Attorney-General and Procurator-General. It will provide operational support to the Attorney-General's Office. The Ministry of the Interior and the Ministry of Defence have been asked to improve protection of the civilians at risk by the law enforcement authorities, by increasing their presence in areas where the self-defence groups are active. The proposal is currently under discussion.

Within the law enforcement authorities, proposals have been put forward on a number of measures to promote respect for human rights. Emphasis has been placed on the development of new training initiatives for the law enforcement authorities, the aim being to protect the population and encourage respect for human rights and international humanitarian law.

Encouragement is being given in conjunction with the Ministry of Defence to allowing the Commander-in-Chief of the armed forces at his discretion to discharge subordinates who have failed to perform satisfactorily in the fight against outlawed groups, and to promote others on the basis of merit.

Humanitarian agreements and other similar mechanisms have been developed and inter-institutional projects involving the High Commissioner for Peace, the Ministry of the Interior, the Solidarity Network and the Ministry of Defence have been launched.

Lastly, work is being undertaken with the Solidarity Network on the early warning system for preventing massacres and forced displacements.

Security of human rights defenders and persons at risk

The Vice-President's Office participates in the committee responsible for administering the Programme for Human Rights Defenders. Agreement has been reached on protection ("shielding") for 110 NGO and trade union headquarters, protection has been offered to 116 individuals, and 43 vehicles have been allocated, in addition to other measures relating to communications, transport and emergency assistance to persons at risk.

Talks between the NGOs and the Ministry of Defence are being encouraged. The Vice-President's Office is also monitoring the implementation of Directive No. 07 of 9 September 1999 concerning recognition of the legitimacy of human rights defenders. Intelligence records of human rights defenders are also being reviewed.

Assistance to persons displaced by violence

Together with the Solidarity Network, work was undertaken on the CONPES document containing a comprehensive plan of action to assist persons displaced by violence. The document was published in November 1999.

Improving the administration of justice and combating impunity

In order to ensure that progress is made in the most important current investigations into violations of human rights and international humanitarian law, special commissions have been sent to the departments of Chocó, Antioquia, Casanare, Sur de Bolívar, Arauca, Magdalena, Cauca and Cesar.

The special committee responsible for investigating such cases has been working on around 20 individual cases, including those of Alvaro Gómez, Mario Calderón, Elsa Alvarado (Cinep), Eduardo Umaña, the massacres of Mapiripán and La Gabarra and cases relating to the establishment of self-defence groups.

These investigations have led to a number of protection measures and a number of them are at the trial stage.

There have been regular meetings of a joint committee set up to promote amicable solutions in cases relating to the Unión Patriótica. The Committee has presented two reports to the Inter-American Commission on Human Rights (IACHR) and has promoted the creation of special investigative subunits.

The Vice-President's Office has encouraged efforts to find amicable solutions and has made his views clear on more than four cases under consideration by the IACHR.

One of the most important advances has been the completion of work on designing a databank containing data on violations of human rights and international humanitarian law.

In accordance with the legislative agenda, work has been done on the following projects:

- the Statutory Law respecting the organization of military criminal justice;
- a bill to reform the Single Disciplinary Code;
- preparatory work on elements of crime and rules of procedure and evidence based on the Statute of the International Criminal Court;
- ratification of the Statute of the International Criminal Court;
- the Juvenile Code.

Consideration is currently being given to the possibility of ratifying the Inter-American Convention on Forced Disappearances of Persons.

Lastly, Act No. 548 has given effect to a decision not to recruit young people below the majority age.

Human rights Plan of Action

This is a priority for the national human rights policy. The Plan has achieved a number of successes, with the establishment of the Permanent National Commission on Human Rights and International Humanitarian Law and the National Consultative Committee. Once the plans for the latter were finalized, they were submitted to the President's legal secretariat, the appropriate executive decree was signed by the President and published. The Plan also includes a strategy of publicity and education on human rights.

Combating impunity in Colombia

The Government of Colombia is well aware that impunity has a corrosive and undermining effect on the rule of law, which is the institutional bedrock on which the nation is built. For this reason, the State's greatest efforts are focused on the task of reducing those harmful effects by using the legal apparatus available to it, by strengthening existing laws and regulations especially in the area of criminal law, and by bringing the full authority of the State behind these efforts. Nevertheless, a number of points need to be made regarding the question of impunity in Colombia.

The effectiveness and efficiency of the administration of justice in Colombia should not be judged by the criteria which are normally applied to systems of justice that are called on to deal only with ordinary crime and delinquency, as is the case throughout much of the world.

We believe that impunity in Colombia can be fully understood only in the light of the particular nature and scale of the Colombian conflict.

When we talk about "impunity", we are referring to the ineffectiveness of the justice system in investigating, prosecuting and punishing crimes committed under normal circumstances.

An analysis of the Colombian situation must take into account the fact that the military capacity of the illegal armed groups and the characteristics of the

current internal armed conflict often complicate the administration of justice and on occasions give rise to situations of impunity which the justice system attempts to remedy at great risk to itself.

The question arises: has the Colombian State done everything in its power to combat impunity effectively?

A cursory review of the measures and actions undertaken by the State show that it has indeed done everything reasonably possible. The measures undertaken in this area include the following:

- enactment of the 1991 political Constitution which includes many important provisions for the protection and promotion of fundamental rights;
- extensive provisions on the fundamental rights of the person as a fundamental element in the Constitution and the ultimate purpose of the State's activities;
- numerous provisions concerning measures for the protection of those rights. Thus, in addition to the basic framework and sources of ordinary law, provision has been made for a number of specific measures, such as those relating to constitutional and court protection (*tutela* or *amparo*), which have proven to be highly effective in protecting fundamental rights and promoting awareness of and respect for such rights in society;
- the primacy of international human rights treaties over domestic legislation;
- measures to extend the range of courts and tribunals responsible for defending and safeguarding rights, with the creation of the Constitutional Court and the Superior Council of the Judicature. The former ensures that the provisions of the Constitution are enforced and acts as the highest human rights tribunal; the latter ensures that the judicial branch enjoys special autonomy and the financial means to fulfil its institutional functions;
- establishment of the Attorney-General's Office, transforming an investigative system into an accusatory one and opening the way to a more rapid and effective criminal process;
- the creation of the Office of Ombudsman (People's Advocate) responsible for protecting citizens' rights.

Since 1991, on the basis of the 1991 Constitution, a number of important advances have been made, including:

- the adoption of the Act respecting the termination of ownership of illegally acquired property;
- the formulation and implementation of the Policy for the Promotion and Protection of Human Rights under the direction of the Vice-President's Office;
- a 49 per cent increase in the law enforcement budget over the period 1992-97, the greatest level of funding devoted to law enforcement of all the countries in the Andean region and the greatest number of employees in the justice system among those countries;
- general restructuring and purging of the national police;
- the enactment of a new Military Penal Code which provides sanctions for actions not referred to in the previous Code;

- reforms in criminal, procedural and substantive legislation, which will cover all violations of international humanitarian law;
- the creation within the overall structure of the Attorney-General's Office of a specialist Human Rights Unit, and the creation of 25 special investigative subunits responsible for investigating violations of workers' human rights (resolutions Nos. 300 to 325 of 26 June 1999 and No. 00814 of 29 October 1999 of the National Directorate of Prosecutors' Offices);
- all of the above measures are in addition to the legal rights and mechanisms established for the protection and promotion of workers' fundamental rights;
- the opening of an Office of the United Nations High Commissioner for Human Rights in Colombia, at the invitation of the Government.

Apart from these legislative measures, the Government, and in particular the Ministry of Labour and Social Security, has also been developing operational plans and activities to combat impunity. At the Government's request, the special subunits of the Attorney-General's Office were entrusted with the task of investigating violations of human rights of trade union members (resolution No. 00814 of 29 October 1999 of the National Directorate of Prosecutors' Offices).

In addition, the Government has developed a Programme of Action for the Promotion and Protection of Workers' Human Rights and Fundamental Rights, and is currently organizing an inter-institutional system for consolidating information and directing action in cases of violations of workers' human rights. Under the guidance of the Inter-Institutional Commission for the Promotion and Protection of Workers' Human Rights, the Government will also reinforce mechanisms for following up individual cases.

Programme of protection for human rights defenders and trade union leaders

Act No. 418 of 1997, in accordance with previous provisions concerning the General Directorate (Administrative Unit) of Human Rights of the Ministry of the Interior, empowers that body to protect persons in situations of risk to their life, integrity, safety or liberty, as a result of political or ideological violence or the internal armed conflict.

The social groups eligible for such protection include activists and leaders of social, civic and community organizations, guilds and trade unions, rural workers' organizations, ethnic and political groups, as well as opposition and human rights groups.

A detailed report by the Security Administrative Department (DAS) on measures for protecting trade union leaders that have been implemented by that organization to date is being produced.

However, this document presents more general information on the implementation of the Programme. Other institutions of national, regional and local level have also committed considerable resources to the protection of trade unionists, in addition to those provided under the Programme (for example, Government of Antioquia and ECOPETROL).

At the same time, with regard to specific protection measures, the Committee on Risk Regulation and Assessment has established security measures for trade union headquarters (closed-circuit television, armoured

doors, alarms, lighting, extinguishers, security phone systems, etc.), and for the protection of trade union leaders (physical protection, including bodyguards, changes of residence, mobilization, communications, transfers, economic humanitarian aid, firearms permits, social assistance). The number of trade union leaders benefiting from protection measures under the Programme is broken down as follows:

Trade union leaders provided with "hard" protection (escorts/bodyguards, vehicles)	41
Trade union leaders for whom self-defence training has been recommended (medium to low risk). These individuals were the subject of a technical study by the Administrative Security Department, which involved payment of travel and daily expenses.	21
Total number of escorts (bodyguards) assigned to trade unionists and trade union headquarters	87

The Programme's original budget was increased during 1999 by 8 billion pesos (8,000,000,000). That sum was shared between the Human Rights Unit of the Ministry of the Interior and the Security Administrative Department (DAS).

Risk studies on trade union headquarters

Protection measures at trade union headquarters have been recommended by the experts responsible for the studies. Those measures include the following: armoured doors and windows; walk-through metal detectors; explosives detectors; closed-circuit television and phone systems. Such measures have been introduced at many trade union headquarters.

Armouring and physical protection projects

During 1999, the Committee approved projects to armour and protect 81 trade union and NGO headquarters. Of those, 42 trade union headquarters will be provided with armouring. To date, 13 such projects have been completed. The rest are still in progress.

One important element of the Programme is the early warning subprogramme, which involves the creation of a communications network using 250 cellular transmitters. This will allow trade unions, NGOs and communities in situations of risk to maintain permanent communications with all the security authorities of the State and in particular with the members of the Committee on Risk Assessment. This should allow immediate action to be taken when necessary to prevent human rights violations.

National Strategy for Coexistence and Civic Security

Description

Violence, unemployment and insecurity are the main problems facing Colombians in their everyday lives. With that in mind, the Government drew up its development plan for 1998-2002: "Change to Build Peace", which considers the problems from different perspectives with the aim of putting forward an integrated peace plan. This will involve a commitment by the Government and by civil society to begin building a more participatory State, strengthen the social fabric, boost production and job creation and build peace.

The objective of this national strategy is to promote change to allow the country's inhabitants to begin moving towards coexistence and security, through

specific policies developed with the collaboration of the national police, the municipal authorities, the productive sector and the community as a whole.

Proposals

The National Strategy for Coexistence and Civic Security is based on seven proposals regarding action, policies and initiatives.

Agencies and mechanisms for trade union participation and consultation

The Government is pledged to renewing the various mechanisms and bodies which allow direct participation by trade unions and the forums for consultation with other social, political and economic entities.

This is shown by the work done by the Consultative Committee on Wage and Labour Policies, which was broadened during 1999 to include representatives from other social sectors who are not statutory members. This made it possible to conduct a wider debate on the country's economic problems and on proposals from various sectors regarding possible solutions.

In order to provide effective support to the Committee, the Ministry concluded an agreement with the ILO on the financing and implementation of a project entitled "Assistance to the Consultative Committee on Wage and Labour Policies", which is currently being implemented. This is a "tripartite" project, that is to say it includes official representatives of trade unions, employers and the Government. It is currently working on an agenda for discussions during the year.

At the same time, the Government has revived the work of the Inter-Institutional Commission on Workers' Human Rights, in which the workers themselves and other social organizations will participate. It is currently working on a set of proposals which will be presented to the Consultative Committee at its next meeting. Work on supporting proposals for the Committee is the task of working groups created by the Ministry to deal with particular subject areas, and is discussed with representatives of other government agencies, trade unions and NGOs represented on the Committee.

Similarly, the Committee on Risk Regulation and Assessment of the Ministry of the Interior operates permanently with worker representation and has the task of assessing the protection requirements of trade union leaders.

Other participatory or consultative bodies which afford the trade union movement the opportunity to participate in the institutional processes of the State include the following:

- the Inter-Institutional Committee for the Elimination of Child Labour;
- the administrative boards of the SENA ² and the PROSOCIAL, ³ the Social Security Institute, compensation funds and social security funds;
- the National Health Council and the Social Security Council;

² Servicio Nacional de Aprendizaje.

³ Promotora de Vacaciones y Recreación Social.

- the administrative board of the teachers' social benefits fund;
- staff committees in all state institutions;
- the administrative board of the National Savings Fund;
- national and regional planning councils;
- direct participation mechanisms in electoral proceedings.

Action against outlawed groups

Given that the self-defence groups are criminal organizations that have set themselves up in clear opposition to the institutions of the State, and given also that their actions have exacerbated the existing conflict, a tough government policy has been formulated for subduing them with a view to preventing further acts of violence.

Between January and August 1999, 11 members of these groups were killed in battles with the army, while 53 weapons and 15 vehicles were seized.⁴ A total of 370 members of the self-defence groups were arrested.⁵ The Government has created a Coordination Centre for Combating the Self-defence Forces presided over by the Vice-President, Dr. Gustavo Bell. Other participants in the Centre include the Minister of Defence, the Attorney-General, the Procurator-General and senior officers of the armed forces and law enforcement authorities.

The judicial inquiry into the massacre at Mapiripán in the Department of Meta in May 1998, which was one of the darkest episodes in Colombia's recent history, has made progress towards identifying those responsible for planning and carrying out the attack. Warrants have been issued for the arrest of four of the culprits, including Carlos Castaño Gil, the head of the *Autodefensas Unidas de Colombia (AUC)*. The leader of the self-defence forces' assault at Mapiripán, Pedro Pablo González Velasco, was killed in a battle with the national army.

In its action against drugs trafficking, which has been a major contributory factor in the violence afflicting the country and has links with the internal armed conflict, the Government has achieved considerable success in its efforts to bring those responsible to justice and in implementing a number of targeted measures aimed at eradicating this scourge.

To that end, the Government has created an Anti-Narcotics Battalion. This is a specialized airborne unit whose mission is to provide back-up in the task of eradicating illegal crops and destroying laboratories where narcotics are manufactured. It was essential to establish a force of this type, given that a large proportion of the illicit crops are guarded by heavily armed groups.

Significant advances have been made in combating violence, both in prevention and in actions against those responsible. The fight against the self-defence forces has been intensified. There has been wide recognition of the progress made in the operational capabilities of the armed forces, which have managed to reverse the tide of guerrilla offensives which existed before 1998. Impunity has been reduced as a result of the response actions undertaken by

⁴ Source: The national army.

⁵ Source: Office of the High Commission for Peace.

the authorities, but such actions must be seen within a context of armed conflict involving not merely ordinary criminals but major military forces capable of putting up stiff resistance. The fight against impunity does not simply require the means needed for regular police and judicial investigations gathering evidence and identifying, charging and sentencing those responsible, since the overall context is one of armed confrontation.

This means that, since we are dealing with armed conflict on a large scale, and although the criminal justice system has its own contribution to make in the fight against impunity, it is in the area of military operations and political negotiation that the State must focus its efforts to combat the violence that affects the entire population.

Action by the security forces

No involvement by members of the armed forces in illegal acts, whether by commission or by omission, will be tolerated, nor will the mere suspicion of such involvement

The Colombian Government will not tolerate any negligence, complicity or participation by members of its armed forces in the perpetration of acts that violate fundamental rights or international humanitarian law, indeed it will take action in such cases. Nor will the Government allow individuals who are or have been under investigation in connection with such violations to remain within the ranks of their armed forces, since the mere suspicion of such involvement compromises the integrity of the armed forces.

There have been exceptional and isolated incidences of links between members of the armed forces and outlawed groups. However, we must state quite unequivocally that such occurrences in no way reflect the policy of the Colombian Government and in all cases, given the illegal nature of such links, the State has prosecuted those involved. In addition to the judicial proceedings that may be initiated in response to criminal acts, the Government has provided the Commander-in-Chief of the armed forces with the legal powers to discharge officers and soldiers who have failed to perform effectively in the fight against outlawed armed groups.

In addition, a number of other initiatives have been promoted by the Vice-President. These were described in the previous section concerning advances made in national human rights policy.

Conclusions

1. The Government has identified those population groups that are most vulnerable to the violence that has arisen as a result of the armed conflict. Those groups include trade union members and leaders. This has been done with a view to implementing special protection and security programmes which have since proven effective.
2. In order to eliminate any possibility, however remote, of members of the security forces being linked to violations of fundamental rights or of international humanitarian law, the Government has won approval for a number of legislative reforms.

In addition, the Government has used its discretionary powers to discharge military personnel who have been investigated by judicial or disciplinary bodies on suspicion of involvement in violations of fundamental rights through acts of omission or negligence.

The police and armed forces have also instituted training courses in human rights and international humanitarian law on the assumption that education and the civic culture prevailing within the security forces are the key to the successful accomplishment of their mission.

3. The Government has adopted measures and taken effective action to improve the general security of the population (this naturally includes workers and trade union leaders), to reduce the activities of outlawed groups and to eradicate those factors which encourage violence, thereby effectively combating violence and impunity.
4. The Government, in association with hundreds of civil society organizations covering a wide range of ideologies, has been successful in encouraging the general public to mobilize in a peaceful but united and resolute manner against violence.
5. As a direct result of the policies and activities which will be described below, there has been a noticeable drop in the various indicators relating to the violence. In particular, there has been substantial progress in reducing violations of fundamental rights of workers and trade union leaders who had suffered as an indirect consequence of the internal armed conflict.
6. Closer links and exchanges have been established with the international community, whose understanding and direct support for the peace process are crucial to its success.
7. The peace process has made considerable advances in recent months, through continued talks with the FARC-EP and with the development and prioritization into thematic units of the common agenda on which agreement was reached on 6 May 1999.
8. It is in the interests of civil society and a priority for the Government – reflected in the second main area of talks with the FARC – that negotiations on resolving the conflict should achieve real progress in the area of international humanitarian law, particularly with regard to the protection of the rights of the civilian population not directly involved in the armed conflict. This, logically, must also include measures to protect trade unionists and trade union leaders whose rights have been violated or threatened as a result of the internal armed conflict.
9. It should be understood that the Colombian State is doing everything that it reasonably can to punish crimes committed by persons involved in the conflict. However, these crimes are not taking place under the normal circumstances familiar to judicial authorities operating in countries that are not affected by armed conflict and not faced with the task of combating impunity; they are manifestations of a wider armed conflict which must be viewed in a somewhat different light, given that the authorities are required to confront armed forces endowed with considerable military strength and experienced in the use of non-standard military strategies.

Policies and achievements of the Ministry of Labour and Social Security: Content and progress

One of the Government's priorities is its obligation to maintain the rule of law and respect for the rights of all the country's inhabitants. In terms of this particular commitment, the Ministry of Labour and Social Security bears an enormous responsibility as the body responsible for promoting and monitoring

respect for the fundamental rights at work, which are so vital to the harmonious labour relations on which equitable development must be based.

This mandate requires institutional capabilities which the Ministry of Labour and Social Security has hitherto not had, and accordingly one of the Government's objectives has been that of transforming and modernizing the Ministry with the assistance of the ILO.

This involves a far-reaching restructuring of the organization. It includes improved training for its staff, the entire process of planning, developing, implementing and evaluating policies and efforts to improve activities and procedures.

One element of the restructuring has been the creation of a special unit which is administratively and financially autonomous and responsible for developing labour inspection activities as a concrete expression of the State's role as guarantor of the Colombian labour system.

Within the process of restructuring, particular importance has been given to the task of strengthening management capacity by adopting organizational plans allowing the integration and coordination of distinct areas and departments to focus on priority policies. This has been the case with the Policy for the Promotion and Protection of Workers' Human Rights and Fundamental Labour Rights, and the policy relating to the elimination of the worst forms of child labour and the protection of young workers.

The Government is aware of the need to transform the Ministry of Labour and Social Security. It understands the importance to peace and social harmony of a body fully capable of formulating labour, employment and social security policy and of carrying out the tasks of labour inspection effectively.

Programme of Action for the Promotion and Protection of Workers' Human Rights

Description

The Ministry of Labour has pledged to undertake the coordinated development of a set of effective measures to promote and protect the human rights of Colombian workers. Two basic initiatives are currently under way:

First, the development, adoption and implementation of a Programme of Action for the Promotion and Protection of Workers' Human Rights and Fundamental Labour Rights, with particular emphasis on freedom of association; secondly, the creation of a specialist group responsible for implementing the Programme.

The Programme of Action includes activities in the following areas:

- reactivation of the Inter-Institutional Commission for the Promotion and Protection of Workers' Human Rights;
- establishment of the Inter-Institutional System for the Promotion and Protection of Workers' Human Rights;
- programme of Protection and Early Warning of Violations of Workers' Human Rights;
- plan to promote and publicize workers' human rights;

- establishment of a network of defenders of workers' human rights;
- integration of regional tripartite groups for promoting workers' human rights;
- promotional campaign on workers' human rights.

The programme to promote and protect fundamental labour rights, with particular emphasis on freedom of association, includes the following elements:

- special project on dealing with workers' complaints and claims;
- revival of the project to develop a new culture of labour relations;
- development and implementation of mechanisms to promote and protect fundamental labour rights, especially freedom of association;
- programme to promote fundamental labour rights, with particular emphasis on freedom of association;
- publication of ratified ILO Conventions;
- production and publication of educational and information leaflets on agreements that have been adopted.

The Programme of Legislative Adaptation comprises the following:

- systematic compilation and publication of the international labour Conventions ratified by Colombia;
- review and analysis of international labour Conventions ratified by Colombia in the light of Colombian law;
- work on drawing up proposals for draft legislation or regulating decrees amending and adapting existing laws and regulations;
- review of proposed reforms with the ILO;
- recommendations to the Government concerning the submission and examination of draft legislation before Congress and the enactment of the associated regulating decrees.

The Ministry of Labour and Social Security has considered it necessary to modernize the management and structures through which it carries out its functions in this area, and for that purpose has set up an Internal Coordination Committee to propose and implement the Programme of Action for the Promotion and Protection of Workers' Human Rights and Freedom of Association.

That Committee is responsible for defining, coordinating and monitoring the activities of the following:

- an internal working group for implementing measures to promote and protect workers' human rights;
- an internal working group responsible for implementing measures to promote and protect fundamental labour rights, especially freedom of association;

- an internal working group responsible for legislative adaptation and for compiling and publishing international labour Conventions.

Each of the above groups is responsible for implementing projects and measures provided for in the Programme described above.

Progress made

Different degrees of progress have been made in implementing the various projects which make up the Programme.

Currently, the process of setting up the Internal Coordination Committee and integrating the special working groups has been consolidated, while the parallel process of restructuring the Ministry is also under way. The purpose of these initiatives is to safeguard the Ministry's role and the institutional capacities required by it in those areas.

- Programme for the Promotion and Protection of Workers' Human Rights:

The Ministry of Labour and Social Security is currently carrying out diagnostic work on the human rights databank (this is the task of an office set up for the purpose). A proposal was produced concerning the creation of an "Inter-Institutional System for the Promotion and Protection of Workers' Human Rights". That proposal was submitted to the working group of the Inter-Institutional Commission on Workers' Human Rights and consensus was reached on reactivating the Commission, which was convened on 22 February of the current year.

Similarly, in accordance with the commitment made by the Ministry of Labour and Social Security within the Inter-Institutional Commission, efforts have continued to gather information on particular cases involving trade union members and officials for the purpose of follow-up and to facilitate action by the different state bodies responsible for investigating the different cases.

- Programme for the Promotion and Protection of Fundamental Labour Rights:

A special group has been set up to study and follow-up complaints presented to the Ministry concerning alleged violations of freedom of association and has taken appropriate measures. Instructions have also been given to labour inspectors concerning the procedures for dealing with such violations and the priority which they are to be given.

Similarly, with a view to ensuring better publicity and awareness of the ILO Conventions ratified by Colombia, preparations are under way to publish them and disseminate them among labour administration officials and labour court judges.

- Programme of Legislative Adaptation:

The ILO's Regional Office has been asked for assistance with the task of adapting legislation which the Government has undertaken. For that purpose, central workers' organizations and employers have been invited to participate in the internal working group responsible for carrying out a comparative analysis of national labour standards in the light of the principles embodied in the ratified Conventions and for drafting any amendments that may be needed.

Once progress has been made in this analysis, ILO experts will be asked to participate in the final process of analysis and drawing up proposals.

Adapting legislation

Since 1987, the ILO's Committee of Experts on the Application of Conventions and Recommendations has made a number of observations regarding the disparities that exist between Colombian legislation and the international Conventions. Many of those observations concern Conventions Nos. 87 and 98.

During the period in question, although attention has been drawn repeatedly to the discrepancies between national legislation and the Conventions, we should not lose sight of the fact that the same Committee of Experts has referred to Colombia as an example of progress in terms of legislation, particularly with regard to measures providing enhanced protection against anti-union discrimination. This shows that the State is acting to protect the rights embodied in Conventions Nos. 87 and 98.

Nevertheless, it is obviously the case that on a number of occasions, when the Government has submitted legislation to Congress in response to observations made by the ILO Committee of Experts, those Bills have been blocked by the legislature acting in accordance with its constitutional powers.

In March 1999, the Government tabled a Bill which sought to amend national labour legislation in response to most of the observations made by the ILO's Committee of Experts on the Application of Conventions and Recommendations with regard to Conventions Nos. 87 and 98. The Bill, which was subsequently numbered 184, was approved by Committee VII of the Senate during the first discussion on 9 June 1999. The Bill is intended to give the greatest possible freedom to trade union organizations by removing unreasonable legislative impediments, such as excessive state involvement in determining a trade union's internal arrangements; however, the Bill also goes further than the observations of the Committee of Experts in amending provisions in the Code which violate the principle of freedom of association but which are not referred to in the observations.

However, given the political sensitivity of the issue and the legal difficulties in undertaking a series of reforms proposed by the Committee of Experts, the Government refrained from including them in this particular Bill, believing that the political and legal debate should take place in forums more conducive to dialogue and reflection.

Subsequently, taking into account the observations made by the National Association of Manufacturers (ANDI), the Single Confederation of Workers (CUT) submitted proposals for additions and amendments to the Government's original Bill. These proposals were examined by the Ministry of Labour and Social Security which found most of them to be viable.

Between 28 September and 14 October 1999, Senate Committee VII met on a number of occasions, with the participation of various representatives of the trade union movement and the Ministry of Labour, in order to examine the CUT's proposals and the Government's response. In these meetings, consultations took place on fundamental aspects of the Bill.

Bill No. 184 of 1999 was approved by the Senate in plenary session on 15 December, although it still had to be discussed by the House of Representatives. Now, finally, the Government, in accordance with its constitutional powers, has convened Congress in extraordinary sessions, in which the Bill will be discussed before 16 March 2000.

Similarly, the President of the Republic has included Bill No. 184 on the legislative agenda as a top priority, which means that the legislative body will have to deal with it as a priority.

Taking into account the success achieved in the task of adapting legislation in the light of the observations of the Committee of Experts regarding Conventions Nos. 87 and 98, the Ministry of Labour has pledged its efforts to undertake a study of all the international Conventions ratified by Colombia that are at variance with domestic legislation with the ultimate aim of bringing the latter into line with those Conventions and thereby achieving greater harmony between our own legislation and the principles embodied in the international labour Conventions.

The text of Bill No. 184 of 1999, which is being discussed by Congress, is attached as an illustration of the progress that is being made by the Ministry in the task of adjusting domestic legislation.

Cases under consideration

Colombia respects and complies with decisions taken in international forums, and understands that doing so is crucial to its own harmony and prosperity.

For the same reasons, it is attempting to strengthen its ties with the ILO, and has made it a well-established custom to comply with requests of the Committee on Freedom of Association and the Governing Body.

The Government of Colombia also understands that the collaboration, guidance and support of the international organizations is essential in its efforts to improve social conditions, a goal which is being achieved thanks to the technical and specialist support provided by bodies such as the Committee on Freedom of Association.

The Colombian State, which is subject to certain constraints imposed by its own juridical institutions, wishes to draw attention to certain specific points which should be taken into account by the ILO when it comes to assess the particular cases under consideration, especially with regard to the limits imposed on the Government by its own legal and regulatory framework.

- (1) The foundation on which Colombian political life is based is respect for and promotion of the fundamental rights enshrined in our Constitution, including freedom of association and the right to organize.

This is both a guiding principle and an absolute imperative in our tradition of the rule of law. It has been the basis of the Government's actions and has prompted it to assume political responsibility for promoting and protecting those rights as an unquestionable and non-transferable obligation.

- (2) An analysis of the Committee's observations suggests a number of possible lines of action for the Government. Some of these would be at variance with the basic principles of the rule of law and would affect the division of powers and, consequently, the ability of the administration to comply with the principles established in this area.
- (3) While it is clear that one of the basic principles of our Constitution is the requirement for full compliance with our international obligations, that principle also implies a concomitant obligation not to overstep the clear limits which the Constitution imposes on the executive branch.

- (4) Those limits are derived from the universal concept of the division of powers, according to which the autonomy of each of the three branches of power constitutes the fundamental guarantee for a balance of power and provides the legitimacy for official decisions.
- (5) The executive may not assume the role and the powers of the other branches.

For example, defying or disregarding a “*res judicata*” would constitute a clear abuse of power by the executive branch which democratic institutions would not tolerate. The same would apply if administrative decisions undertaken by the administrative authorities assumed the character of general law, for which the legislative branch is responsible, or of judicial rulings clearly pertaining to the realm of the judiciary.

A clear division of powers safeguards the democratic State and underpins its conceptual, philosophical and practical foundations.

- (6) The Government, which constitutes one of the branches of power, is the natural interlocutor of the Committee on Freedom of Association, and it is naturally to the Government that the Committee’s observations are addressed.
- (7) As a corollary to the above, we reaffirm our commitment as the Government of Colombia to doing everything within our power to implement the Committee’s observations, it being always understood that our powers, as in any State based on the rule of law, are conditioned, regulated and delineated by law which constitutes the highest authority for the State and the nation.

In order to provide the direct contacts mission with a detailed picture of the advances made by the Government in each of the cases under consideration by the ILO, we are providing information relating to Case No. 1787 from the databank of the Human Rights Office of the Ministry of Labour and Social Security, a text setting out the progress that has been made in all these cases and drafted in response to the Committee’s 319th Report, and a synoptic summary of action taken in each of the complaints made against private companies and public bodies, showing very clearly the different types of action taken by the Ministry within the limits of its statutory powers.

Proposals regarding technical assistance and cooperation from the ILO

Colombia’s commitment to preserving and promoting the human rights of all its people has been reflected in an active policy involving a variety of official bodies and using the many resources at its disposal.

This issue is an essential element in the work of the Ministry of Labour and Social Security and requires major efforts to achieve substantial improvements in the area of human rights.

With that purpose in mind, the Ministry has adopted a “Programme of Action for the Promotion and Protection of Workers’ Human Rights and Fundamental Labour Rights”, which sets out the major tasks incumbent on the various departments of the Ministry of Labour and Social Security, in coordination with the institutions and bodies responsible for promoting workers’ human rights and fundamental rights at work, especially freedom of association.

Implementing the Programme will require considerable resources to strengthen the technical and institutional basis. It therefore seems appropriate for the ILO's technical cooperation and assistance to be linked to the efforts to which the Ministry of Labour and Social Security is committed.

As regards the protection of workers' human rights and fundamental rights at work, the Government has granted permanent status to the Inter-Institutional Commission on Workers' Human Rights as the body most able to formulate and, in some cases, adopt programmes and activities for the defence, promotion and protection of the human rights of Colombian workers.

The reactivation of this body with a mandate to coordinate and promote initiatives aimed at achieving the goals established for it is an essential objective in the Ministry's Programme of Action. This will be undertaken in conjunction with other authorities and with the active participation of the trade unions and the social sector, by defining appropriate actions and following up those already adopted.

The Government considers it appropriate that technical assistance should be provided to strengthen the Commission as a forum for dialogue, consultation and inter-institutional coordination, and one which will also develop technical guidelines for formulating and managing projects in areas covered by its mandate.

At the same time, the ILO, through the Committee of Experts on the Application of Conventions and Recommendations and the Conference Committee on the Application of Standards, has indicated that Colombia must bring certain provisions of its labour legislation into line with the Conventions signed and ratified by Colombia. To that end, and with a view to promoting the fundamental rights at work, the Ministry of Labour and Social Security included in its Programme of Action the Programme of Legislative Adaptation as a key element in the promotion and protection of the fundamental rights at work. For that purpose, it is expected that ILO experts will provide technical assistance and that they, in collaboration with government officials and experts representing workers and employers, will form a working group which will carry out a comparative analysis of internal legislation and formulate proposals for new standards that may be required to bring national legislation into line with the principles embodied in the ratified Conventions.

The Government's second reply

Violence in Colombia and trade unionism

Introduction

It is worth mentioning at the outset that, where no explicit mention is made to the contrary, when we speak of human rights we are referring to the fundamental rights of all human beings – the right to life and physical well-being, to dignity and freedom. The first two of these amount, in fact, to one and the same – the right to physical life in its entirety; the second two, to the right to social existence as an individual. Fundamental rights are therefore nothing other than the recognition of physical and social existence that all members of a society owe one another.

Likewise, in order to understand better the phenomenon of violence affecting Colombia, it is important to clarify that we are referring to political violence, as expressed in the armed conflict affecting the whole of Colombian society, the worst manifestation of which is the barbarism which characterizes it,

as the unlawful armed protagonists (guerrilla and self-defence forces) and, very occasionally, some members of the state police, have disregarded and transgressed the provisions of international humanitarian law in the course of the confrontations. Trade unionism is one of the sectors to have been affected.

Furthermore, offences against fundamental rights do not selectively or exclusively affect unionized workers. The victims of acts of aggression against fundamental rights belong to various levels or strata of the population, including peasants, businessmen, professionals, tradesmen, the religious, independent workers, political leaders, human rights defenders and public officials, who are assaulted on the basis of their political affiliation, their active or passive participation in the armed conflict or the simple fact that they live in a violent area.

In the last ten years the armed conflict has cut short the lives of over 16,000 people, leaving in its wake a high number of disappeared and abducted persons. It has led to a colossal forced displacement of inhabitants from the most affected regions and has caused extensive damage to the economic infrastructure and destruction to neighbouring communities.

Emergence and development of the guerrilla movement and the self-defence forces

Three guerrilla groups were founded during the 1960s – the FARC, under the communist influence of the Soviet Union; the ELN, inspired by the Cuban revolution; and the EPL, which had its roots in Maoist political doctrine.

The M-19 emerged at the beginning of the 1970s. Unlike the other communist-inspired groups, it was characterized by its *foquista*⁶ approach and aimed to become a political player through its influence on public opinion.

The FARC, which established itself as a guerrilla group with a peasant vocation and which emerged in connection with social and political resistance processes, was caught off guard by the largest peasant mobilization of the 1970s, set in motion by the hardliners of the National Association of Peasant Concessionaires, whose Maoist-inspired members were opposed to both the Communist Party and the FARC.

Within this armed process the divorce between the FARC and the peasant movement marked just one course of action in a more complex scheme involving a dual approach – a legal and an armed struggle against the system, implying the coexistence of two organizations, both in principle autonomous – the party and the guerrilla group. Within this division of functions, the Communist Party was responsible for the legal and political struggle, while the FARC's domain was military confrontation combined with social resistance in the countryside.

The EPL offered a similar party/guerrilla group approach, only from a Maoist perspective, more radical and dogmatic. As regards political activity, the party preached for non-participation. This precariousness in its political apparatus restricted its possibilities of becoming a real player recognized by the people. It did not, however, stand in the way of the Leninist idea that it is the "political vanguard" which must drive the war and guide the masses, translating in this case into the manipulation of social movements. Of course its sectarianism contributed to the later decline of the peasant movement, leading to a situation of dispersion and total fragmentation.

⁶ *Foquismo*: theory of guerrilla war advocated by Che Guevara.

As for the ELN, it soon forgot its aspirations to become a political player, opting for the military confrontation approach, which caused it to suffer successive defeats during its first years, until it virtually disappeared. Prominent leaders died in combat, others went into exile and an enormous number of its members were captured.

Likewise, during the second half of the 1970s, the armed forces and the state security bodies made significant advances in the counter-insurgency struggle. By the end of 1982 hundreds of guerrillas (including many M-19, ELN and EPL commanders and a few FARC commanders) had been taken prisoner.

In September 1982 the Peace Committee was set up which was responsible for implementing President Belisario Betancur's peace policy. In November of the same year, the Congress of the Republic approved the Amnesty Act, which allowed the guerrillas to recover their freedom.

This government initiative opened the door to "National Dialogue". In 1984 truce and ceasefire agreements were signed with the FARC, the M-19 and the EPL. The parties, the social organizations and recognized personalities were called on to participate in the consultation proceedings.

In this connection mention should be made of the strengthening of the guerrilla organizations and the resurgence of the ELN. With the aim of incorporating themselves into civilian life and developing a "democratic political struggle" the guerrilla organizations promoted the establishment of various political movements: the FARC – the Patriotic Union; the EPL – the Popular Front; the ELN – *A Luchar*,⁷ and the M-19 – the Democratic Alliance.

Many people from the popular strata of society and also many trade unionists, among others, established ties with these political movements, including some who already belonged to legal leftist political parties such as the Communist Party, "*Firmes*",⁸ etc.

Following the failure of the National Dialogue, for reasons that we will not go into in this summary, the now strengthened guerrilla groups resumed their armed attacks on the Establishment, and the political movements that they had inspired remained. In the 1986 elections the Patriotic Union (UP) submitted the candidature of the former magistrate and former trade union leader of Fenaltrase, Jaime Pardo Leal.

In November 1986, various trade union groups stemming from the Trade Union Confederation of Colombian Workers (CSTC), the split Confederation of Colombian Workers (CTC), the collapsed Union of Colombian Workers (UTC), and from a non-confederated trade union group going by the name of Independent Trade Unionism (which at the end of the day gained majority support over all the other workers' confederations), took the decision to establish the Single Confederation of Workers of Colombia (CUT).

The second phase of the Colombian conflict is marked by the war which President Virgilio Barco declared on drug traffickers ("the extraditables"). These powerful criminal organizations responded with terrorism (bombs in the major urban centres, assassinations of important people (three former presidential candidates and senior officials), selective assassinations, multiple threats

⁷ To fight!

⁸ Attention!

against trade union leaders, judges and social leaders, inter alia). They organized an army of paid assassins to carry out their sinister work.

At the same time, they organized paramilitary groups to dispute territories with the guerrilla movements (by carrying out massacres) and to later purchase land (it is calculated that they own approximately 6 million hectares), in other words an entirely unplanned labour counter-reform generating massive displacement and armed control – sometimes even political and social control – of entire regions. The worst manifestation of this political control was the assassination of persons considered to be political adversaries – “guerrilla collaborators or sympathizers”.

These two war fronts bolstered by drug trafficking claimed hundreds of victims, mainly Patriotic Union affiliates and leaders (unable to strike the FARC, they aimed their weapons at its political front throughout the country). Guerrilla activities were focused on the region of Urabá, where the EPL and the FARC had a strong presence, generating a high death toll (massacres and selective assassinations of political leaders and activists, and also of members and leaders of the trade unions in the banana plantations). This caused massive displacement from the plantations towards the region’s urban centres – Apartadó, Chigorodó, Carepa and Turbo – and the consequent abnormal growth of these areas (shanty towns).

Some trade union sectors, particularly from the teaching profession, subsequently decided to become involved in political activities in various regions of the country and as a result many of their leaders became the target of the “self-defence forces”.

It cannot be denied that the “counter-insurgency” drug trafficking war signified a risk for the State as some of its police – fortunately few – felt they shared the same objectives and dishonoured their institutional mission by participating in or tolerating actions against the defenceless population, rendering them guilty of violating human rights, and in particular, international humanitarian law.

The third and final phase of the armed conflict, which began in 1991, is characterized by the political events that followed the establishment of the National Constitutional Assembly. It led first to a peace treaty and then to a number of insurgent movements or parts of such movements joining and participating in civilian life. Among the demobilized groups were the M-19 and one sector of the EPL (“Hope, Peace and Freedom”) which played an important role in the Assembly, giving them political influence, including various trade union leaders of the CUT who participated in the Constitutional Assembly and subsequently in the parliamentary bodies representing these groups.

However, the political involvement of these groups cost a large number of people their lives. This time, the members of “Hope, Peace and Freedom” were victims of their former EPL comrades who were still under arms. The EPL responded to the political and trade union power that the “Hopers” won in the region of Urabá with massacres and selective assassinations of its leaders. The FARC subsequently joined this escalation of crime. The war in Urabá between the various protagonists in the conflict resumed and worsened. Moreover, new players emerged: the *Convivir*⁹ and the self-defence force known as Popular Commandos. Between 1993 and 1997 this crossfire left dead a large number of members and leaders of the banana trade union SINTRAINAGRO and also of FENSUAGRO.

⁹ *Convivir* means to live together or coexist in harmony.

Furthermore, at the beginning of the 1990s a war was waged in Magdalena Medio (Santander and Antioquia). The main protagonists were the national army against the ELN, the EPL and the self-defence forces linked to drug trafficking. In addition to the massacres, selective assassinations and disappearances, there was a rash of dynamite attacks on pipelines. It was the workers of ECOPETROL, affiliated to the USO and the African palm plantations, who were most affected by this crossfire. In addition to the deaths, some USO leaders were detained, accused of rebellion and terrorism.

Two events stand out: first of all, the death threats made by the self-defence forces against the entire USO leadership which affected the CUT's management bodies where a number of them occupied managerial posts; and secondly, the acute conflict raging in the area, above all in Barrancabermeja, the worst expression of which was the abduction and subsequent assassination of 25 youths, carried out in May 1998 by the self-defence forces of Santander and southern Cesar, causing rifts and the subsequent expulsion of the EPL from the area by the ELN as its actions were exacerbating the conflict.

Recently, the Chief of the United Self-Defence Forces of Colombia, Carlos Castaño, ordered the execution of the commander of the self-defence forces of Santander and southern Cesar, Guillermo Cristancho, alias "Camilo", for his excesses against the civilian population, which is an indication of the level of barbarity used by this group against the people in this region.

Distribution of violence

According to the information made available to the Ministry of Labour and Social Security, the reliability of which is based on the fact that it contains data provided by the trade union organizations, various non-governmental organizations and the national press, we find that between January 1991 and December 1999, 593 unionized workers were murdered, including 132 trade union leaders.

Furthermore, the above Ministry's databank reveals that over 50 per cent of the victims come from two departments – Antioquia and Santander. The most affected regions have been Urabá Antioqueño, Córdoba, Sucre, south Bolívar, Magdalena Medio, Cesar and Magdalena, where the armed conflict is severe owing to the presence of guerrilla groups and self-defence forces. Likewise, four trade union organizations (FECODE, SINTRAINAGRO, USO and FENSUAGRO) register over 50 per cent of the homicides. More specifically, the highest number of assassinations of trade unionists occurred in the regions affected by the conflict. (See annexed tables and graphs on the departments and trade unions affected by the armed conflict.)

Furthermore, it is important to point out that of approximately 150 trade union organizations affected by the violence, 96 register one (1) homicide between 1991 and 1999; 29 trade unions register two (2) homicides; and the rest register over three (3) during the same period. Virtually all the organizations affected are linked to the CUT.

Homicides of trade unionists by department (1991-99)

Departments	1991	1992	1993	1994	1995	1996	1997	1998	1999	TOTAL
ANTIOQUIA	13	21	46	19	44	64	53	2	2	264
SANTANDER	9	13	10	4	6	3	1	3	1	50
MAGDALENA	3	2	2	6	0	0	15	1	1	30
CORDOBA	1	3	0	0	1	11	11	1	0	28
CESAR	0	5	1	1	7	4	4	1	2	25
NORTE SANTANDER	2	3	2	4	3	7	4	0	0	25
CAUCA	1	5	2	3	1	4	6	1	1	24
VALLE	0	4	2	3	1	6	6	0	2	24
RISARALDA	2	2	0	1	5	1	2	1	1	15
BOLIVAR	1	0	1	0	0	5	4	2	0	13
CAQUETA	0	0	1	0	1	3	4	1	0	10
CALDAS	0	2	1	2	2	1	1	0	0	9
SUCRE	1	0	1	2	1	2	1	1	0	9
BOGOTA	0	6	1	1	0	0	1	2	0	11
Subtotal	33	66	70	46	72	111	113	16	10	537
META	0	2	0	0	1	4	1	0	0	8
ARAUCA	0	0	2	0	0	0	4	0	1	7
PUTUMAYO	1	0	0	0	0	2	0	4	0	7
CUNDINAMARCA	0	1	0	4	0	0	0	1	0	6
VICHADA	0	0	0	0	0	5	1	0	0	6
TOLIMA	0	1	1	0	1	1	1	0	0	5
ATLÁNTICO	0	0	0	1	0	0	1	1	1	4
CHOCO	0	0	0	0	0	2	1	0	0	3
BOYACA	0	0	0	0	0	0	2	0	0	2
GUAJIRA	0	0	0	0	0	2	0	0	0	2
GUAVIARE	0	0	0	0	0	0	2	0	0	2
NARIÑO	0	0	0	1	0	0	0	1	0	2
HUILA	0	0	0	0	0	0	1	0	0	1
QUINDÍO	0	0	0	0	0	1	0	0	0	1
Total	34	70	73	52	74	128	127	23	12	593

Source: Mintrabajo databank.

Total national homicides of trade unionists (1991-99)

Source: Mintrabajo databank.

Homicides: Trade unions most affected (1991-99)

Trade union	1991	1992	1993	1994	1995	1996	1997	1998	1999	NS*	TOTAL
FECODE	14	7	5	6	15	46	38	3	3	2	139
SINTRAINAGRO	3	8	26	7	25	32	14	1	1	1	118
USO	7	9	8	4	3	1	0	3	0	0	35
FENSUAGRO	1	1	1	6	0	3	6	0	0	0	18
Total	25	25	40	23	43	82	58	7	4	3	310

*NS: Not specified.

Trade unions most affected by violence (1991-99)

Source: Mintrabajo DATABANK.

Homicides of trade union leaders (1991-99)

1991	1992	1993	1994	1995	1996	1997	1998	1999	NS	TOTAL
10	38	19	26	21	18	30	4	9	5	132

Homicides – trade union leaders (1991-99)

Source: Mintrabajo databank.

Region of Urabá

The region of Urabá has been subjected to various processes of colonization. Between the end of the nineteenth century and the beginning of the twentieth migrants arrived from the departments of Córdoba and Bolívar and set about extracting latex from rubber trees for export; this activity continued until stocks were depleted towards the middle of the 1950s, making way for large farming estates producing bananas and plantains in the outlying areas and for extensive cattle breeding.

In 1960 the United Fruit Company, taking advantage of the favourable geographical location for the shipment of agricultural products overseas and the region's excellent soil conditions, began the business of banana production on an individual basis, generating employment, national and foreign investment and the integration of the zone into the country's economic and political life. In fact, the geostrategic position of Urabá favoured the development of commercial exchange activities and was an auspicious setting for informal trade and contraband.

Of Urabá's 1,230,000 hectares of territory, over 29,000 are used for banana production, approximately 40,000 for plantain production, 60,000 are suitable for rice cultivation and 300,000 are used for the extensive cattle breeding of approximately 400,000 head of cattle; further land contains an abundance of timber-yielding trees, heavily wooded areas with a variety of flora and fauna, and is also used for the peasant production of yams, cassavas, cocoa and fruit trees, inter alia.

The banana agribusiness, the zone's main economic activity, developed in 409 plantations belonging to 310 owners in the municipalities of Chigorodó, Turbo, Apartadó and Carepa. It generated 16,000 direct jobs.

The growth of the agribusiness between 1991 and 1993, the enlargement and establishment of plantations and the setting up of banana-producing enterprises resulted in a huge number of shanty towns – 30 rural ones and 23 urban – providing shelter for 52,154 inhabitants, 32,204 of whom were situated in Apartadó. Organized into social movements and backed by leftist armed groups and political parties, these people prompted – in the heart of banana-producing country – a struggle for rural and urban land which peaked between 1985 and 1994.

The trade union movement in the banana-producing region

At the beginning of the 1980s the trade union movement in Urabá's banana plantations was represented by eight workers' organizations, including SINTAGRO and SINTRABANANO. These two trade unions grew in stature from 1984 onwards and their actions expressed the guerrilla influence of the EPL in the former and the FARC in the latter. In fact, the rise of the trade union movement was linked to the activities of the guerrilla groups to consolidate their social influence in the region and to establish their control over the banana sector. This translated into acute opposition between the two trade union organizations, causing a painfully high number of victims from both sectors and also from minority trade union organizations.

In addition, the worker-employer confrontation which culminated in the 1988 strike led to the cancellation of the legal capacity of SINTAGRO and SINTRABANANO. During this period there was a nationwide process of trade union unification and leadership reshuffling, which ultimately led to the establishment of the Single Confederation of Workers of Colombia. It was at this

time that trade unionism was unified in Urabá into SINTRAINAGRO which grouped together some 14,000 banana-growing workers.

Despite this unification process, the struggle for power and control of the trade union by the armed protagonists continued for a number of years.

The reintegration of the Popular Liberation Army into civilian life

As part of the process of restoring peace and reintegrating the Popular Liberation Army into civilian life, in 1991 the Hope, Peace and Freedom Movement was established, which was joined by important leaders of Urabá's banana workers.

The reintegration into civilian life of this armed group of influence in the region was well received by vast sectors of industry, movements and parties and brought with it a few months' improvement in the human rights situation. The process was rapidly undermined by opposition sectors, however, and serious problems began to be seen with the first deaths of members of the reintegrated groups and the reactions they generated in sectors of the Hope, Peace and Freedom Movement. This fact not only gave fresh impetus to the violence in Urabá but also signified a setback on the road to national peace.

Violent anti-state protagonists

As mentioned above, Urabá is one of the main regions in the country where guerrilla groups established strong areas of control, a balance of territorial authority, and supremacy in political activities. The guerrillas established themselves in Urabá at the end of the 1960s as anti-state protagonists and proceeded to develop a military political strategy which allowed them to permeate the incipient banana workers' movement and finally to exert indisputable control over these organizations.

Revolutionary Armed Forces of Colombia (FARC)

The development of a strategy characterized by its combination of forms of fighting involved links between members of the Patriotic Union and the Communist Party with the various structures of the FARC, which at times translated into dual affiliation. The struggle in its areas of influence to achieve local power, political supremacy and military control could be considered as one of FARC's main interests in the conflict in the Urabá region.

Following over two decades of political and military fortification in the region, the local crisis over power, together with the guerrilla's arbitrary financial harassment, lent weight to the idea of legitimizing other emerging parties to the conflict, such as the paramilitary and self-defence forces. The appearance of new players such as the self-defence forces of Córdoba and Urabá, capable of violently disputing the military and political areas occupied by the FARC, further aggravated the conflict, turning it into one of widespread violence.

Both the FARC guerrillas and those of other groups financially harassed shopkeepers, transporters, owners and administrators of plantations, inter alia, by issuing extortion notes and direct threats. The above circumstances demonstrate the FARC's considerable military strength, but it lost ground among Urabá's inhabitants from the point of view of political solidarity and legitimation.

The 1990s brought with it the systematic assassination of activists, active members and sympathizers of Hope, Peace and Freedom, who were murdered by various FARC guerrilla fronts operating in the region. Between 1991 and 1994, 146 active members of that political organization lost their lives.

On 29 January 1993, at the Arca plantation in the municipality of Turbo, unidentified members of the EPL dissident guerrilla group abducted Alirio Guevara, vice-chairman of SINTRAINAGRO and an active member of the political group Hope, Peace and Freedom, during a meeting. The group of attackers burst into the room and took him, announcing that they belonged to the EPL and would return him soon. In collaboration with the regional leadership of Front V of the FARC, they then murdered the trade union leader.

In the early hours of 23 January 1994, a group of armed men arrived at a party organized by the inhabitants of a working district of Apartadó called "La Chinita" and after intimidating those present opened fire, killing 35 and injuring 12 others. According to available information, the multiple homicide was the work of FARC members as part of their violent confrontation with the political movement Hope, Peace and Freedom.

These facts showed an increase in the armed confrontation in the region which was at its highest between 1995 and 1997, a period marked by the highest number of homicides of SINTRAINAGRO union leaders and members.

Bolivarian militias

In an evident shift of perception about the war by the FARC and in the search for new areas of confrontation to supplement the rural ones, over the past three years militia structures have been set up in the main towns and in other urban areas in the region, which go by the name of Bolivarian militias.

The tasks performed by the members of the Bolivarian militias can be divided into three main categories: tactical and logistical support; financial and organizational matters; and the execution of persons considered to be political opponents, alleged or real members or collaborators of the police force and of paramilitary groups.

The militia was also allegedly responsible for a number of homicides of DAS members in Apartadó. It is important to point out that several of the assassinated members of the rural DAS were former EPL combatants who, by agreement between the Government and the political organization Hope, Peace and Freedom, joined that state body.

Popular Liberation Army (EPL)

At the end of 1991, following the surrender of arms by the Popular Liberation Army, a group of reintegrated combatants decided to resume the guerrilla struggle. They organized themselves under a leader going under the alias of "Gonzalo", set up the Bernardo Franco Front and announced the resumption of military operations in the region to the north of Urabá, an area traditionally under their influence.

Following various differences with its former guerrilla comrades concerning the reintegration process, by way of a public communication the EPL declared war on the members of Hope, Peace and Freedom who had been reintegrated into society, maintaining that they had betrayed the movement.

During the following months the group concentrated on its internal organization under the military protection of the FARC which allowed it to enter its areas of influence and control, while maintaining its autonomy of command vis-à-vis the Popular Liberation Army.

Thus began a series of homicides perpetrated by this dissident group against members of Hope, Peace and Freedom. At the beginning of 1992 the organization began to establish closer ties with the leadership of the Popular

Liberation Army in the search for responses to the homicides, and the members of the guerrilla organization undertook to respect the lives of those reintegrated into society – an undertaking that was soon broken.

In the first half of 1995 several units of this group launched one of the most violent confrontations to date against the so-called self-defence forces. Without actually involving direct clashes and by engaging in typical war manoeuvres, a large number of people were murdered who were suspected by both sides of belonging to or collaborating with the other. This was the cause of the forced and massive displacement of people from the northern subregion.

The peasant self-defence forces of Córdoba and Urabá

The peasant self-defence forces of Córdoba and Urabá constitute a private organization which includes groups of armed and trained men. Although it has not been possible to establish the existence of a strategic political plan to take power, it is clear that both directly and indirectly these forces favour changes in local political power in areas where land is concentrated in few hands, such as the north of Urabá where cattle breeding predominates.

By taking a violently confrontational approach with armed insurgents, their conduct is of a counter-insurgent nature. They defend private property, sustained financially by cattle breeders, tradesmen and the owners of some banana plantations, who they claim to represent. This organization consists of private forces made up of groups of 30 to 60 men, who are strictly disciplined and have short- and long-range weapons. They continuously patrol rural areas, issue threats, force people to depart and assassinate alleged collaborators of the guerrilla movement.

The self-defence forces protect three main interests: private property, local political power and the counter-insurgency struggle.

The ranks of the self-defence forces grew with the incorporation of a large number of EPL guerrillas who, pursued and surrounded in the department of Córdoba, opted to surrender. The self-defence forces and these former guerrillas were responsible for numerous assassinations of teachers in Córdoba, southern Bolívar, Cesar and Magdalena, who were branded as EPL or ELN sympathizers or collaborators.

The Popular Commandos

The 1991 peace process came with the ups and downs inherent in any political negotiation process. According to the senior leadership of Hope, Peace and Freedom, individual and collective assurances were given that the guerrilla groups would respect its members' lives. This political calculation did not come off. The areas and territories abandoned as a result of the EPL's armed struggle began to be disputed by the FARC and the EPL dissidents, who murdered some important trade union and political leaders affiliated to Hope, Peace and Freedom.

The issue of the personal safety of those reintegrated into society became urgent. Strikes and protest marches served no purpose. Hope's headquarters became the setting for vigils; not only were the leaders' lives in danger, but also those of its other members working in the plantations. As a result, Hope, Peace and Freedom requested the Government to supply guards for the headquarters of its political movement and for its most representative leaders. Subsequently, in agreement with the Government, they decided to link up with some of the men from the DAS movement, who basically acted as guards.

Although Hope, Peace and Freedom says that it reacted within the framework of the law to the ongoing homicides, the fact is that the Popular Commandos sprang up. These organizations were established by a group of men from the area of San Jorge with military experience in the so-called "workers' militias", a sector that was never reintegrated. They were formed initially to defend themselves from attacks by the EPL dissidence and they ended up in open hostilities with the FARC and the Bolivarian Militias, degenerating into a group on the offensive, selectively killing opponents of other political groups and workers' leaders, such as those belonging to the Communist Party and the Patriotic Union.

Magdalena Medio

Practically all the known forms of violence developed, to a greater or lesser extent, in this region, profoundly affecting the spirit of the people, whose behaviour varies between aggression and fear.

Violence played a determining role during the colonization process, the development of the petroleum industry, the consolidation of the cattle ranches, and lastly, the structuring of the local economy.

In this extensive region, social development was characterized by the ongoing confrontation of the various local groups. Struggles to retain power and privileges and the quest for better conditions with respect to life, land, pay and services were the fundamentals of the conflict. The settlers and peasants fought against the landowners, large estate owners and the State for the right to land; the workers and employees fought against the petroleum enterprises for better living and pay conditions. The general population fought against the local, departmental and national administrations for public services and communication routes.

Alongside the fight for land, in the processes undertaken to consolidate it, in the quest for a particular economic structure and a specific development process in which the social groups could be consolidated and contrasted, there was expropriation, persecution, assassination, branding, extortion, etc., which began to shape a way of life in which people became accustomed to the use of violence as a means of power, subsistence and pressure. Settlers and peasants, workers and employees, administrative officials, political groups, popular sectors, owners and entrepreneurs, police forces, security organizations and non-institutional armed groups adapted to this way of life on the basis of their own interests and needs.

In order to examine the phenomenon of violence in its historic context it is necessary to begin with its most basic manifestations and forms, progressing towards the most complex, following the course of the most significant events of the past 60 years since the beginning of colonization and petroleum exploitation up until the rise of drug trafficking which made the region an area of influence. Socio-economic and political relations in the region are therefore linked to local processes and phenomena: petroleum exploitation, colonization, migration due to bipartisan violence, the emergence of leftist guerrilla groups which exerted influence in the region, political confrontation in the institutional framework, the actions of the state security bodies, the self-defence forces, the schools for hired assassins and narco-paramilitarism.

In 1965, the first detachment of the recently founded National Liberation Army (ELN) was established and in 1966 the FARC set up its fourth front in a neighbouring area. These guerrilla groups remained in the region of Magdalena Medio and were frequently involved in clashes with the national army and the self-defence forces disputing control and socio-territorial authority. In addition, from the early 1980s the region became the hub of logistic and military support

for drug cultivation and trafficking operations, rendering the original web of violence all the more complex.

The Colombian self-defence forces, which emerged at the beginning of the 1980s in Magdalena Medio, have a specific feature that makes it imperative for the State to combat them as it no longer has control – they increased the operational and defence capacity of drug trafficking and introduced the practice of political assassinations and collective massacres, thereby endangering not only leftist militants but also public officials, activists and leaders of the traditional parties, democratic personalities, trade unionists and social leaders, journalists and all those they consider to be their enemies.

Conclusions

1. It can be concluded from the above that the affiliates of trade unions situated in certain regions of the country are involved in the developing spiral of armed conflict and that the principal perpetrators are the self-defence forces and the guerrilla organizations the FARC and the EPL. The self-defence forces arbitrarily assimilate trade unionism with the insurgent movement to justify their criminal actions against it. In the words of Carlos Castaño, head of the self-defence forces, the defendants of human rights and some trade unionists are “para-guerrilla”.
2. State officials are occasionally involved in violations of fundamental rights, contrary to the responsibilities inherent in their posts, to the instructions of their superiors and to state policies. Although already low, this involvement has fallen in recent years as the result of the many parallel actions the Colombian Government has been taking to stop it through prevention, prosecution and repression.
3. This being the case, the acts of violence perpetrated against various social sectors come under international humanitarian law. Consequently, investigating and evaluating them corresponds to the mandate of international organizations specialized in this field.

IV. Summary of interviews

During the direct contacts mission numerous interviews were held with public and private institutions and individuals, providing a rich source of factual and conceptual material from a wide range of viewpoints, which at times appeared to be opposed but in most cases were complementary. Although obviously it cannot be claimed that this was sufficient for the mission to gain a full understanding of the complex reality of Colombia, these interviews enabled the members of the mission to extend and deepen their knowledge of the real situation in the country, in its social, cultural, economic, political and legal aspects.

In the light of the mission’s specific objective, for the purposes of this report the vast amount of information obtained had to be selected, summarized and classified from the subjective and objective standpoints:

1. *From the subjective standpoint:* i.e. with reference to the persons and institutions interviewed: these have been arranged into groups and divided into those that belong to the State and those that do not; the former have been further broken down into those that are part of the Government or directly linked to it and those belonging to state institutions that are independent or autonomous with respect to the Government. The resulting classification is as follows:

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- (a) Government: President and Vice-President of the Republic, ministers and directors of administrative departments, representatives of the security forces;
 - (b) independent or autonomous state institutions:
 - (i) jurisdictional bodies (Supreme Court of Justice, Constitutional Court, Council of State, Superior Council of the Judicature);
 - (ii) Attorney-General's Office (*Fiscalía General de la Nación*);
 - (iii) Office of the Procurator-General of the Nation (*Procuraduría General de la Nación*);
 - (iv) Office of the Ombudsman (*Defensoría del Pueblo*);
 - (c) workers' organizations;
 - (d) employers' organizations (and in some cases public or private enterprises);
 - (e) independent national and international sources: churches, media, non-governmental organizations, representatives of higher education; Office of the United Nations High Commissioner for Human Rights in Colombia.
2. *From the objective standpoint:* We felt it necessary to arrange the information under the following headings with a direct bearing on the mission's purpose:
- (a) the specific situation with regard to freedom of association and the right to organize, in law and in practice;
 - (b) the impact of widespread violence on trade union activity, attempting to determine whether there is violence targeted specifically against trade union leaders or unionized workers in general, whether these are the effects of generic violence occasionally affecting trade unionists just as it may affect other members of society, or whether there is a combination of both;
 - (c) general interpretations of the phenomenon of widespread violence in Colombia in terms of its origin and forms:
 - (i) violence of non-state or anti-state origin:
 - (1) guerrillas;
 - (2) paramilitary or self-defence groups;
 - (3) drug traffickers;
 - (4) common crime;
 - (ii) violence originating in the State:
 - (1) directly;
 - (2) through collusion with certain forms of non-state violence (by paramilitary or self-defence groups);

- (3) through tolerance of or indifference to these forms of non-state violence;
- (d) possible solutions to the problems experienced by Colombia, in relation to the purpose of the mission.

Obviously, not all of the persons and institutions interviewed referred to all of the points mentioned above, and even when they did cover the same subjects they differed widely as to which of the many aspects of the situation was emphasized.

A. The position of the Government

President of the Republic

The views of the President of the Republic, Mr. Andrés Pastrana Arango, were imparted to us in two ways: through the virtually identical versions presented by the various members of his Government – who were interviewed first – and through his own words when he kindly received the members of the mission in what was to be the last in a long series of interviews.

In President Pastrana's view, the main problem Colombia had to solve was that of violence, which was closely linked to the problem of drug trafficking, although they had different aspects and each required a different approach.

In the case of the guerrilla war, the Government had embarked boldly and with determination on the path of dialogue, which had already enabled considerable progress to be achieved.

In the case of drug trafficking, the only way was direct confrontation and the fight to eradicate it, which was also being carried out with determination.

On both fronts, the support of the international community was vital.

In addition, the Government had set as one of its main priorities the protection of human rights in general and trade union rights in particular, and it did not persecute the trade union movement. The President highlighted the considerable decline in the number of complaints of human rights violations attributable to agents of the State compared to previous years. He was firmly committed to achieving clear progress both in harmonizing legislation and in ratifying international labour Conventions, and with regard to practice. He expressed the political will to ratify ILO Conventions Nos. 151 and 154.

He once again assured the members of the mission that his Government was entirely willing to cooperate with the ILO.

Vice-President of the Republic

The Vice-President of the Republic, Dr. Gustavo Bell Lemus, as a historian, highlighted the special features of Colombian history that were essential to an understanding of this unique and incomparable conflict. It was neither a dictatorship brutally oppressing the civilian population nor a closed oligarchy.

The disastrous role of drug trafficking could be traced back to the 1980s. It had left no sector untouched by its perverse influence. It had unleashed violence and corruption. An entire political generation had been practically annihilated.

This situation placed considerable limitations on the ability of the State to ensure that human rights were exercised fully.

Colombia received and desired international cooperation. President Pastrana was making considerable efforts to enlist the support of the international community.

With regard to international organizations, the action taken by the Office of the United Nations High Commissioner for Human Rights was outstanding, as was the work of non-governmental organizations, although there had been certain instances of "normal friction".

As regards other States, Colombia received and appreciated the assistance of several States, especially the Netherlands and the United States.

Minister of Labour and Social Security

The Minister of Labour and Social Security, Dr. Gina Magnolia Riaño Barón, accompanied the mission almost constantly, attended interviews with government officials and also held several lengthy substantive meetings at which she stated the Government's views on the general situation in the country, human rights and trade union freedoms. Senior officials and advisers of the Minister also participated in the meetings held in the Ministry of Labour. As regards bringing the legislation into conformity with international labour Conventions, the Minister is advised especially by certain independent personalities, in particular Dr. Luis Carlos Sáchica, former President of the Supreme Court of Justice and one of Colombia's most outstanding constitutionalists, and Dr. Jorge Iván Palacios, former President of the Labour Division of the Supreme Court of Justice.

Since most of the points dealt with in the meetings with the Minister of Labour (in particular the question of harmonizing legislation) are extensively discussed in other parts of this report, this summary of the interviews held by the mission will confine itself to highlighting some of the essential points that are not dealt with elsewhere in the report.

As regards the human rights situation, this was a matter of special concern for the Ministry, which has a Human Rights Office headed by Dr. Jorge Iván Palacios, who gave a detailed account of the subject and handed the mission a written document. Moreover, the Minister of Labour had requested the Vice-President of the Republic to include cases affecting trade unionists on the agenda of the Special Committee to promote investigations of human rights violations. The cases of attacks on trade unionists were particularly alarming, and the Ministry's Human Rights Office had registered 593 cases between 1991 and December 1999. Of these, 310 cases involved four organizations, all CUT affiliates, the hardest hit being teachers (FECODE, with 138 cases), banana plantation workers (SINTRAINAGRO, with 118 cases but much fewer members) and petroleum workers (USO).

Minister of the Interior and Director of the Security Administrative Department

The Minister of the Interior, Dr. Néstor Humberto Martínez Neira, received the mission accompanied by Lieutenant Colonel Germán Jaramillo, director of the Security Administrative Department (DAS).

The Minister regarded the violence against trade unionists as merely one expression of the general internal conflict. This conflict went back a long way, since the old party political conflict of the 1940s had led to the formation of defence groups and peasant

groups fighting for land, followed in turn (in the early 1960s) by the guerrilla uprising, which was ideologically aligned with Marxism and Cuban socialism.

Since the collapse of socialism in Europe, Colombia was the only country in which movements of this kind continued to exist, with considerable power and economic resources. The explanation lay in its relations with drug trafficking, “the mother of all evil” according to the Minister, which had not only contributed to the emergence of what were known as “self-defence groups” but was now also linked to the guerrilla forces. According to the Minister, the drug traffickers now had two illegal armies protecting them, despite the fact that they were fighting against each other – the guerrillas and the self-defence groups.

All of this represented an enormous challenge for the Colombian State, which had to face many enemies – the drug traffickers, the self-defence groups and the insurgent forces.

Colombian society too was marked by a culture of crime and violence which transcended armed conflict, and had started to recruit teenagers. There were 5,000-6,000 teenagers in gangs at the service of any criminal. Although the number of homicides had begun to decline, 26,000 were committed a year, or 60 per 100,000 inhabitants, and 85 per cent of these were common crimes.

In order to solve the problem of violence, the President of the Republic was committed to achieving reconciliation, which he pursued with the determination befitting a Head of State. Despite the enormous difficulties, progress had been achieved more rapidly than in Central America. An agreement had been reached with the FARC for a political solution through negotiation.

Without prejudice to the negotiations, the State was fighting a hard battle against the guerrilla forces. On the other hand, it was also continuing the armed conflict with the self-defence groups and had penetrated the “safe haven” established by their leader Carlos Castaño at El Nado de Paramillo.

Some years earlier (1994-95) the “CONVIVIR” groups had been operating under cover of legality in cooperation with the security forces, but unfortunately they had degenerated into armed organizations (even using weapons whose use was restricted to the armed forces) and had later become self-defence groups. These groups no longer existed as such in Colombia; there were only organizations operating outside the law that were subject to a criminal statute.

A frontal attack was being launched on drug trafficking, and to this end state resources had been strengthened with assistance from the United States and the World Bank amounting to over US\$1.6 million. The campaign focused on fumigating illegal crops by helicopter with the aim of eradicating them, and social investments would have to be stepped up for this purpose. The viability of the country depended on its ability to put an end to drug trafficking.

As regards violations of human rights, there had been a spectacular decrease in the number of violations attributable to the State, which five years earlier had amounted to 50 per cent and now, according to estimates attributed by the Minister to the Colombian Commission of Jurists, only represented 2 per cent.

There had recently been two or three shocking murders of trade unionists and human rights activists linked to the trade union movement, including that of Eduardo Umaña Mendoza, as well as others not affecting trade unionists, such as that of a very popular television actor. Although in some cases the actual perpetrators had been imprisoned, it was much more difficult to find those who had ordered the murders. According to the Director of the DAS, the murders were believed to have been planned by members of

paramilitary groups, but these no longer operated through their own groups but hired mercenaries for the purpose. This meant that the link was lost between the physical perpetrators (who were often found dead) and the persons responsible for ordering the murders. There had also been cases of homicide caused by personal problems, such as the case of María Arango and her husband, according to the Director of the DAS.

The State had a special programme to protect trade unionists, and this Government had revitalized it and managed to win back the trade unionists' confidence. The Minister of the Interior handed over a detailed document on this programme. At the end of the previous Government's term, the risk assessment committee that determined whether protection should be granted had even been dismantled. Now, when trade unionists feared for their safety, they came to the Ministry of the Interior. Never before had there been so much protection for trade unionists, which had made it possible, for example, in 1999 to save the lives of three trade unionists (including Tarsicio Mora of the FECODE). In 1999 an additional 8,000 million pesos had been earmarked for the trade unionist protection programme. The President had given his authorization for trade unionists to choose the persons to be appointed as their bodyguards, who, after undergoing brief security instruction, joined the DAS staff, which had risen from 120 to 250 persons. As was pointed out during the interview by the Minister of Labour and Social Security, there was a specific presidential directive on this subject.

While the mission was in Medellín it held an interview with Brigadier General Luis Alfredo Rodríguez Pérez, commander of the metropolitan police of Valle de Aburrá, who gave a general overview of the different sources of violence in the metropolitan area in Medellín and the measures taken to deal with it.

Minister of National Defence

The Minister of National Defence, Luis Fernando Ramírez Acuña, stated that complaints concerning the safety of trade union leaders were normal in situations such as that prevailing in Colombia. However, *there was no policy of violation of trade union leaders' rights, neither were such violations condoned*. The Government maintained good relations with the trade unions.

In his view, the cases of violence affecting trade union leaders were isolated acts stemming from the traditional sources of violence in the country: the guerrillas and the self-defence or paramilitary groups.

The guerrillas had a much more radical stance than the trade unions and pressured them to adopt the same position. Trade union leaders had to be very courageous to maintain a different discourse.

Guerrilla pressure on the trade union movement took different forms: to pressure trade union organizations the guerrillas would infiltrate a strike, converting it into an "armed strike". To pressure trade union leaders, the guerrillas would accuse them of not supporting them, and an outspoken leader would become a target for the guerrillas.

As part of the process of dialogue, working committees had been set up and the different sectors of civil society had been invited to participate in them. The trade union leaders were the only ones who had not joined in, stating that they did not want any confusion concerning their political stance: they wanted change by legal means, not by force.

Armed groups were very numerous. According to the Minister, the FARC were some 15,000 strong, and the ELN had 5,000 men. The paramilitary groups were believed to have approximately 5,000 men.

The paramilitary or self-defence groups had emerged in recent years as a very bad response to the insurgency and had proliferated at a much faster rate than the guerrillas.

This situation of violence was influenced by drug trafficking, which had destabilized the entire country. According to the Minister, both the guerrillas and the paramilitary groups financed their operations out of money derived from the drug trade, as they themselves had admitted.

It had also seriously affected other institutions, such as Congress (80 or more congressmen had been imprisoned as a result of a recent trial), the judiciary, the police and the military; to deal with them, drug traffickers sometimes used bribery and at other times resorted to homicide.

Drugs and weapons formed a vicious circle. The drug trade financed arms purchases (bought on the black market – other countries were very lax in this area) and these weapons were then used to defend the drug traffickers.

Violence pervaded society as a whole. The population was increasingly armed and an average of 25,000 homicides a year were committed in Colombia, a country of 40 million inhabitants. However, the crime rate had registered a downward trend recently, from 30,000 killings per year to approximately 23,000 in 1999.

Approximately a quarter of these were due to the internal conflict (guerrillas, paramilitary groups, combat) and the rest to homicide, traffic accidents, alcohol, and a combination of weapons and alcohol. The Minister considered that the deaths caused by the internal conflict could be divided into approximately 60 per cent attributable to guerrillas and 40 per cent attributable to paramilitary forces.

The figures for abductions had increased abruptly in 1999, mainly as a result of large-scale collective abductions carried out by the ELN, which had kidnapped 250 persons at a mass in Cali and another 60 or 70 passengers on an aeroplane. Some 95 per cent of abductions were attributable to the guerrillas and 5 per cent to paramilitary groups.

As regards trade union leaders, special protection measures had been adopted, particularly by President Pastrana's Government. The President was a fervent admirer of the trade union movement and, since his father's Government (1970-74), had promoted reforms for the workers' benefit. It was to be hoped that there would be an appropriate response on the part of trade union leaders.

In any case, the number of trade union leaders among the victims of violence was low. The Urabá cases were probably isolated occurrences. They had directly affected SINTRAINAGRO, the banana workers' trade union, many of whose leaders used to be in the EPL. They had fairly good relations with employers and there was a high level of productivity. SINTRAINAGRO was one of the unions most threatened by the guerrillas, but this issue was distinct from the purely trade union problem and stemmed from the conflict between the FARC and the EPL. The FARC considered former members who had been rehabilitated to be traitors. Over 800 people had been killed in clashes between the two guerrilla forces.

The paramilitary groups were criminals whose methods were the same as or worse than those of the guerrillas. The perception was that they threatened leaders who played along with the guerrillas.

The Minister did not rule out the possibility of there being a link between the paramilitary groups and landlords, but the main connection was with the drug traffickers. The paramilitary forces had originally been linked with the drug trade, especially since the kidnappings carried out by the guerrillas. The drug traffickers were the “brains behind” the paramilitary groups, who had later gained the support of landowners, even those who were not drug traffickers.

When the drug millionaires appeared they had become guerrilla targets. The drug traffickers had sought to fight the guerrillas on their own terms, which had led to the emergence of the groups initially called MAS (which stands for “death to kidnappers”).

What was beyond doubt was that the Ministry was actively fighting against both the guerrillas and the paramilitary groups. The paramilitary forces could not arrogate the function of maintaining order and meting out justice.

As regards financing, the *paramilitary groups* had begun by receiving donations from drug traffickers and landlords. What they used to receive from donations they now obtained by coercion. For example, 60 per cent of Castaño’s financing came from drug trafficking. In an interview he had said that coca had come from the guerrillas and that he had “liberated” the land and was now continuing coca production although, if the Government wished to fumigate it, he would agree.

Drug trafficking brought in US\$1,000 million per year for the insurgent forces.

The guerrillas, drug traffickers and paramilitary groups made good use of Colombia’s geography and the atypical distribution of its population, which since colonial times had settled the mountains first instead of the coastal areas, leaving great swathes of uninhabited land. Transport was by aeroplane or river boat. The south-east of the country (the Amazon and eastern plains) accounted for 50 per cent of the surface area and approximately 5 per cent of the population. The State was hardly present at all in most of the country.

Despite the difficulties, the Minister was optimistic about winning the war against drug trafficking. The Medellín cartel (with the supposedly “invincible” Pablo Escobar) and the Cali cartel had been dismantled. A political decision had been taken to pursue the war on drugs. Once the drug traffickers had been weakened, the guerrillas and paramilitary groups would be weakened too.

The changes that had occurred had to be taken into account. Vertical integration had taken place, in that the crops were now also cultivated in Colombia. In the last two years, coca cultivation had reached some 110,000 hectares. The same applied to poppy cultivation: the best heroin in the world was produced here. The guerrillas had been very poor 40 years before. Drug trafficking had begun with shrewd businessmen who had brought in coca base from Peru and Bolivia, which was then processed in Colombia, and the distribution centres used to be in the hands of the Colombian mafias. Today, since the cartels had been dismantled, the Mexicans had taken over distribution. The Colombian drug traffickers had now turned to planting coca in Colombia.

In the last three or four years, smaller growers had emerged who were vertically integrated in the drug trafficking business. Crops had been planted in the south and the guerrillas, who were also present there, collected protection money (known as “*gramaje*”) (according to them they were simply collecting tax from whoever happened to be there). There were some FARC groups who owned laboratories and engaged in drug trafficking. Probably 60 per cent of the guerrillas’ resources were financed out of the drug trade.

The Minister was also very optimistic about the success of the peace process. There had been several attempts to make peace over time, as Colombian society had always tried

to give the guerrillas a chance. But now progress was greater and more rapid than on other occasions, and innovative methods were being used. For example, 42,500 km² of land (the size of Switzerland) – out of a total surface area of 1,200,000 km² – had been unilaterally handed over to the FARC.

Minister of Foreign Relations

The Minister of Foreign Relations, Dr. Guillermo Fernández de Soto, highlighted in particular the existence of a state policy to protect human rights and the peace plan carried out on the initiative of the President of the Republic and under his personal and direct management. Unfortunately the economic situation was precarious, marked by severe recession, unemployment and inflation, which was starting to improve with the bold adjustment measures adopted by the Government.

On the subject of violence, he referred to that perpetrated by the insurgent forces and by the so-called “self-defence groups” and to the destabilizing effect of drug trafficking. At the same time, he pointed out that despite the years of conflict and the impact of drug trafficking, democratic institutions had not been jeopardized and a process of reconciliation and negotiation had been launched.

The guerrilla movement, which had been active for over 40 years, was now represented essentially by the FARC, totalling between 15,000 and 20,000 rebels with an enormous capacity for terrorist action and presence in rural areas, which carried out destabilizing operations. It accounted for about 65 per cent of insurgent forces. The ELN made up another 20 per cent, and there was also the small ELN, which had become a truly criminal grouping.

President Pastrana had succeeded in initiating a peace process through dialogue with the FARC, even meeting personally with its leader, Manuel (“Sure-Shot”) Marulanda. A fair amount of progress had been achieved in the peace process, and a “clearance zone” or détente zone had been established in accordance with the law in order to further this kind of dialogue. This was a unilateral act of reassertion of Colombian sovereignty.

Within the peace process mechanisms for citizens’ participation had been set up through “thematic committees”. The trade union sector was to be represented, but it was saying that it would attend only under certain conditions.

The beginning of dialogue had not meant the end of violence, since it had not been accompanied by a truce.

No significant progress had been achieved as yet with the ELN. Besides being responsible for the destruction of a large number of electricity pylons, they had recently carried out several mass abductions (of AVIANCA airline passengers, members of the congregation of La María church, and a group of fishermen near Barranquilla) and demanded ransom, which was unacceptable to the Government as it would lead to a breakdown of the legal institutional system.

Little by little dialogue had been resumed with the ELN and they had released the hostages, except for some of the AVIANCA passengers.

In the Minister’s view, drug trafficking had an influence on the rebel movement. A “marriage” in terms of financing and protection had transformed the nature of the conflict.

The “self-defence groups”, totalling 4,000-5,000 persons, had escalated the conflict. Originally born out of the need for protection against guerrilla violence, they had become a

disruptive violent force which the Government rejected. They were responsible for blatant and atrocious violations of human rights (just as the rebels were).

The civilian population had been hit hardest by the violence, and it had begun to give clear indications of its desire for peace, through several recent mass protests mobilizing millions of persons.

The state policy of protecting human rights, implemented under the leadership of the Vice-President of the Republic and even covering human rights violations committed by agents of the State, had achieved important results. In particular, the Minister of Foreign Relations stated that there had been a significant decrease in the number of deaths of trade unionists thanks to the protection policy pursued.

In the trade union and labour sphere, progress was being made in bringing the legislation into conformity with the international labour Conventions ratified by Colombia. Advances were also being made in the process of ratifying Conventions Nos. 151 and 154, which had already been approved by law and were currently being examined for constitutionality by the Constitutional Court, which was the last stage before ratification.

Minister of Justice and Law and Legal Secretary of the Office of the President of the Republic

Dr. Rómulo González Trujillo, Minister of Justice and Law (and former President of the Supreme Court of Justice), referring to cases of violence against trade unionists, placed special emphasis on the separation of powers, which was fully applied in Colombia, and pointed out that it was the Attorney-General's Office which was competent to handle criminal cases.

The Government pursued a general policy of providing protection to trade union leaders against possible violence directed against them.

On the other hand, when complaints were brought of acts of violence or sabotage committed in the course of industrial action by workers, this could result in the trade unionists themselves being brought to justice ("judicialization") or in disciplinary proceedings being instituted against them. As a result of cases of this kind following a protest in 1999, a case-study group had been established which had facilitated contacts, and the union leaders had admitted that if acts of sabotage were found to have occurred this went beyond protest action and was a matter for the courts.

The Ministry had also intervened to provide protection to leaders of the Association of Prison Guards.

Acknowledging that there were widespread delays in justice (including the labour courts) mainly as a result of existing procedures, the Ministry had promoted alternative dispute resolution through conciliation and settlement and the establishment of "Houses of Justice", especially in remote communities.

As regards the relationship between drug trafficking and the guerrillas, he stated that the guerrillas collected a payment known as "*gramaje*" on drug circulation as a means of financing to replace the primitive methods of kidnapping and extortion. The paramilitary groups also appeared to have adopted this method.

The *Legal Secretary of the Office of the President of the Republic*, Dr. Jaime Arrubla, stated that one of the first measures the Government had to tackle was the restructuring of the administrative apparatus, since the administration was not viable and, far from being an

engine of development, it was holding it back. The administration had to be streamlined and economies achieved, among other things because state expenditure had increased with the introduction of numerous new institutions created by the Constitution of 1991. The “budget of truth” had to be adopted, together with fiscal austerity measures and ensuing staff cuts both in the State and in departments and municipalities, as well as public enterprises. It had also become very difficult to allow increases in public sector wages.

This was the context in which the Constitutional Court recently handed down Judgement No. 568 ordering the reinstatement of several workers in Empresas Varias de Medellín. The Legal Secretary severely criticized this decision while praising the dissenting opinion of a minority of the judges. He felt that it was not impossible that a shift in jurisprudence would occur once the composition of the Constitutional Court was renewed in December this year.

Director of the National Planning Department

Dr. Mauricio Cárdenas, Director of the National Planning Department, gave an in-depth and clear explanation of the official view of the country’s economic and financial situation and the measures undertaken by the Government to recover from the serious crisis and recession that the President had to face when he took office. Those aspects of his extensive account which have a bearing on the situation and rights of workers and their organizations are summarized below.

The economic situation was marked by a steep drop in investment, rising interest rates and an increase in unemployment (from under 8 per cent in 1994 to over 20 per cent in September 1999, although it had been brought down to 18.7 per cent by December 1999).

On the financial side the traditional conservative tendency of fiscal stability had been reversed and a large and growing deficit appeared. Owing to the previous administration’s lax and expansionist fiscal management, when the new Government had taken office in 1998 it had been forced to implement adjustment through short-term and structural measures, which had been well received by the country.

Efforts had been made at all these levels to ensure that the measures adopted did not cause greater difficulties for the workers. For example, although negotiations had to be maintained with the International Monetary Fund (IMF), the Government had resisted the IMF’s insistent demands for agreements to include labour flexibility since this had not yet been debated at the national level.

Measures had been taken to reopen the country to foreign investment, maintaining competitive interest and exchange rates in order to gradually restore economic growth so as to reach historic growth rates of 5 per cent per year by 2002 or 2003. The vital task of finding a solution to the serious problem of the financial sector had not yet been achieved. The banks were in an extremely vulnerable situation requiring capitalization or liquidation, depending on the case.

In addition to introducing austerity measures in the budget, in order to reduce the deficit the Government considered it necessary to decrease the burden of transfers to departments and municipalities (which would require amendment of the Constitution, which provides for a fixed percentage of central incomes to be paid to them) and of the social security scheme (through pension and health reforms in particular).

Obviously, the workers were likely to be hard hit both by the serious situation and by many of the measures taken to deal with it. For the time being, the Government had

succeeded in cutting expenditure and investment in ways that would avert what could have been a “labour massacre”, according to the Director of Planning. Wage restraint had been chosen as an alternative to mass lay-offs.

Steps had also been taken to bring down unemployment by jump-starting the economy, providing training and introducing a package of drastic measures (included in the *Plan Colombia*) comprising job creation (the “Let’s get to work” plan with a US\$900 million contribution from the World Bank and the IMF) and participation by NGOs through social infrastructure projects and the creation of jobs for the unskilled.

In the view of the Director of Planning, relations with the workers were good and the Standing Negotiation Committee was carrying out its work on a regular basis, although the meeting scheduled for February had been postponed until after the direct contacts mission.

B. The position of state institutions that are independent or autonomous with respect to the Government

Legislative branch

The mission was received jointly by the acting President of the Senate, Dr. Luis Elmer Arenas; the President of the Seventh Senate Committee, Senator Edgar Perea; the President of the Seventh House Committee, Representative Irma Edilsa Caro Pulido; and the General Secretary of the Senate.

The acting President of the Senate stated that Bill No. 184 respecting collective bargaining for public employees had been approved by the Senate and had been tabled before the House of Representatives. He gave a detailed account of the various bills discussed and approved by the Senate in recent years, which was further supplemented by the General Secretary of the Senate.

The President of the Seventh House Committee announced that the year’s work would begin on 16 March with a discussion of Bill No. 184, marked urgent by the President of the Republic, in the first week. They would do everything necessary to see that the Bill, which she supported out of sheer conviction, would be widely publicized at the national level so as to achieve the necessary consensus for its approval.

The country faced many problems, but they should not be attributed to the Government but rather to the long-standing conflict. The President of the Republic had now embarked on a peace process with excellent prospects.

In this respect, the acting President of the Senate stated that Congress had given the Government full powers to take the necessary measures with regard to human rights and the peace process. The Attorney-General of the Nation had been given powers to protect the human rights of all Colombians and the workers in particular. The new Military Penal Code contained stringent provisions on members of the security forces who committed crimes against humanity violating the fundamental rights and guarantees of Colombians; these cases were no longer under military jurisdiction, but were to be handled by the ordinary courts.

Concerning the Penal Code, a bill had been tabled before Congress to combat the impunity of perpetrators of crimes against any person, including guerrillas or foreigners.

One could even say that Congress had gone too far in approving human rights standards, which had been used against the rule of law.

Today, said the acting President of the Senate, we are all under threat. Not only the workers, but also many employers and cattle ranchers had been threatened or killed, as well as students and congresspersons (several of whom had been attacked or abducted).

Senator Edgar Perea, President of the Seventh Senate Committee, stated that Congress was responsible for supporting draft legislation which would enable Colombians to have a better life and had given its full support and the necessary powers to the Government to take measures for the welfare of the workers and the people. The direct contacts mission should hear the workers' complaints and the Government's position and conscientiously weigh up all the elements in order to arrive at a just solution. He hoped that Colombia, a country affected by conflict, would not be subjected to sanctions. If this occurred, it would ultimately harm the people, already caught in the crossfire of the conflict between the guerrilla, the paramilitary forces and the army.

Senator Perea, who described himself as a son of the people, an ordinary worker elected by the people, said that he was pained, for example, by the frequent dismissals of workers, which aggravated the serious problem of unemployment. The Government should adopt a more active policy to avoid lay-offs.

However, in particular, the necessary budgetary resources had been approved to protect trade unionists, who now had bodyguards they themselves selected.

Jurisdictional bodies (Supreme Court of Justice, Constitutional Court, Council of State, Higher Council of the Judicature)

Constitutional Court

The President of the Constitutional Court, Dr. Alejandro Martínez Caballero, recalled that Colombia was one of the founding Members of the ILO and had ratified 50 international labour Conventions. It was customary for Colombia to send, among the members of the delegation to the ILO every year, three judges: one from the Constitutional Court, one from the Council of State and another from the Supreme Court of Justice.

Before the Constitution of 1991 was adopted, the Labour Code had recognized such Conventions as a subsidiary source of law. The Constitution of 1991 made them a principal source of law.¹⁰ This was made clear already from the first ruling handed down by the Constitutional Court in 1992, and was reiterated in numerous subsequent rulings, several of which referred specifically to international labour Conventions. Nonetheless, there was still a persistent perception among judges and public servants that they were a subsidiary source of law.

¹⁰ Article 53, fourth paragraph, of the Constitution provides that: "International labour agreements duly ratified are part of domestic legislation". Moreover, article 93 provides that: "International treaties and agreements ratified by the Congress that recognize human rights and that prohibit their limitation in states of emergency have priority domestically. The rights and duties mentioned in this Charter will be interpreted in accordance with international treaties on human rights ratified by Colombia."

One of the functions of the Constitutional Court was to verify the constitutionality of international treaties, with mandatory effect, after they were approved by Congress and before their ratification.¹¹

Moreover, since Colombia was also a member of the Organization of American States (OAS) and a party to the Protocol of San Salvador, workers' rights were covered by threefold protection: national, regional and that of the ILO.

In addition to a priori review of constitutionality – one of the forms of what was known as abstract review,¹² the Constitutional Court was competent to carry out incidental review. In its exercise of this function, in a recent decision reviewing a ruling on an action for protection of constitutional rights (*acción de tutela*), the Constitutional Court had recognized the recommendations of the ILO's Committee on Freedom of Association as having binding force. Pursuant to this decision of the Constitutional Court, an order had been issued for the reinstatement of workers who had lost their jobs as a result of a strike.

Problems arose in the labour sphere because legislative action had not been taken to adopt the fundamental labour statute provided for in article 53 of the Constitution. It was therefore the Constitutional Court which had to elaborate on the general principles laid down in the Constitution on the subject, including those of freedom of association (article 38 in general; article 39, right to organize) and collective bargaining (article 55).

Justice Dr. Gaviria¹³ stated that the Constitution of 1991 was a watershed in the life of the country not only in general terms but in particular with regard to international law and international labour Conventions. Before its adoption, there had been no tradition of considering international labour Conventions as binding. The State had signed Conventions laying down guarantees without any intention of complying with them. The Constitutional Court had recognized the concept of "constitutional bloc", which included not only the Constitution itself but, among others, human rights treaties and international labour Conventions. By being incorporated in the constitutional bloc they had become living law.

However, the old tradition persisted, and the Constitutional Court's decisions caused resentment, especially in official circles.

Another judge pointed out that problems had also arisen when, in carrying out abstract review, the Constitutional Court had had to rule on incompatibility of earlier provisions with the Constitution of 1991,¹⁴ and, in particular, of the provisions of the Labour Code, which dated back to 1950. For example, the Labour Code categorically prohibited strikes in the public service without distinguishing between essential and non-essential services. The Constitutional Court had issued a conditional ruling in this case,

¹¹ Article 241 (functions of the Constitutional Court), paragraph 10: "Decide in definitive manner on the feasibility of international treaties and the laws approving them."

¹² Abstract review also exists in cases of presidential objection to an act approved by Congress and in cases in which a public action of unconstitutionality is filed.

¹³ Drafter of the decision reviewing the *tutela* ruling mentioned above.

¹⁴ The President of the Constitutional Court explained that the ordinary courts too could, in a given case, refrain from applying a law which is contrary to a constitutional provision enacted subsequently, when the objection of unconstitutionality was raised.

conceding that this provision was constitutional, provided that it referred to a public service defined as an essential service, but declaring it unconstitutional in all other cases.

Justice Dr. Gaviria pointed out that the Constitutional Court could review legislative action if a service was declared essential when this was not in fact the case.

In its case law to date, the Constitutional Court had recognized as essential public services the administration of the State, public utilities, the administration of justice, the central bank, health services and basic security. There appear to be some differences of opinion with regard to the petroleum industry, since Dr. Gaviria pointed out that there was no law defining it as an essential service, while another judge stated that there was previous legislation for oil refining and transportation.

The Court had not taken a position with regard to the possibility of applying the definition of essential services and the provisions on the maintenance of a minimum service recognized by the ILO.

The Constitutional Court had also handed down rulings on collective bargaining for public employees. Where they had budgetary implications, the Constitutional Court had the power to recognize the effectiveness of the right and the budget would have to be amended or supplemented as necessary.

The Constitutional Court also included labour rights with other human rights, such as the right to due process. In a ruling handed down the previous week by a *tutela* court, protection was granted to workers dismissed from the Military Hospital for a strike that was declared illegal. The grounds for the ruling were not that the decision of the Ministry of Labour had been disregarded, but that these workers had not had the opportunity of defence.

The President explained that in 1994 the Constitutional Court had put a stop to a tendency by enterprises to discourage unionization, in its the rulings in the Leoniza and Noel cases. The Constitutional Court had defended the very existence of the trade union in these cases, where a so-called "collective agreement" between the enterprise and non-unionized workers offered greater advantages than those obtained by the union through collective bargaining.

In the Clínica Chayo case (1999), the Constitutional Court had gone further. The workers had complained that the arbitrators had applied a concept of equity which was very different from that of the Constitutional Court. The Court ruled in favour of the workers, considering that the arbitrators' concept of equity did not meet the collective requirements of the work.

Supreme Court of Justice

The mission was received by the President of the Supreme Court of Justice, Dr. Nelson Pinilla Pinilla; the President of the Labour Court of Cassation, Dr. Carlos Isaac Nader; the President of the Criminal Court of Cassation, Dr. Edgar Lombana Trujillo; and Labour Court of Cassation Judges Drs. Francisco Escobar Henríquez, José Roberto Herrera Vergara, Rafael Méndez Arango, Luis Gonzalo Toro Correa, Germán Gonzalo Valdés Sánchez and Fernando Vásquez Botero.

The President of the Supreme Court of Justice stated that he trusted that the direct contacts mission would bring about a more immediate and realistic perception of the situation in the country, which was characterized by appalling and indiscriminate violence. The victims of this violence had been not only trade union leaders, but also Supreme Court

magistrates, judges, public prosecutors, members of the security forces, political and civic leaders, governors, legislators, ministers and candidates to public office.

Justice Dr. Herrera stated that for the last 50 years Colombian labour legislation had been the most advanced in the area of collective labour law, together with that of Mexico. Colombia had tacitly recognized collective labour law in the constitutional reform of 1936, in 1976 it had ratified Conventions Nos. 87 and 98 (which many States have not ratified), and since 1991 the right to organize had been formally recognized in the Constitution. Colombia adhered to both the letter and the spirit of these provisions.

Although the main focus of the complaints brought before the ILO did not concern the Supreme Court of Justice, it was aware that these complaints referred to possible interference in trade union activities, obstacles in the way of establishing trade unions and certain instances of limitations being placed on the right to strike. However, since 1978 the requirements for the establishment of trade unions had been eased (especially with the requirement to obtain authorization being replaced by simple registration). According to another judge, it was fairly easy to set up a trade union, and hence if there were few trade unions it was because existing unions had not lived up to the workers' expectations.

As regards the right to strike, the existence of collective agreements in the private sector meant that there were few strikes. The right to strike was exercised the most where it was restricted by the Constitution itself, i.e. in essential public services.

The country viewed the complaints presented to the ILO with concern, since these were serious accusations. The Director-General of the ILO should take account of particular conditions in each country. A comparison of Colombian legislation with that of similar countries showed that it was much easier to establish trade unions in Colombia.

Of course, the killing of trade unionists – just as that of any other person – was to be condemned. But this stemmed from the conflict besetting the country, which affected many sectors. The judicial sector had been one of the hardest hit and did not hold the Government responsible.

Specifically as it related to freedom of association and the right to organize, the jurisdiction of the Supreme Court of Justice was limited. It included the following cases:

- (a) appeals for review (cassation), although these had only an incidental bearing on the above, as they concerned individual legal disputes, rather than collective economic ones;¹⁵
- (b) appeals against arbitration awards (*homologación*) (appeals to quash awards of arbitrators on grounds of exceeding their competence). These were the most directly related to freedom of association and the right to organize.

It should also be borne in mind that the Supreme Court of Justice was responsible for drawing up the rosters for arbitration courts.

A situation of great uncertainty had arisen with the establishment of the Constitutional Court, since in addition to the ordinary jurisdiction of the Supreme Court of

¹⁵ However, it was pointed out afterwards that they could have a more direct bearing on freedom of association and the right to organize in cases of violation of trade union immunity. As for individual disputes involving public employees, these were under the contentious administrative jurisdiction, as was the supervision of the activity of the Ministry of Labour.

Justice there was the possibility of interference by the Constitutional Court through its review of rulings in *tutela* cases. There was a divergence of views between the Constitutional Court and the Supreme Court of Justice on points that were sometimes crucial.

Some of the views taken by the Constitutional Court had placed certain enterprises in serious conflict, as was recently the case of the ruling on *Empresas Varias de Medellín*, overturning after a number of years the ruling handed down by the ordinary courts which had been upheld on appeal by the Supreme Court of Justice. The country had not yet come to terms with the Constitutional Court's decision. However, the fact that such a decision had been handed down showed that there was no state policy of persecuting trade union leaders.

What was more difficult to understand is the case concerning a strike of trade union officials, in which it was ruled that an order issued by a trade union was equivalent to an order issued by a legitimate, competent authority.

If these rulings were to continue, Colombia would go further than other countries. However, civilized countries generally did not recognize strikes in essential public services.

One of the problems affecting workers was the length of proceedings in the labour courts, which was sometimes excessive. Given that actions brought by workers in defence of their rights had vital implications since they had to do with their basic needs, it was essential that these be dealt with promptly by the courts. While the duration of proceedings varied from one district to another, Justice Dr. Herrera admitted that the inescapable fact was that there were delays in handling labour cases. One of the factors aggravating such delays was the introduction of the *tutela* procedure, which judges had to handle as a matter of priority and expedite within a short time limit.

In this situation, the Superior Council of the Judicature was taking measures to decongest the courts. Another judge stated that this had been achieved in almost all the districts, but that one of the most congested was still the Bogotá Court, since this was where many employers were located, and according to the principle of elective jurisdiction workers could choose the court at their place of residence or their last place of employment.

Moreover, the fact that *tutela* cases were handled more promptly meant that they were used to excess in situations where there were other mechanisms for the protection of rights. According to Justice Dr. Rafael Méndez Arango, this had resulted in it becoming a parallel procedure in which due process was not observed and which was used to challenge at any time judicial decisions that had been taken after a full trial and even appealed in the Supreme Court of Justice. (Under the law on *tutela* proceedings, cases brought against court rulings or decisions putting an end to proceedings were subject to a time limit of two months, starting from the time at which the ruling became enforceable; however, the Constitutional Court had declared this provision unconstitutional.)

As a result of a misinterpretation, the concept of "*vía de hecho*" (an act of an authority without legal basis), which used to have a precise meaning in relation to the liability of the State under the contentious administrative jurisdiction, had now been extended to court rulings. Accordingly, previous decisions were disregarded, affecting the right of defence of the party who had won the case, who was not summoned to the proceedings. Moreover, since *tutela* proceedings could be brought before any judge, at any level, anywhere, the absurd situation arose in which the judgements of the highest constitutional bodies, including those with exclusive constitutional jurisdiction (such as the Council of State for electoral matters) were annulled by a municipal judge.

According to Dr. Méndez Arango, civilization was founded on the principle of *res judicata*, which had disappeared in Colombia. As a result, anyone who might wish to invest in Colombia thought twice before doing so. As the *tutela* system was currently applied, there was no prescription or time limit, and no dispute could ever be considered to have been definitively settled.

As regards trade union immunity (*“fuero sindical”* enshrined in article 39, paragraph 41, of the Constitution), the Labour Court of Cassation had rectified the error that had prevailed in case law up until now, allowing a choice between reinstatement and severance pay. Dismissal of a person protected by trade union immunity without meeting the legal requirements was null and void, and the worker had to be reinstated.

The President of the Criminal Court of Cassation, Justice Dr. Edgar Lombana Trujillo, stated that one of the matters of greatest concern was the punishable acts committed against the lives of trade unionists. It should be noted at the outset that Colombia faced an extremely serious problem with regard to public order. Between 22,000 and 26,000 killings occurred every year, comparable to the figures in countries at war.

Moreover, every year an enormous number – between 2,500 and 2,800 – of extremely serious crimes or crimes against humanity were committed, such as kidnappings for extortion purposes (illegal deprivation of freedom for political or economic purposes). These were not only common crimes or acts committed by the guerrillas or members of paramilitary groups, but also stemmed from drug trafficking, which put the country to shame and generated a considerable amount of corruption.

However, the targets of this violence were not only trade unionists, but journalists, professionals, public servants, military personnel, judges, etc.

In order to combat it, the State had established a special procedure and a special jurisdiction. The latter, known as the “faceless” or regional justice system, was to be abolished by law; all that would be left would be what was known as the specialized justice system. Moreover, in the case of certain personal circumstances of the victim (for example, if the victim was a trade unionist), simple homicide was converted to aggravated homicide and carried a sentence for murder.

The Colombian judiciary was independent and was not subject to, neither did it accept, interference.

Where the perpetrator was a soldier on active duty or a member of the national police, the case was handled by the military penal justice system. However, there was a recent tendency both in the jurisprudence of the Constitutional Court and in the new Military Penal Code (which had not yet entered into force) to exclude from the military penal jurisdiction crimes against humanity, genocide and torture.

Council of State and Superior Council of the Judicature

The mission was received jointly by the President of the Superior Council of the Judicature, Dr. Julio César Ortiz Gutiérrez, and the President of the Council of State, Dr. Mario Alario Méndez, accompanied by the following staff of the latter: Vice-President Dr. Manuel Santiago Urueta (member of the first section, responsible for supervising the legality of administrative acts by the State) and advisers Dr. Alberto Arango Matilla (President of the second section, responsible for most cases with a labour or economic content) and Dr. Carlos Arturo Orjuela (member of the second section).

Council of State

Adviser Dr. Arango stated that the second section of the Council of State was competent to handle labour disputes between public employees and the administration that did not originate in a contract of employment. Where there was a contract of employment or collective labour law was involved, the ordinary labour courts were competent to deal with the case. Freedom of association and the right to organize were respected.

Adviser Dr. Orjuela stated that the Council of State was competent to supervise the legality of all acts involving the regulation or development of labour standards by examining actions for nullity filed against decrees, resolutions and other administrative acts by the public authorities.

Labour rights were fully enshrined in the Constitution of 1991, based on the fundamental principle laid down in article 25 that “work is a right and a social obligation and enjoys, in all its forms, the special protection of the State”, and that “every individual is entitled to a job under dignified and equitable conditions”. It also recognized for the first time trade union immunity and the possibility of collective bargaining for public employees, taking up the principles enshrined by the ILO (especially in Convention No. 151), which had not yet been regulated by any act or regulations of the executive branch. Their effectiveness thus depended on case law.

In this respect, the Council of State had already handed down its first decision on the scope of trade union immunity of public officials, which had subsequently been taken up by the Constitutional Court. This jurisprudence could be described as a “duet” by the Constitutional Court and the Council of State.

As part of the judiciary, the Council of State enjoyed full autonomy and exercised rigorous supervision, in accordance with the Constitution and the law, of administrative acts involving trade unions, such as recognition of trade unions, sanctions, and declarations of illegality of strikes.

The third section of the Council of State (contractual and extra-contractual liability of the State), which handled cases relating to disappearances and abuses by the security forces, had made effective the extra-contractual liability of the State, thus strengthening permanent supervision of abuses by the public authorities.

Superior Council of the Judicature

The President of the Superior Council of the Judicature, Dr. Ortiz, stated that it had full autonomy to prepare the draft budget for the judiciary (including the Attorney-General’s Office), which was subject to approval by Congress, as well as full autonomy to implement it. The present level of resources would be adequate to cover expenditure, but there were cash problems due to the fact that it was subject to government expenditure and cash programming mechanisms.

Concerning conflicts of jurisdiction between the ordinary courts and the military penal justice system, which were handled by the Disciplinary Jurisdictional Division of the Superior Council of the Judicature, he confined himself to pointing out that the military penal justice system dealt with crimes committed by soldiers in the course of duty (“*actos de servicio*”), without giving further details on trends in case law on the subject or the consequences of Constitutional Court rulings or amendments to the Military Penal Code.

Attorney-General's Office

Dr. Jaime Córdoba Triviño, Deputy Attorney-General of the Nation¹⁶ (formerly the first Ombudsman when this institution was established), received the direct contacts mission together with Dr. Pedro Elías Díaz, Director of the National Human Rights Unit, and Dr. Pilar Gaitán, Director of International Affairs. He explained to the mission that since the adoption of the 1991 Constitution, the Attorney-General's Office belonged to the judiciary and not to the executive branch; it was autonomous and independent from the Government.

The Attorney-General's Office was responsible for penal proceedings, except those handled by the military penal courts,¹⁷ and was competent to conduct investigations, order security measures to be applied to persons or property, and indict suspects before the judge (unless it issued a preclusion order or a stay of proceedings).

Although the institution was recent, it was strong, being present in 1,044 municipalities, with over 4,000 prosecutors, as well as its own judicial police, the Technical Investigation Unit (CTI). The CTI had 5,000 staff (including experts in ballistics, economics, accounting, etc.), as well as the Institute of Legal Medicine and Forensic Science. It cooperated with other judicial police forces, the National Police and the DAS.

The Attorney-General's Office had set up special units reporting directly to the Attorney-General or the National Director of Prosecutors' Offices, in order to investigate the most serious cases and those with the greatest social or international impact so as to meet Colombia's commitments to the international community and combat impunity. One such unit was the Special Human Rights Unit. Each special unit had highly qualified prosecutors, experts and teams and benefited from international cooperation.

According to the Deputy Attorney-General, with the introduction of these and other measures the face of justice had started to change in Colombia. Spectacular progress had been made in human rights, earning express recognition on the part of the Office of the United Nations High Commissioner for Human Rights, the Inter-American Commission on Human Rights and national and international non-governmental organizations (Amnesty International, Americas Watch, International Commission of Jurists, etc.).

The Special Unit had succeeded in solving shocking crimes that amounted to assassinations, including the recent murder in their home of two members of CINEP (a social and human rights research organization of the Society of Jesus). The physical perpetrators had been arrested and Carlos Castaño had been identified as the one who ordered the killings. Other successful cases included that of Eduardo Umaña Mendoza, a professional and human rights leader; Jesús María Valle Jaramillo, President of the Human Rights Commission of Antioquia; and cases involving the abduction and killing of foreigners. In a significant number of cases the acts were attributable to agents of the State. Where the security forces were involved, the case did not fall within the competence of the Attorney-General's Office but was referred to the military justice system. In jurisdictional

¹⁶ Attorney-General Dr. Alfonso Gómez Méndez was on leave, but sent special greetings to the direct contacts mission.

¹⁷ The military penal courts, which were subordinate to the executive branch, handled cases that fell within the military jurisdiction, that is, when a member of the security forces (military or police) acted in the exercise of their duties or in relation to them.

disputes, the Jurisdictional Disciplinary Division of the Superior Council of the Judicature decided in favour of the military justice system.

There had been numerous cases of death threats – which had even been received by the Attorney-General himself – to former directors of units,¹⁸ witnesses and victims and their families, who had been intimidated. Existing protective measures were inadequate. The Attorney-General's Office had a victim and witness protection programme but lacked sufficient resources. These methods were used to impose the law of silence and terror. According to the Deputy Attorney-General, all of this made their task more difficult, but was no excuse not to perform it.

In nearly all cases the perpetrators were *paramilitary or self-defence groups*.

Colombia had one of the highest crime rates in the world; one of the highest rates of violent homicide; and the highest number of investigations per prosecutor (an average of 300), approximately equal to that of Mexico.

As regards workers' human rights, the Attorney-General had a standing invitation to sit on the Inter-Institutional Commission for the Promotion and Protection of Workers' Human Rights (established in May 1997 on a temporary basis, but then extended), which also included representatives of civil society: five representatives of workers' confederations, the Church, the Colombian Commission of Jurists, supervisory bodies (the Procurator-General of the Nation and the Ombudsman) and, on invitation, the Attorney-General. The Commission was very active, displaying the highest level of commitment among all the state bodies. The Attorney-General's Office found this a useful interaction, which had enabled it to organize the information on cases of violation of workers' human rights.

Information on some 1,200 cases since 1991 that had formerly been dispersed all over the country had been gathered and consolidated. Information from the criminal investigation system prior to the 1991 constitutional reform had also been collected. The Attorney-General had referred these cases, involving homicides, disappearances, threats, abductions and torture, to the Human Rights Unit. Trade union leaders had contributed to this task.

A Subunit (the only one) had been set up within the Special Human Rights Unit to deal with priority and urgent cases relating to workers' human rights. This decision had been taken not because of the complaints or Case No. 1787 before the ILO, but in order to put an end to impunity, which was in everyone's interest.¹⁹

At all events, the highest priority had been given to Case No. 1787. It covered 105 cases, and the Subunit had four prosecutors, which was appropriate in order to bring the cases together under a small number of prosecutors, given that there was information common to several cases. A specialized team of investigators targeted violations committed against the human rights of workers and trade union leaders and endeavoured to determine the major risks, their origin, gravity, etc.

¹⁸ Dr. María Claudia Pulido, who had to leave the country for the United States, and Dr. Virgilio Hernández, who had to take up other duties after receiving a direct threat to himself and his family from Castaño.

¹⁹ There had also been a small number of cases in which investigations had been carried out against trade union leaders.

The Deputy Attorney-General handed a written document on the specific cases requested by the ILO to the mission (including that of Jorge Ortega García, Vice-President of the CUT), as well as the following table:

Situation of the 105 cases included in Case No. 1787

Number of cases	Current status	Measures adopted
3	Indictments brought	Perpetrator identified and committed for trial
10	Suspects identified	Investigation formally opened against specific persons, investigation begun and security measures adopted
79	Preliminary proceedings under way	Perpetrators not yet identified. Identity of armed group involved (paramilitaries, guerrillas, common criminals) determined but not that of individual perpetrator
12	Preliminary proceedings suspended	Statutory time limit of four months has elapsed, therefore cases suspended for a period, but not closed
1	Attorney-General lost jurisdiction	Transferred to military penal justice system

Criminal law provided special protection for trade union leaders: murder of a union leader constituted aggravated homicide for terrorist purposes, since killing a person in this position spread fear among the population.

One of the cases investigated by the Subunit was directly linked to the victim's trade union activity. The physical perpetrators were two former policemen (former National Police officers) and there were strong indications as to the identity of the person who ordered the killing.

However, not all cases were related to trade union activity. There had been crimes of passion and common crimes (for example, involving resistance to robbery). The armed conflict affected many people, not only on account of their trade union activity. For example, in the case of the Attorney-General's Office itself, although many prosecutors, experts and judges had been murdered, and many of them were members of the union ASONAL Judicial, they were not killed on account of their union membership.

Another case involved a member of FECODE (the teachers' union), who was killed not for being a member of FECODE but for his teaching activity. He taught in a conflict-affected area and wished to maintain an independent stance, thus becoming a target. There was a similar case in SINTRAINAGRO, several members of which carried out social or political activities in leftist groups such as the Popular Union (UP), which the self-defence groups – supported in the past by members of the security forces – were bent on eradicating. In the Cubará massacre (1993) 13 workers were killed who were also UP members and used to be members of the former Popular Liberation Army (EPL), who after rehabilitation joined the organization Hope, Peace and Freedom (which had the same acronym – EPL).

According to the Deputy Attorney-General, persons attacked on account of their trade union membership or office accounted for between 5 and 10 per cent of all victims of violence. Among the main sources of violence, the paramilitary groups came in first place, being the perpetrators in 77 per cent of cases.

For example, members of the Trade Union of Workers of the Coca Cola Plant (Medellín) had been murdered by members of a paramilitary group. The other perpetrators were guerrillas, the security forces and even common criminals.

The activity of the paramilitary groups was difficult to define. They were not political criminals, but neither were they common criminals. Moreover, they had been left out of the negotiations under way between the Government and the guerrillas.

The Attorney-General's Office, which in 99 per cent of cases acted unofficially, through the press, was handling 400 cases involving the crime of establishing or membership in armed gangs/paramilitary groups, and 236 arrest warrants had been issued. The courts had issued arrest warrants against all the leaders, and even handed down guilty verdicts – the problem was capturing them.

Castaño's paramilitary group accounted for 90 per cent of the paramilitary forces in Colombia. They had formed a parallel army with their own intelligence and communication network and with the support of certain sectors of the population: manufacturers, landowners and middle-class peasants. They used guerrilla strategy and had achieved territorial supremacy in the Andes.

From an ideological standpoint, the Deputy Attorney-General considered that there was a very small minority of right-wing extremists including, for example, some press columnists who maintained among other things that the Human Rights Unit had been infiltrated by the guerrillas.

The origin of the paramilitary groups lay in drug trafficking, especially after guerrillas had kidnapped the daughter of a member of the Ochoa family. They had been born of the State's inability to maintain a monopoly of force. The self-defence groups had taken power and exercised it in certain areas.

The paramilitary forces served more than one master and their ideology was opposed to the guerrillas and anything resembling them, including civilians who supported the guerrillas or were not committed to fighting them.

Concerning their relationship with the armed forces, members of the armed forces had been involved in some cases. Although the self-defence groups were not the armed wing of the army, in some cases there was collusion or tolerance. With respect to these cases, the Deputy Attorney-General acknowledged what had been done by the Government, which had taken several measures and had even retired generals on account of human rights.

On the penal side, other problems arose. A number of military personnel had been charged, but there was a conflict with the military jurisdiction. Obviously, this did not apply to cases in which military personnel were carrying out their duties, but the Superior Council of the Judicature had considered that many cases came under this category, including that of a violation committed by a soldier who had not taken off his uniform or merely had his boots on.

Despite the efforts that had been made to combat impunity and the comprehensive strategy designed by the Attorney-General's Office to counter it, the Deputy Attorney-General considered that the impunity rate was approximately 40 per cent. This was an intolerable figure, but much lower than that in other countries of the hemisphere (Brazil, Mexico).

Office of the Procurator-General of the Nation

The Procurator-General of the Nation, Dr. Jaime Bernal Cuéllar, received the mission together with his adviser, Dr. Roberto Serrato. He began his account by highlighting the fact that the Office of the Procurator-General, in accordance with the 1991 Constitution, was a state body, not a government body. It was an independent supervisory body with a range of tasks, the most important – from the mission's standpoint – being that of

administrative supervision and protection of human rights. The Office exercised disciplinary authority over public servants, on whom it could impose penalties consisting of fines, suspension or removal from office. The Procurator-General was directly responsible for acting in first instance in proceedings involving senior officials of the State (ministers, generals, congresspersons) and in second instance in the case of governors of departments. It employed 3,050 staff.

Two special teams had been set up recently within the Office: the human rights violation team and the anti-corruption team. The latter, in which the Office of the Comptroller-General was also involved, had achieved surprising results. It held public sessions in the departmental capitals to receive complaints of corruption and had enlisted widespread cooperation among the population.

The Procurator-General also participated in the peace process and in the Inter-Institutional Commission on workers' rights.

This was not a political office and politics were not supposed to influence the conduct of his duties. In order to ensure that this was actually the case, the manner in which he was appointed should be changed, since he was currently selected by the Senate from a list of candidates presented by the President of the Republic, the Council of State and the Supreme Court of Justice.

The current situation in Colombia was marked by acts of violence against human rights and there were cases of links between violent groups and the security forces, although this was now being corrected.

Among the many causes of violence it should be borne in mind that there were some 30,000 members of armed groups: between 6,000 and 7,000 in the self-defence groups and, in the guerrilla forces, 15,000 in the FARC, between 5,000 and 6,000 in the ELN and between 600 and 800 in the EPL. The ranks of both paramilitary groups and guerrillas were swelling, among other things because there were no job opportunities. Potential recruits included soldiers coming out of compulsory military service. This aspect could change given current plans to introduce a professional army.

Another factor to be taken into account was violence committed by common criminals, especially organized and cross-border crime.

The self-defence groups had originated with the establishment of the CONVIVIR groups, supported by the State, as a means of compensating for its absence in certain areas. Restrictions had been placed on the application of the Decree on CONVIVIR by judgement C-572 of the Constitutional Court, which also limited the type of weapons they were allowed to use.

Unfortunately there were cases of collusion between the security forces and paramilitary groups. However, it would be slanderous to say that this was an institutionalized policy. One of the tasks of the Procurator-General was precisely to verify and carry out disciplinary investigations into cases of this kind. A case fell within its jurisdiction if it involved a public servant. For example, it did not handle all cases of massacres or violence, only those in which a public servant could have been involved.

Disciplinary proceedings were separate from penal proceedings. They had been instituted in several cases of massacres, such as the Barrancabermeja massacre in which the victims belonged to the petroleum workers' union USO. In some of these cases, members of the security forces had been suspended and removed from office, including officers and senior officers, and even a colonel and a general.

In most cases the penalties imposed for collusion with violent groups had been for acts of omission, although there had been two or three cases of acts of commission as well.

Criminal cases involving members of the security forces had been referred to the military penal justice system. Following a decision of the Constitutional Court, with which the Procurator-General was entirely in agreement, cases involving certain crimes (for example, crimes against humanity, drug trafficking, illegal enrichment) had to be tried by the ordinary criminal courts. After this decision had been handed down, the Office of the Procurator-General demanded that cases of this kind be transferred to the judiciary, and some 350 cases were in fact brought before it.

While the Office of the Procurator-General took trade union rights extremely seriously, there were relatively few cases in which it could intervene, because it was not competent to handle cases involving only violations committed by guerrillas or paramilitary groups. There had to be at least some indication that a public servant was involved. Where there were indications of such involvement in the course of criminal proceedings, the Office of the Procurator-General requested copies of the proceedings in order to act.

Conversely, the Office of the Procurator-General had intervened at the request of trade unions in criminal cases brought against trade unionists. One such case involved proceedings brought against 14 members of the USO. When it had been proved that “cloning of faceless witnesses” had taken place,²⁰ 13 of the 14 trade unionists had been acquitted and the other released on grounds of procedural nullity.

The Office of the Procurator-General was also involved in winding up public or private corporations in order to ensure that rights were respected.

Because of his functions, the Procurator-General was exposed to many dangers, but this did not deter him from carrying them out. At one point it had been said that the paramilitary forces had sent out an order for him to be killed; he went in person to speak to their commander-in-chief, Carlos Castaño (the area commanders were autonomous but reported to him). The Procurator-General admitted that he had probably acted irresponsibly, but fortunately he had emerged unscathed.

A peace process was now under way with the guerrillas. The Procurator-General was optimistic about its outcome, since he believed that the FARC and the ELN genuinely wished to reach a solution.

Office of the Ombudsman

The Ombudsman, Dr. José Fernando Castro Caicedo, met with the mission accompanied by Dr. Wolmar Pérez, National Director in charge of receiving complaints, and Dr. Maldonado, in charge of economic, social and cultural rights.

According to the Ombudsman, head of a state body that was totally independent of the Government and elected by Congress for a four-year term, “Colombia is a country that

²⁰ “Faceless witnesses” were those whose identity is kept secret while testifying in order to protect their safety. “Cloning” occurred when this anonymity was used to make the same witness appear as two or three different persons in order to give the false impression that there were several witnesses. There also used to be “faceless” prosecutors and judges in what was known as the regional justice system, but they no longer existed. This was a violation of due process and the existence of faceless witnesses was an exceptional measure.

violates human rights". The participants in the armed conflict violated the human rights of the civilian population and the State was too weak to prevent it. This weakness meant that whole tracts of the territory were not dominated by the State but under the sway of paramilitary and guerrilla forces. The country had been reduced to feudalism.

According to the statistics of the Office of the Ombudsman, in 1999 there had been 403 massacres resulting in 1,860 deaths. The main perpetrators were the paramilitary groups. (A "massacre" meant the killing of three or more unarmed civilians who were entirely defenceless.) The authorities did not guarantee the right to life.

As regards trade union rights, numerous complaints had been received of killings of trade unionists, persecution, etc. The Ombudsman believed that there was no state policy to eliminate or repress the trade union movement. There was no state policy aimed at eradicating trade unions or preventing their establishment or development. The conflict affected not only trade unions, but priests, human rights defenders, journalists, councillors and *personeros* (local human rights ombudsmen). In such a dirty war, everyone was a target, especially women and children. The Ombudsman travelled in an armoured car escorted by eight bodyguards.

As regards the life and safety of trade unionists, the Government had undertaken belated efforts to protect trade unionists, as well as human rights defenders and others. The current Government had taken action and made substantial investments, but the Ombudsman did not see this as a solution. However well people were protected, if someone wanted to kill them they would.

Nonetheless, the Ombudsman did not think anyone had succeeded in intimidating the trade unionists and forcing them into self-restraint. Trade union leaders like Lucho Garzón – whom the Government had provided with all kinds of guarantees – continued to speak out loud and clear.

The trade union movement represented no more than 10 per cent of the working class in Colombia, and although this low percentage was due in part to mistakes made by the trade unionists themselves and to public opinion, it was also the result of persecution.

As regards workers' rights in general, the Ombudsman said that the State rode roughshod over the working class, citing as examples the discriminatory wage increases of the current year, the 1993 health reform (based on the Chilean model), the social security system which did not meet the workers' needs, and a system of housing loans whereby the debt could exceed the value of the house, resulting in confiscation of families' savings, repossessions of homes and even suicide. Labour flexibility had been introduced by Act No. 50 of 1990.

The Office of the Ombudsman had received three main types of complaint of violations of economic, social and cultural rights:

1. *Violations of the right to work:*

Approximately 585 complaints had been received. The most frequent causes for complaint were staff cutbacks in private or state enterprises; mass dismissals in private or state enterprises and ensuing lawsuits to collect severance pay, as a result of the economic and fiscal crisis; failure of private and state enterprises to pay benefits on time, and isolated instances of failure to recognize such benefits; and in the case of (mainly private) enterprises that were wound-up, complaints against the receiver (who reported to the Superintendency of Companies) for failure to pay compensation.

2. *Violations of the right to social security:*

Approximately 884 complaints had been received. Substantial progress had been made in this area in recognizing workers' rights in various social security institutions, but there were some shortcomings in the actual effectiveness of these rights, owing to delays and excessive red tape. Concerning employer recognition of entitlement to benefits, a significant contribution had been made by the constitutional mechanism seeking to protect fundamental rights, in particular the *tutela* proceedings, which could be instituted in any court and were extremely expeditious (ten days).

3. *Violations of freedom of association, the right to organize and the right to strike:*

A total of 81 complaints had been received. Essentially in areas where the conflict was particularly intense, and generally as a result of acts perpetrated by illegal armed organizations, the following complaints had been filed in the context of the armed conflict: death threats, deprivation of liberty, torture, cruel, inhuman or degrading treatment and forced disappearance.

Trade unions were also being stigmatized, mainly by the participants in the armed conflict.

The Ombudsman said that he would make the following unofficial proposal after consultations with the Government and the workers, for a possible conclusion of the direct contacts mission:

- (a) a commission of inquiry should not be instituted, since economic sanctions could ultimately be detrimental to the workers;
- (b) there should however be a requirement to comply and follow-up, since Colombia was a country which violated human rights, although there was no policy either of violation or of non-violation; and
- (c) to this end a Permanent Office of the ILO should temporarily be opened (like the Office of the United Nations High Commissioner for Human Rights) in order to ensure that the Government and Congress fulfilled their obligations, receive complaints from the workers and monitor employers' behaviour.

In response to this proposal, the members of the direct contacts mission explained the mission's mandate and stated that they could only take note of the proposal and transmit it to the Organization.

C. Workers' organizations

The direct contacts mission held a number of meetings, both in Bogotá and Medellín, with representatives of federations and confederations of workers' organizations, with the various trade unions which still have cases pending before the ILO, and with other trade union organizations. This part of the report does not consider individual cases which will be considered separately by the Freedom of Association Committee and does not consider the new allegations which have led to requests for the ILO's intervention or the new complaints, since it was not possible to consider them in the light of the Government's comments. The report confines itself to describing in general terms the actions undertaken by workers' organizations in relation to new issues.

Briefings were heard from lawyers representing workers' organizations and from the National Trade Union School, which presented a very full analysis of the cases of violence against trade union leaders and members.

Colombian trade union associations

General Confederation of Democratic Workers (CGTD)

Julio Roberto Gómez said that it was essential to strengthen the ILO to enable it to resist the tide of neo-liberalism, given that it was the only tripartite body which defended human rights, freedom of association and workers' rights, which are the most vulnerable aspects of any employment relationship.

The situation in Colombia was extremely complex and characterized by constant attacks on human rights and a shadowy campaign aimed at destroying the trade union movement. In the past ten years, the policies of different governments had amounted to a strategy to destroy the trade union movement. Since the opening up of the economy in 1990, all manner of laws and policies had been adopted with the effect of creating ever-greater dependence and ever-greater difficulties.

Globalization had meant a curtailment of the rights and liberties of workers. Privatizations (affecting the ports, electricity, banks and natural resources) meant surrendering the country, a process of denationalization, and were being used to break up trade union organizations.

Permanent jobs were disappearing and were being replaced by temporary contracts of 30, 60 or 90 days. This made it impossible for workers to organize and present demands. It meant contracts and wages based on fear, along the lines of the "Pinochet" model.

There had also been reversals in the area of social security. For example, a system of payment in advance for medical treatment had been introduced, which meant an end to the principle of solidarity.

The common denominator in all this was the continual violation of the international labour Conventions.

Trade unions had to be set up in secrecy, since workers who were found to be organizing unions were dismissed without any hearing, and the Ministry of Labour never took up their defence.

Registering and gaining legal recognition for trade unions was a tortuous process. According to the law, obtaining legal recognition should be automatic, but was not so in reality.

As far as the neo-liberals were concerned, the best trade union was one which did not exist.

If in addition the prevailing problems of security were also considered, the chances that trade unionism would survive appeared to be limited.

Another problem lay in the fact that the BID, together with the Treasury and the economic management team, favoured so-called "desempeño" agreements under which, in order to reduce the fiscal deficit of provincial authorities, some 25,000 workers had been made redundant in the past 18 months. Loans were being granted for the purpose of

dismissing workers (with compensation) breaking up the organizations concerned hindering collective bargaining.

According to the reply given by the Ministry of Labour, Colombia was a decentralized country in which it was not possible to interfere with the actions of the provincial authorities, which meant in effect that labour rights were non-existent.

Another aspect of all this was the attempt to impose labour flexibility.

Faced with these facts, the Colombian trade union movement had set aside its differences to create the *Comando Nacional Unitario* (1998), which in 1999 presented a list of demands to the Government.

Confederation of Workers of Colombia (CTC)

Apecides Alvis said that there had been an offensive by the State against trade union organizations. For more than ten years, complaints had been presented to the ILO concerning government practices that violated the right to life and personal integrity. More than 2,700 workers had been murdered, and between 11 and 15 had been murdered in the past 60 days.

The situation was a dramatic one and there was no evidence of any improvement. Contrary to what the Government had said, the situation was not simply a consequence of the war; the workers had been murdered because of their trade union activities.

The ILO, through the Freedom of Association Committee, had asked the Government to remedy the situation and the representative of the Government of Colombia on the Committee on the Application of Standards had given an assurance that amendments and reforms would be adopted in line with the international labour Conventions. That commitment had not been honoured.

For that reason, the trade union movement had felt obliged in 1998 to request the appointment of a commission of inquiry. This had led to the direct contacts mission which provided an opportunity to present complaints directly. The mission was necessary to facilitate changes that would give effect to the international labour Conventions and establish internal legislation that would be strictly in conformity with them.

The trade union movement had never sought to bring about economic sanctions as a consequence of the activities of the commission of inquiry (as had been erroneously claimed), since that would harm the general population. However, if sanctions were applied, the responsibility would be that of the Government, which had had more than two years to make the necessary changes.

The false claim that the union's request for a commission of inquiry might lead to economic sanctions was now being used as the main weapon against the trade union movement. It was a form of character "assassination" which seriously jeopardized the trade union movement's public image.

In reality, all that the trade union movement wanted to do was to oblige the State to respect the Constitution according to which Colombia was a State subject to the social rule of law.

With regard to the right of association, there were not only the particular violations of which the CGTD representative had complained, there was also the problem that Colombian law itself actually limited or curtailed the right of association. The practice of

concluding individual employment contracts led to short-term employment, which hindered collective bargaining and the establishment of trade unions.

The scope of collective agreements was limited by government directives such as the one according to which state employees could not have a pay rise of more than 9 per cent, and then only in the case of those whose salaries were double the minimum wage or less. Under these circumstances, collective bargaining was impossible. That constituted a violation of the right of collective bargaining and the right to strike.

The CGTD was demanding solutions to those problems within the framework of the rule of law.

The effects of the policies and actions of both the Government and the employers were equally terrible and affected development, employment, education and social security. The nation and society were experiencing a general deterioration. The International Monetary Fund was imposing measures aimed at reducing the deficit, and the Government was applying those measures within its administration and urging private employers to apply them.

Single Confederation of Workers of Colombia (CUT)

Luis Eduardo (Lucho) Garzón said that the Government claimed to be acting according to the direct contacts mission agenda. In the first version of the agenda produced by the Government, workers were given a total of three hours out of a total of 16 days. Strings had been pulled to prevent a meeting with senior media representatives.

In the view of the trade unions, democratic discussion with the Government of President Pastrana was not possible. The trade unions had been criticized for not joining the Peace Commission and had been put on the spot in terms of public opinion by being asked to state whether or not they approved of the "Plan Colombia". The request for a commission of inquiry had been called an "act against peace".

The Permanent Consultative Committee on Labour and Wages Policies, far from being permanent as its name suggested, met only on odd occasions.

In the light of the plan for talks between the FARC and the Government, the trade union movement had said that it favoured a peaceful and negotiated settlement. However, it wanted to influence the talks rather than simply being used as a pawn. In order to have an influence its participation could not be limited to a seat on the Peace Commission.

The difficulties faced by the Government in relation to the international organizations did not concern only trade union issues. For example, the President implemented the Law approved by Congress making forced disappearance a crime. This would lead to difficulties with the United Nations Commission on Human Rights.

To the outside world, the President, possibly with an eye on the Nobel Prize, promoted his peace initiatives, but he was not solving any of the real problems faced by Colombians.

With regard to wages, while members of Congress had been given a 15 per cent pay increase, 67 per cent of state employees would get no increase at all and the rest would get an increase of only 9 per cent.

A situation of impunity now prevailed with regard to the many cases of murder, violence and threats against trade unionists. Some time before, a minister of labour (who had since died) had sought to excuse the situation by telling the ILO's Committee on the

Application of Standards that there were murders of trade unionists throughout the world. The European representatives had said in reply that, where such cases did occur in other countries, the culprits were known. The Government was not the victim of the belligerent parties; what had happened was that the State had essentially ceased to exist.

There had been a series of measures aimed at breaking up the trade union movement. Workers face an extremely difficult situation and the Government was prevaricating until peace might be achieved. The trade union movement demanded that there should be no further delays in finding appropriate solutions.

Confederation of Pensioners of Colombia (CPC)

Fortunato Lozano said that the CPC represented almost all pensioners in the country. He contrasted the situation of pensioners in the European countries, who were given special treatment, with that of pensioners in Colombia, who were regarded more as a nuisance.

Pensioners were also victims of the Government's policies towards the working class. For that reason the CPC was working in solidarity with the trade union associations. There were no differences between pensioners and those still at work.

Failure to pay social security benefits or provide health care services constituted violations of human rights.

International workers' organizations

ORIT-ICFTU

Janosz Janeck Kuczkiewicz, Assistant Director of the Trade Union Rights Section of the ICFTU, expressed the support of the international trade union movement for the request made by the Colombian trade unions for a commission of inquiry. He expressed surprise at the Government's propaganda against the commission of inquiry contained in a document which was apparently made available to the Colombian press and published in a daily newspaper. The underlying attitude expressed by the text in question was deplorable and it mixed up issues – freedom of association and trade sanctions – which were quite unconnected. Sanctions had been portrayed as a direct and immediate consequence of appointing a commission of inquiry.

He therefore requested the direct contacts mission to seek clarification from the Government on this matter. (The Ministry told the mission that the document was no more than a working paper produced by one of its departments and had been leaked.)

CLAT-WCL

Enrique Marius welcomed the *Comando Nacional Unitario* of the three trade union associations.

The situation in Colombia presented the ILO with a challenge. The Freedom of Association Committee was doing an excellent job of analysing complaints and formulating appropriate recommendations.

Recent complaints had dispelled any doubts regarding the need for a commission of inquiry. There was a need to break through the tangle of manipulation, and also to state clearly that the ILO did not take economic measures.

The fundamental problem was a moral one related to impunity for acts of violence.

Establishing a guerrilla organization in Colombia appeared to be easier and cheaper than setting up a trade union, and the Government was sitting down at the negotiating table with guerrilla organizations.

It should not be forgotten that there was no peace without social justice.

Association of Lawyers at the Service of Workers

– **Alberto León Gómez**

A number of points needed to be made to place this issue in its context.

As the ILO had stated, there was a close link between civil and political liberties and trade union liberties. In Colombia, the rights and freedoms enshrined in law did not actually exist in practice. The overall picture was dominated by human rights violations. Since 1987, the competent supervisory bodies had received numerous complaints concerning violations of the rights to life, physical integrity and liberty of trade unionists.

An even more serious aspect of the situation was the fact that when human rights violations occurred, a situation of impunity prevailed.

The database of the Ministry of Labour, together with that of the Attorney-General's Office, indicates that more than 1,000 such cases had been recorded but not one single individual had been sentenced. A number of cases had been shelved or were "dormant".

Acts of social protest were penalized or hindered by apparently legal means. These included recourse to "faceless" justice (also euphemistically called "special" courts), the first violation of due process. But it went further: in the case of members of the USO, the prosecution authority had detected evidence of "cloning" of witnesses, that is, the use of one unidentified witness as if he or she were in fact more than one person.

There was a dichotomy between what the authorities said and the prevailing reality. In November 1999, the Government signed an agreement in Geneva with the workers on the mandate of the direct contacts mission which included commitments to eliminate various violations. Nevertheless, between the signing of the agreement and 31 January 2000 there had been eight alleged or confirmed murders of trade unionists, as well as several cases of arbitrary disappearances and detentions.

On 30 December, the President had noted the Law which defined forced disappearance as a criminal offence and established the competence of the ordinary courts to deal with cases of human rights violations committed by military personnel.

There had been numerous cases of repression against people involved in protests, involving the Banco Cafetero and Banco Popular, the Banco P. Hipotecario and indigenous organizations (which were legitimate even if not explicitly covered by Conventions Nos. 87 and 98).

A programme of protection for trade union leaders had been publicized and \$4 million was said to have been earmarked for it. However, that programme was intended initially for human rights defenders and was extended only later to cover trade unionists and other such categories. Furthermore, it was still not possible to deal effectively with the causes of the violence against trade unionists because the culprits were not identified or punished.

The Government maintained that the killings of trade unionists were not due to their trade union activities but were an aspect of the armed conflict and that violence affected all sectors of the population. With regard to the first statement, even if it were true, the Government could not relinquish its duty to protect the life and integrity of its citizens, those being fundamental rights, especially when one took into account the fact that such crimes were committed against defenceless people. The second part of the statement was a partial truth, given that the murders were not entirely indiscriminate and the victims often became targets because of their activities. The justified demands of the trade unionists and unjustified rebellion had been confused.

Freedom of association and peace were closely linked. The trade union movement, through the three principal trade union associations, reaffirmed that they were independent of the State, the armed movements and the political sectors.

The trade union movement was the first to seek a negotiated end to the armed conflict, which it did through a number of distinct bodies: the Search Committee, the Citizens' Mandate for Peace, the Permanent Assembly of Civil Society, the Council for Peace. The latter, which had been created "by law", had only occasionally being convened by the current Government.

However, that does not mean that the trade union movement renounced its duty to defend the interests of workers or spoke for one of the parties in the conflict. The trade union movement affirmed its legitimate and autonomous role.

The international community for its part had to play its legitimate role by appointing a commission of inquiry.

– **Enrique Borda**

With regard to the *relationship between labour legislation and freedom of association*, the Committee of Experts in its observations and the Freedom of Association Committee in many of its reports had made it clear that the Substantive Labour Code directly violated ILO Conventions Nos. 87 and 98. To date, all that had been achieved was the presentation of a bill aimed at redressing that deplorable fact.

However, such measures were cosmetic only, and do not deal with the fundamental problem. There was a need for consultations.

An appeal against the measures in question on grounds of unconstitutionality had been lodged and a copy of the application was supplied.

With regard to the *violation of freedom of association by the labour courts*, some rulings had infringed the right of association, the right to enter into contracts and the right to strike. It was of no importance which branch of government violated the Conventions. One could say that there was a certain defiance on the part of the labour courts who refused to implement those articles of the 1991 Constitution that protected workers' collective rights (namely, articles 39, 55 and 56), and the international labour Conventions.

The Constitutional Court had quashed rulings handed down by the highest labour jurisdiction, the Supreme Court of Justice, on the grounds that those rulings amounted to "vías de hecho", or serious violations of the international labour Conventions and of the Constitution.

The trade union movement had complained about the existence of agreements between Supreme Court judges and companies involved in cases pending before the Court in which the judges in question were to act as labour advisers.

Legal limits had been imposed on the right to collective bargaining. In cases brought before an arbitration tribunal, the tribunal had sometimes ruled against the workers. With regard to the composition of tribunals, where no agreement was reached by the parties on the appointment of the third arbitrator, 90 per cent of the persons nominated by the Supreme Court were originally company consultants and the tribunals had been given full powers to resolve cases involving the abrogation by an employer of a collective agreement, although under the terms of international law (and the domestic law that had previously been enforced) settlement should be based on the petition of one of the parties. And in most cases, the tribunal accepted the demand of the employers rather than that of the workers.

With regard to *trade union immunity*, a fundamental right enshrined in article 39 of the Constitution which gave effect to the principle of freedom of association, there had been serious problems in cases arising from restructuring. In cases of state restructuring, the understanding had been that the “special” provisions governing the restructuring process took precedence over trade union immunity. That meant that, in cases where a post occupied by a trade union official covered by trade union immunity was eliminated, the official would be dismissed without any regard to the statutory requirements regarding trade union immunity, on the grounds that “the public interest came first”, an argument supported by labour court judges.

In summary, far-reaching amendments to existing legislation were needed to give effect to Conventions Nos. 87 and 98. At the same time, it should not be forgotten that judges themselves could be the subject of complaints for violations of the international labour Conventions.

– **Jorge Humberto Balero**

There were *limitations on sectoral negotiations*. In reply to complaints that Colombian legislation rendered some rights ineffective, or suspended other rights in the case of certain groups of workers, the Government had said that Act No. 50 of 1990 had been a step forward. However, it was not a step forward as far as industrial trade unions were concerned, since it gave precedence to the wishes of individual workers to the detriment of the trade union organization and made it a requirement that an industrial trade union should cover the majority of workers in each company as a condition for representing them. If that was not the case, a general meeting had to be convened. That contributed to the disintegration of the trade union movement and constituted unwarranted interference in trade union autonomy.

There was to have been a law concerning industrial trade unions, but the Government had failed to promote it and the employers opposed it. In 1998, the National Trade Council had claimed that it would be unconstitutional and not in the interests of the workforce.

In actual fact, only SINTRAELECOL has managed to hold sectoral talks. Other attempts to do so, for example by the health and banking sector workers, had failed.

The right of collective bargaining was not recognized in the case of the public sector unions. The trade union movement, through the *Comando Nacional Unitario*, had organized three general stoppages in the face of the Government’s arrogant and autocratic attitude.

The trade union representing employees of the Ministry of Labour had been obliged to take legal action as its list of demands had been ignored. The union had initiated legal proceedings to enforce compliance before the administrative disputes court and obtained favourable rulings from the court of first instance and the Council of State.

National Trade Union School

The National Trade Union School gave a succinct and well-documented presentation on human rights violations affecting trade unionists, illustrated with slides and accompanied by a written document that was presented to the direct contacts mission. In the past four years, 74 trade union members had suffered physical attacks, 33 had been victims of forced disappearance and 90 had been detained illegally. In addition, 37 trade unionists had been abducted, 1,276 had received death threats in the last three years, and there had been 14 bomb attacks against trade union premises that had been attributed to the paramilitary forces. If to those figures were added the number of murders between 1991 and 1999 (more than 1,300), it became clear that Colombia was “the most dangerous place in the world for the exercise of the fundamental right of association”. In the opinion of the National Trade Union School, “this situation will not change as long as the State and the employers continue to ignore the value and importance of the right of association in the life of a society that regards itself as democratic and as long as there is no change in the mindset of major sectors of political and economic life in the country who continue to regard unionized workers as allies of subversive or self-defence forces or as enemies of the common good”.

The year 1999 had seen an increase in human rights violations attributable to agents of the State, in the form of harassment, abuses and illegal detentions carried out by members of the police and army during trade union protests. The attempt on the life of Domingo Tovar, director of the CUT, was also carried out by official bodies.

In a high percentage of cases, it was not possible to determine the identity of the culprits.

However, the National Trade Union School considered that 75 per cent of the human rights violations involving trade unionists were the direct consequence of the manner in which freedom of association was restricted, 20 per cent had arisen as a result of the exacerbation of the armed conflict and 5 per cent were the result of criminal acts of violence reflecting the general breakdown in Colombian society.

According to the School’s 1999 report, in terms of human rights violations affecting unionized workers, the general picture during the year covered by the report showed evidence of changes while still following the general trends of the past decade.

During the year in question, 69 unionized workers were murdered (including 18 trade union officials), 676 trade unionists received death threats, 29 were detained illegally, 19 were abducted and 13 had attempts made on their lives.

Those figures were alarming and clearly reflected the destructive effect of the social and armed conflict on the world of work. Two points merited particular attention. First, if the figures were compared with those for the preceding years, it was clear that there had been a fall in the number of killings of trade union members, reflecting a fall in the number of killings through massacres (although the number of selective killings had increased).

However, the fall in the total number of killings did not reflect any profound change in the general historical pattern of human rights violations affecting unionized workers; it contrasted with, and was possibly explained by, the growth in the number of death threats, abductions, individual assassination attempts and armed attacks against trade union premises.

Secondly, the figures reflecting the fall in the total number of homicides and the increase in the number of threats, murder attempts and illegal detentions, highlighted the paradox faced by the trade unions whenever attempts were made to enter into political

negotiations with the participants in the armed conflict. The Government of Andrés Pastrana, in the tradition of all the previous governments that had made it their goal to achieve peace, continued talking about peace and making concessions to those responsible for the armed conflict while pursuing an increasingly tough policy towards those involved in the economic and social debate, who acted within the law and had nothing to do with the armed conflict.

The present Government's peace policy thus had a much darker side. That was seen in the outrageous suppression of freedom of association and the ban on strikes (which contrasted with the treatment of the social organizations between 1994 and 1998), the harassment by the security forces of anyone involved in protest actions and the increase in the number of threats and attempted murders of union members at crucial moments during the settlement of labour disputes.

Those facts, together with the general weakening of economic and social rights, growing unemployment and plant closures, clearly showed the fundamentally anti-union stance of President Pastrana and the blindness of a government which failed to understand the need to create a framework within which a peaceful resolution could be found to the country's social and economic conflicts.

Beyond that general conclusion, a number of specific points emerged from information obtained from the databank of the National Trade Union School:

- In 1999, death threats were the principal form of violation of the civil and political rights of trade union leaders and unionized workers. Of the total number of human rights violations involving workers during that year, 78.6 per cent were death threats, most of which occurred during labour disputes (workers' protests, strikes, marches and collective talks). The predominance of death threats as the main form of human rights violation was linked to the increase in the number of labour disputes resulting from the general economic deterioration and to the contradiction between the Government's declared policy of peace and its anti-union stance.
- The sectors worst affected by violations of the right to life were the teaching profession (members of FECODE), banking sector workers (members of UNEB), agricultural workers (mainly those belonging to FENSUAGRO) and members of INPEC.
- Most murder victims were affiliated to the Single Confederation of Workers of Colombia (CUT), and most of those were members of the Colombian Federation of Teachers (FECODE). However, there had also been a considerable increase during that year of violations of the human rights of workers belonging to the General Confederation of Democratic Workers (CGTD). Attacks against members of the CUT were linked to the role played by that organization in talks aimed at resolving the many labour disputes that had arisen during the year.
- In 1999 there had also been a resurgence in bomb attacks against trade union premises. A total of six such attacks were recorded. Such actions were relatively new and on the increase, were aimed at coercing and dividing the trade union movement, and affected mainly trade unions in the departments of Atlántico and Antioquia.
- 21.86 per cent of trade unionists who suffered human rights violations were women, 13.1 per cent of whom were trade union officials. Most of those violations consisted of death threats, murders and forced displacements. Teachers were the worst affected group.

- In 1999, there were 19 cases of trade unionists being kidnapped by rebel groups. The sectors worst affected were health workers, oil industry workers and prison guards.
- Antioquia was still the department where most murders of trade union members were committed. Of the 69 trade unionists murdered in the country during 1999, 37.68 per cent (26 cases) were killed in that department. In other administrative divisions, in particular Cundinamarca, Tolima, Atlántico and Santa Fe de Bogotá, there had been a considerable increase in death threats and attempted murders of trade unionists.

According to the National Trade Union School, between 1991 and 1999, 266 trade union leaders and 1,070 trade union members were murdered. The School's report indicated that during 1999, large sectors of the country continued to view trade unionists as allies of subversive or self-defence forces or as enemies of the common good. In 1999, 18 trade union officials were murdered (all but two of the victims were named, although their union functions were not indicated), as well as 51 ordinary members; 13 trade unionists were abducted by rebel groups; in Antioquia paramilitary groups had threatened and harassed 162 schoolteachers; violations of the human rights of agricultural workers were linked to the presence of trade union organizations in territory disputed by guerrilla and self-defence groups; SINTRAINAGRO suffered 85 per cent fewer murders of its members in Urabá, although in other regions two of its officials were murdered; FENSUAGRO and SINTRAPALITA (Palma africana) felt the effects of the persistent view among the paramilitary groups of trade unionists as potential allies of the guerrilla groups, a view which made the paramilitaries the main culprit in constantly bringing the armed conflict into the world of work; other sectors affected by the violence against trade unionists included health care, the judiciary and prosecution service, the prison sector and banks. The insurgent groups (ELN, FARC, EPL) were responsible for 75 per cent of kidnappings of trade unionists; 80 per cent of the death threats against trade unionists originated from the paramilitaries and such threats were made against 380 trade union leaders and 296 union members.

[Part V of the direct contacts mission report presents detailed information on cases of murder between 1991 and 1999, based on information provided by the National Trade Union School.]

Violations reported by other organizations interviewed by the mission

Official representatives of a number of different trade union organizations reported numerous violations of Conventions Nos. 87 and 98. They included all of the following: threats against workers who participated in strikes, death threats, threats of dismissal to make workers leave their union, use of temporary workers during strikes, violent suppression of strikes, detention of strikers, attacks on trade union premises, murders of trade unionists and other acts of violence, intimidation of workers' families to force them to leave the union, other forms of pressure to leave unions, recourse to "collective accords" favouring non-unionized workers, denial of the right of collective bargaining to public service employees, mass dismissals in the context of restructuring and replacement of dismissed workers with short-term contract workers, legal uncertainty (failure to define essential public services and lack of legal clarity in the case of union mergers (applicability of collective bargaining and validity of existing memberships)), displacement of workers as a result of the armed conflict, infringements of trade union immunity following restructuring or for other reasons, failure by undertakings to deduct trade union membership dues from wages, undertakings not to bargain collectively under the terms of restructuring agreements, membership of service provider companies or institutions as a condition of hiring, prohibition of strikes by the Ministry of Labour, physical attacks against workers during collective action, cancellation of trade union licences, intimidatory

disciplinary investigations, failure to reinstate workers dismissed for their trade union activities, challenges by the Ministry to trade union bylaws, delays in legal actions concerning anti-union discrimination, deductions from wages for participation in stoppages and requirements to make up the hours lost, refusal to recognize trade union membership, denial of the “status” of threatened persons by the education authorities, refusal to relocate threatened persons on the grounds that they were terrorists, requiring a statement of a union’s activities as a condition for obtaining a trade union licence, problems facing members of one union wishing to join another in the event of restructuring, dismissals of executive bodies of new unions, negotiations with minority trade unions despite the existence of others with greater memberships, recourse by companies to provisions on non-unionized workers where there existed a collective agreement, impunity of those responsible for the deaths of trade unionists, delays in administrative and judicial procedures, murders of union officials who had sought protection from the authorities, suppression of demonstrations, serious faults in the system of appointing members of the arbitration tribunal, rulings that contravened ILO Conventions, administrative obstacles to the establishment of trade unions and restrictions on trade union autonomy (administrative approval for executive bodies and trade union bylaws), use of temporary contracts for anti-union purposes, restrictions on collective bargaining on wages, use of subcontracting for anti-union purposes. The intention of such restrictions and violations was clearly to destroy the trade union movement.

The trade union organizations also referred to a number of measures which had reduced the number of jobs (restructuring, privatizations, other measures intended to reduce the State’s role), curtailed labour rights or reduced social benefits, and which were not mentioned in the mission’s report, given that the mandate of the mission was to examine violations of trade union rights in the cases pending before the Committee on Freedom of Association and in the complaint presented under article 26 of the ILO Constitution.

D. Employers’ organizations

The direct contacts mission held a number of meetings in Bogotá and in Medellín with employers’ organizations (ANDI and FENALCO), and with individual undertakings involved in cases still pending before the ILO. This part of the report will not refer to the pending cases themselves, since they will be analysed separately in the established way. The comments here are therefore restricted to the actions taken by the employers’ organizations, although some comments of a general nature made by one of the undertakings concerned are also given here.²¹

ANDI (National Association of Manufacturers)

The first employers’ organizations in Colombia were those of the farmers and coffee producers, followed from the 1920s onwards by organizations of manufacturers. In 1944, the ANDI was established; despite its name, it is not an association of industrialists only, but also covers banks, insurance companies and other employers.

The ANDI is involved in many aspects of national life, including the peace process. The association’s President was touring Europe with representatives of the Government and the FARC. It was not the only organization of its kind. For example, merchants were

²¹ In Bogotá statements were heard from *Bavaria*, AVIANCA, CONALVIDRIOS and the National Federation of Coffee Growers; in Medellín, statements were heard from the Cervecería Unión, Confecciones Colombia, Industrias Alimenticias Noel and Industria Metalúrgica Apolo S.A.

covered by the FENALCO, and the ANDI did not represent the financial sector, although companies in that sector were members of the association. The ANDI, together with other organizations, took part in the discussions of the National Trade Council aimed at reaching agreement on proposals for submission to the Government.

On behalf of the ANDI, it was stated that the complaints brought before the ILO, quite apart from the specific cases still pending, had a legislative or juridical aspect and a political aspect (since allegation had been made that the murders of trade unionists reflected a systematic policy). The juridical aspects were set out mainly by Dr. Alberto Echavarría, Juridical Vice-President of the association, and by members of the Committee of Labour Lawyers; the political aspects were set out by Mr. Nicanor Restrepo Santamaría, President of the Governing Board of the ANDI.

1. *Legislative and juridical aspects*

Dr. Echavarría said that under the terms of the 1991 Constitution, Colombia was a State based on the rule of law, with greater participation by the citizenry, including employers. Some innovative aspects of the Constitution had been developed in legislative terms, while others had not. In the early years, under the Government of President Gaviria, many legislative and economic changes had been made. There had been considerable economic growth accompanied by growth in the money supply and rising debt, as well as four major reforms of the tax system. Inflation, which traditionally had been relatively low, rose to more than 20 per cent per year, reaching a peak of 32 per cent in 1991 or 1992.

From 1998 onwards, the effects of the problems affecting the world economy began to be felt. In 1999 there was a significant reduction in economic activity, and negative growth of 3 per cent, leading to a loss of added value. Also in 1999, the financial sector had suffered a major crisis which forced the state authorities to undertake major capitalization initiatives. Inflation fell below 10 per cent for the first time in many years.

All this led to substantial reductions in the workforce, generally in accordance with the laws in force and with international labour Conventions.

The current unemployment rate was approximately 20 per cent.

The crisis had also led to a reduction in the percentage of workers represented by trade unions, from 14 per cent at the beginning of the decade to the current figure of 5 or 6 per cent. There were three main trade union associations and the majority of the members (approximately 80 per cent) worked in the state sector, that is, about 800,000 public service employees out of a total economically active population of about 7 million. The proportion of private sector workers represented by the unions was lower.

The 1991 reforms had also led to a transformation in the country's territorial structure. The departments were weakened and the municipal authorities strengthened. In order to promote decentralization, measures had been taken to transfer national resources to the provincial authorities. Despite that obligation to redistribute resources, the apparatus of the State retained extensive powers. That had contributed to the budget deficit, which was currently running at 6 per cent of gross domestic product.

The Constitution had established a tripartite Permanent Consultative Committee responsible among other things for carrying out consultations on wages and labour

policies.²² It also contained provisions on the minimum wage.²³ A law of 1996 established that the minimum wage had to be based on the projected inflation rate, productivity and the contribution of the work to the gross domestic product. However, at the end of 1999, a Constitutional Court ruling established other parameters, including the past inflation rate and the cost of a basic “basket” of goods.

The current minimum wage (which in turn was used to establish other parameters) was 260,000 pesos (approximately US\$130), and many workers earned no more than double that amount. That, together with the high unemployment rate, had created a general climate of austerity.

One change introduced by the 1991 Constitution was the creation of the Constitutional Court. A number of recent rulings had attracted the attention of the ANDI, since they had meant an intervention in the running of the economy, which would normally be the sphere of the Governing Board of the Central Bank. Institutions competed with one another, which created an impression of anarchy. In an effort to solve that problem, the ANDI had proposed the creation of an economic division within the Constitutional Court, with judges trained in economics.

Among the rulings in question were some concerning the capitalization of interest, which was prohibited by the Constitution but which had been allowed in certain cases by the Constitutional Court.

Another ruling had referred to the rules according to which the constant purchasing power unit had to be based not on inflation but on the average deposit-taking rates of financial bodies. When those rates grew significantly, the system was unable to resist. The Constitutional Court, for its part, ruled that this was unconstitutional, but kept the provisions in force for nine months, in the expectation of legislative amendments. That meant that a mechanism provided for under the German Constitution, rather than the Colombian Constitution, had to be used.

The introduction of the protection (*tutela*) mechanism in the 1991 Constitution had had an enormous impact. In itself, the step was a reasonable one, since it provided an exceptional mechanism for resolving problems that arose within the cumbersome judicial system. The proceedings in question were intended to protect fundamental constitutional rights and could be initiated before any judge or tribunal (in the ordinary courts or administrative courts), without any time limit. Any rulings that resulted from such actions could be challenged within the appropriate jurisdiction (including the Supreme Court of Justice or the Council of State), and all *tutela* rulings were referred to the Constitutional Court, which then decided which cases needed reviewing. These proceedings had to be resolved within a period of ten days, and within 20 days in the higher court.

There had been a huge increase in such protection proceedings, a very large number of them concerning labour and health issues, with considerable economic consequences. From being an exceptional measure, they had become almost everyday occurrences.

²² Article 56, para. 31: “A permanent committee made up of representatives of the Government, employers and workers, shall promote good labour relations, contribute to the solution of collective labour disputes and coordinate wages and labour policies. The membership and function of the committee shall be governed by law”.

²³ One of the fundamental minimum principles which must be taken into consideration by the Law respecting the status of work is that of the “minimum living wage that is adjustable and proportional to the quantity and quality of work done” (article 53, paras. 1 and 21).

The Supreme Court of Justice and the Council of State had formulated a number of legislative proposals to amend the rules governing *tutela*, but the Constitutional Court was opposed to them. The reason given was that the power to review *tutela* cases made the Constitutional Court, which was in theory on a par with the Supreme Court of Justice and the Council of State, into a body superior to the other two bodies.

The Constitutional Court had even reviewed judgements that had acquired the status of *res judicata*. That had happened with a case involving a number of companies in Medellín. That ruling recognized as binding decisions made by the Freedom of Association Committee, which in the view of the Constitutional Court should form part of constitutional law in the same way as the international labour Conventions, in accordance with article 53, paragraph 41. That had in effect made the Committee on Freedom of Association into a jurisdictional body (which none of the ILO's bodies actually are), without the undertakings affected being informed.

In the view of Dr. Echavarría, such case law from the Constitutional Court had meant that “we do not know under what law we are living”. The judges of the Constitutional Court themselves had said that its rulings were political in nature.

Another subject of concern to the ANDI was the lack of any legal definition of essential public services. It was important to establish clear rules. Paradoxically, strikes took place precisely where they were prohibited, although they were now all referred to as “stoppages”. That had been the case, for example, with teachers and banking staff.

In drawing up a list of essential public services, account had to be taken of the prevailing reality in the country. For example, education was essential in Colombia. Similarly, oil production was essential, since stopping even one enterprise in that sector would paralyse many other activities. Justice was also essential and in Colombia formed an element of national security.

The Committee of Labour Lawyers referred to Bill No. 184 which had already been approved by the Senate and was currently being studied by the House of Representatives. Although the ANDI in general endorsed the contents of the Bill, a number of its provisions violated the principle of equality. One of those aspects concerned the provisions regarding registration, which for trade unions was apparently for statistical purposes only, while for any other individual it was a requirement for publicity and enforcing agreements. There were also objections to the provisions concerning labour inspection and the requirements concerning appearance in court.

In the same way, the ANDI disagreed with the abolition of the monitoring of quorum requirements in meetings where strike action was decided. The decision to strike could be taken by a minority, since according to legislation, strikes voted by a trade union representing more than 50 per cent of staff involved all the workers; the working quorum was 50 per cent or more of members, and the quorum for any decisions was 50 per cent or more of those present. That meant that 13 per cent of the total number of workers could vote for a strike involving everyone. On the other hand, where a trade union did not represent more than 50 per cent of the workers, a vote by more than 50 per cent of the workers was needed for strike action to be adopted.

Another aspect with which the ANDI was not in agreement concerned the right to strike of federations and confederations.

2. *Political aspects*

Mr. Nicanor Restrepo Santamaría, President of the Governing Board of ANDI, spoke on the political aspects during a working lunch at which other members of the Board were also present.

Starting with a general view of the situation in the country, he said that since the birth of the Republic, the State had been very weak and fragile in Colombia and had not been able to fulfil its protective role. Employers, who were a vital part of national life from the very beginning, had suffered as a result of the State's weakness, like everybody else.

In Colombia there were more than 20,000 violent deaths every year, and most of the victims were young and innocent people. In Colombia, unlike the rest of the world, it was more expensive to insure a young person than an adult.

Only a relatively low percentage of those deaths were the result of the armed conflict. Most were simply the result of violence which the State could not control. About 60 per cent of all crimes remained unpunished, although some estimates put that figure as high as 95 per cent. Such factors created a high risk of violations of fundamental rights. The effects of drugs trafficking had a major impact, which aggravated the problem of violence and engendered corruption.

As a result, it was very difficult to do business in the country. There was a certain instability in the country's legal system, and anyone wishing to invest in the country had to take into account the "Colombia factor" in the form of frequent changes in the "ground rules". Corruption was a fact of life and an important role was played by the informal economy and by illicit commerce, fed by the drugs trade. There were high levels of tax evasion and absenteeism. The tax base was formed by a small elite, including undertakings in the formal sector.

Nevertheless, Colombians were not abandoning their country to the law of the jungle or fleeing abroad.

There were also about 3,000 kidnappings every year in the country, and obviously it was people who could pay who were abducted. Many of the victims died, while survivors sometimes suffered physical injuries and invariably were left with permanent psychological damage. Such crimes were a violation of fundamental human rights and the State was powerless to prevent them.

Private companies had adopted the principle of not paying any ransom for kidnap victims.

The climate of violence had made it necessary for people to use various types of protection. There were 80,000 bodyguards, 40,000 professional soldiers, 150,000 professional guards and 130,000 officials.

Turning to the matter of ethical convictions concerning the right course of action in Colombia, Mr. Restrepo said that the starting point had to be Colombia's long tradition as a democratic country ruled by law, and one not given to military takeovers or extremism.

The employers had made many declarations along those lines. The 1992 Code of Ethics of the ANDI set out obligations which did not end with strict adherence to the law, but which also sought to improve the lot of the less well off, through charitable work and support to social projects.

Employers were represented in various non-governmental organizations. For example, employers participated in the work of the Association for Excellence in the Justice System and were involved in efforts to regenerate the education system, which 30 years ago had made Colombia one of the three most successful countries in Latin America in terms of school attendance. That situation had deteriorated to the extent that few countries were now below the level of Colombia in that respect.

One specific and very important point was the role of employers in bringing about a solution to the armed conflict.

The violence prevailing in Colombia could be said to have been uninterrupted since 1948, the year in which the populist leader Jorge Eliécer Gaitán was assassinated. During those 50 long years, the conflict had resulted in the deaths of 1,200,000 people from all sectors, representing 3 per cent of the country's average population during that period.

The violence began as an expression of a party political struggle, but a new war had begun following the 1957 settlement. The guerrillas, who were few at first, grew in numbers and the FARC alone now had 15,000 members.

At first and for a considerable time, the urban population groups tended to regard the war in the rural areas as something that did not really concern it. As the years passed and guerrilla actions intensified, that attitude became increasingly untenable.

The attitude of the employers had also changed. Not only did they regard the war as something alien, they saw peace as the most important enterprise. The assembly of the ANDI in 1999 was dedicated to building peace. The Executive President of the organization was involved in the current peace process to such an extent that he was currently touring Europe together with representatives of the Government and the FARC, and had before that been the spokesperson of the President of the Republic in the work on drawing up an agenda.

There was some room for qualified optimism regarding the outcome of the peace process. For the first time, the parties knew what they wanted and had agreed on an agenda. The aim was to create a State which would protect and safeguard the rights of everyone. The various sectors of society, including the unions, were represented on the Thematic Commission and hoped that some of the places currently vacant would be filled.

More important than deciding whether or not it was right for 20,000 guerrillas and 6,000 paramilitaries to force Colombian society to negotiate with them was the clear evidence of the full engagement of Colombian society through its institutions. On 14 October 1999, a march took place involving 8 million people wishing to protest against what had been happening in Colombia.

It was not that there was no condemnation of terrorism, but rather that there was a clearly understood need for an alternative to the guerrilla actions. It was necessary to seek appropriate mechanisms for dialogue, which in the case of the ELN had yet to be found, despite the progress that had been made at the Maguncia meeting in 1998.

Employers were putting both their money and their lives at stake in efforts to support the peace process. Their lives, because of the risks that they ran (two of the people present at the meeting had had family members abducted); their money, because they were making important contributions to finance aspects of the process (for example, one air transport company had made available an unlimited number of tickets for any trips that might be necessary as part of the peace process). They had also set up the Ideas for Peace Foundation.

Regrettably, the paramilitary forces had some time ago risen up in a counter-insurgency that may not have been entirely spontaneous and had undergone exponential growth. That movement created even more difficult problems. The insurgency itself was based on political ideals and directed against the State, which could find means of negotiation. It was more difficult to deal with those who were not fighting the State, but were fighting those who fought the State.

In addition, there were the pernicious effects of drugs trafficking which in a quite fiendish manner nurtured the other contributory factors in the conflict. It was extremely difficult to determine exactly where each of these different factors began and ended.

It was already costing a great deal to find means of negotiating with the ELN. That organization was demanding a special *détente* zone, in an area that they had lost militarily to the paramilitaries.

The progress made with the FARC was strengthened by the changes that had come about over the years in its public statements, which had tended to focus increasingly on urban rather than rural matters and reflected what could be described as a broadly social-democratic agenda.

However, other agrarian problems had been created in recent years, as coca and poppies had replaced traditional crops. Ten years ago Colombia had imported 600,000 tons of food; it now imported 7 million tons, mainly maize. When the drugs traffickers had moved on from importing coca from Bolivia and Peru in order to process it in Colombia and re-export the final product to growing coca within Colombia, a situation had arisen in which 50 per cent of those growing the plant were very poor small farmers. The elimination of the crop would require a number of urgent social reforms that had hitherto never been undertaken, in order to deprive the drugs traffickers of their base.

At the same time, there was clearly a degree of hypocrisy on the part of the industrialized countries who blamed Colombia for the problem of drugs trafficking, although that trade would not exist if it were not for the consumers in the industrialized world.

In a long communication addressed to the direct contacts mission and summarized below, the ANDI stated that, since the presentation of the last report, new circumstances had arisen which needed to be highlighted in the overall complex national situation and set out the position of the employers.

As regards the negotiations with the insurgent groups, it should be noted that the peace process with the Revolutionary Armed Forces of Colombia (FARC) is continuing and, as we know, is proceeding without any ceasefire being declared. At the end of last year, Colombians enjoyed a 20-day truce during the Christmas period, during which there was a significant fall in the number of acts of violence perpetrated by the guerrilla groups.

During the truce, a number of different representatives of civil society took action. They included workers and employers who, through their most representative organizations, produced a document against violence and in favour of peace.

Despite this, the various forces involved in the conflict, representing all political viewpoints, continued attacks against the civilian population. These included hostage-taking, bomb attacks against public or private bodies, attacks

on the liberty of individuals in the form of kidnappings and extortion. In more general terms, they resulted in the restrictions which hinder the economic and social development of the country.

Last month, for example, as a result of repeated attacks against electrical power installations, the entire community had to put up with rationing of this essential public service. At the same time, the closure of important highways, including the motorway between the country's two biggest cities (Bogotá and Medellín) and the arterial roads from the centre of the country to the north coast, seriously endangered the lives of hundreds of people, caused major problems in supplies and resulted in serious economic loss. One can say that the population is now confined to the major urban centres, given the danger to life incurred by anyone travelling by road.

Although there are no precise statistics, it is estimated that in the last ten years, over 1 million Colombians have been forced to leave the rural areas to live in the major cities. They have been forced to do so by the violence, a phenomenon which in its turn has made it difficult to meet the basic needs of that population and ultimately reinforces the cycle of violence.

The alarming figures for murders and kidnappings show that the violence is general and indiscriminate and that the Colombian State is too weak to take effective action against it. According to data supplied by the NGO *Fundación País Libre*, there has been a general rise in kidnapping since 1995, and many are not reported. It is significant that the number of recorded kidnappings grew from 2,216 in 1998 to 2,945 in 1999, an increase of 33 per cent. Most of the kidnappings last year were linked to extortion (economical and political). The victims come from all sectors of society, although the great majority are commercial or agricultural employers or minors. The great majority of the kidnappings are perpetrated by insurgent groups or ordinary criminals. The authors of most kidnappings are: guerrilla groups, accounting for 54 per cent (FARC:728, ELN:695, and EPL:167); ordinary criminals, accounting for 12 per cent (300); and the self-defence groups, accounting for 3.5 per cent (103).

It is also important to note that according to data supplied by the Criminological Investigation Centre and the Directorate of the Judicial Police, there was a 46 per cent increase last year in cases of collective murder and a 36 per cent increase in the number of individual murder victims. Cases of common homicide rose to 24,394, a rise of 6 per cent during the year. Common assaults also increased by 5 per cent to 26,639 in 1999. Thefts of motor vehicles rose by 6 per cent to 32,782. Land piracy increased by 7 per cent to 3,429 cases last year, and there were 437 cases of subversive action, marking a 25 per cent increase.

Another aspect of the extreme deterioration in the human rights situation has been the recruitment of minors by the insurgent groups (an estimated 20 to 30 per cent of all recruitment), a clear violation of international humanitarian law. Recently, threats have been made against the media which condemned the kidnapping of Guillermo Cortés, the director of *Hora Cero*.

Many of the manifestations of violence are caused by the breakdown in civic values on which our society is based. This to a large extent has been caused by drugs trafficking which, with its extensive resources, has promoted corruption and the idea of making easy money by whatever means. Drugs trafficking has become a source of finance for subversive and anti-subversion groups who in return provide protection for the crops and the laboratories where the drugs are produced.

All the things described are detrimental to the liberties of Colombians in a democratic society because the institutions of the State themselves create

obstacles to peaceful coexistence. This means that Colombian employers are also subject to restrictions in their ability to do business or express their ideas, which is liable to be interpreted as political opposition to particular organized groups of criminals, subversives or anti-subversives with an interest in destabilizing the country. We should not forget the murder of Dr. Jesús Antonio Bejarano, who at the time of his death had recently retired from the Colombian Farmers' Society and who had acted as a peace commissioner in a previous Government. Nor should we forget the constant threats to the lives and families of workers' and employers' representatives or employers' facilities.

Finally, as we indicated in our first document on the complaint against Colombia, the employers condemn the acts of violence that have been directed against trade unionists, just as they condemn those perpetrated against any other Colombian citizens or foreign residents. All these incidents share the same principal causes: the internal armed conflict that has now spread over the entire country; the trafficking in narcotics, which has undermined civic values; the absence of an effective justice system; and organized crime.

We appeal to the ILO and to the international community to support the efforts now being made by civil society to achieve peace. The recent initiatives that have been publicized in the media reflect the general anxieties of Colombia's people. The Mandate for Peace supported two years ago by more than 10 million Colombians on election day; the demonstration involving more than two-and-a-half million children calling for peace; the marches in the main cities which brought more than 11 million Colombians out on to the streets to demand peace; the recent two-minute blackout organized by citizens as a protest against the attacks on the national grid; the publication in the media of a call by more than 15,000 workers in the export sector for "no more" violence; and the joint statement of employers and workers, are all indicative of the need for international support to Colombians in their demand for peace.

For a long time, our country has been largely alone in bearing the enormous human and economic cost of the fight against social scourges such as drugs trafficking, although these problems affect the entire world. If Colombia's problems spread throughout the region, it will become very difficult to ensure peaceful coexistence and to meet the basic needs of people in those countries.

Recently, the Government formulated a programme entitled the "Plan Colombia", which includes an analysis of the current situation facing the country and its institutions and sets out the course that needs to be followed in order to reconstruct the social fabric and allow peaceful coexistence and prosperity for all Colombians.

The "Plan Colombia" places special emphasis on strengthening the State to enable it to deal effectively with the factors that have made peaceful coexistence impossible.

The global economic crisis which began in South-East Asia has affected Colombia since 1998, and one consequence has been an unprecedented reduction in the gross domestic product (GDP) of about 5 per cent in 1999. During that year, industrial production fell by about 13 per cent. That drop in production is particularly significant if one takes into account the fact that during the previous two decades, Colombia had experienced growth of between 2 and 6 per cent.

This led to rapid growth in unemployment to around 18.1 per cent, while the rate of underemployment exceeded 22 per cent. In addition, the crisis resulted in a fall in revenue which meant that the State was forced to resort to internal and external loans to allow the administration to continue and to inject capital into the

public finances. This led to a growth in the budget deficit which at the end of 1999 stood at around -4.6 per cent.

At the same time, last year saw an increase in the number of companies facing insolvency proceedings. There were 198 such cases in 1999, and the number of companies forced into liquidation was 162. The construction sector was one of those worst affected by the recession of the last two years, suffering a loss of 250,000 jobs in the country's six biggest cities.

The trade in contraband goods has also adversely affected a number of productive sectors and led to job losses.

In general, companies have had to adapt rapidly to the requirements of an open and globalized market, by introducing new technologies and seeking strategic partners and new markets to compensate for the loss of traditional customers resulting from international competition. Similarly, companies have had to adopt strategic mechanisms, such as mergers or break-ups, or by using subcontractors, in order to remain competitive and maintain their market position.

An economic situation such as this inevitably has an impact on the world of employment, since it affects the number of workers employed under permanent contracts. This in turn may lead to a reduction in the number of workers joining trade unions, without any intention on the employer's part to discriminate against the unions or the workers. Like many other social institutions, the trade unions are going through an institutional crisis which is not unique to Colombia.

As regards the matter of the compatibility of labour legislation with ILO Conventions, in particular Conventions Nos. 87 and 98, there have been major reforms of Colombia's labour legislation in the last ten years, notably in the area of individual and collective labour law (Act No. 50 of 1990) and in the social security system (Act No. 100 of 1993).

It should be borne in mind that the abovementioned Act No. 50 of 1990 contains numerous provisions in favour of freedom of association and has had a positive effect on the Colombian trade union movement. For example, according to figures supplied by the National Trade Union School, 515 new trade unions were established between 1990 and 1994. Between 1990 and 1992, the number of unionized workers rose from 880,000 to 915,000. These figures clearly show that Colombian legislation, far from hindering the trade union movement, has assisted and strengthened it. The decline evidenced by trade union statistics began long after Act No. 50 came into force, suggesting that the crisis is the result of factors unconnected with the legislation.

Following the adoption of Act No. 50 a new Constitution was adopted in 1991. It included many provisions beneficial to workers and their trade union organizations.

The 1991 Constitution also provided new jurisdictional mechanisms for the protection of rights, such as *tutela* (protection) proceedings and compliance proceedings. The use of the former by workers and their organizations has resulted in a complex body of case law regarding both individual and collective rights. Nevertheless, the abuse of such procedures has tended to undermine them and created a backlog of cases, restricting the time available in which the courts can resolve disputes. Similarly, the new provisions have meant that recommendations made by the Committee on Freedom of Association have to take precedence over rulings given by our own jurisdictional bodies.

There are in fact many decision-making and consultative bodies in which workers and their trade unions as well as employers may participate (these

include the Consultative Committee on Wage and Labour Policies established by the new Constitution and various other bodies).

As regards the observations made by the 1996 direct contacts mission, many of the proposals are being discussed by Congress with a view to incorporation in Bill No. 184 (Senate) of 1999. However, although the Bill was examined, it was not given a first reading within the period required by the Constitution and was shelved.

An attempt has been made to bring about an agreement between the Government, workers and employers on a bill which would define all the essential public services. Discussions on this continued for almost a year and took into account the opinion expressed by ILO experts. Unfortunately, no agreement was reached. We as employers stated that it was necessary, first, to define what was meant by the term "essential public service" in the light of our particular circumstances and needs, while the workers simply wanted a straightforward list. In this area, too, the Government submitted a bill to Congress, although it had to be shelved for the same reasons as Bill No. 184.

The employers wish to state yet again their willingness to enter into discussion and seek agreement on this issue or any other issue relating to labour matters or wages.

In general, the observations of the 1996 mission, which were reflected in Bill No. 184 (Senate) of 1999, are accepted by Colombian employers. Nevertheless, in documents submitted to both Houses of Congress, we set out our observations on a number of provisions contained in the bill, inasmuch as the latter says nothing regarding the scope of trade union registration and the effect of publicity and enforceability on third parties, including employers. Similarly, it restricts labour inspection to the employer, although this should extend to any of the parties involved in the legal employment relationship, that is, employer, worker or trade union. This violates the principle of equality before the State which is responsible for inspection.

We also consider that the secondary effects of strike action may at times transcend individual or sector interests, or those of part of a union or a section of society. The State should safeguard the exercise of trade union rights under conditions of equality for all citizens and see to it that the general public interest takes precedence over that of the individual. Thus, union meetings called for the purpose of voting for strike action or recourse to arbitration should be required to inform the inspectorate so that the latter may be present to ensure that the established procedures are adhered to. This condition applies to other organizations subject to the supervision of other state inspection authorities when they convene meetings of members or shareholders.

While we are the first to defend freedom of association for trade unions, we believe that this should not be to the detriment of the rights of non-unionized workers or minorities within unions. It is a cause of some concern to us that certain mechanisms may be eliminated which, without any detriment to the rights of trade unionists, now ensure a degree of transparency in the work of the unions and benefit society in general.

Mention should also be made of the many initiatives by employers in favour of workers and their representatives, initiatives which have gone far beyond statutory requirements.

In conclusion, we appeal to the workers and their trade union organizations to continue working with us to implement the new labour relations culture, and leave behind us the old patterns of confrontation. Steps have already been taken in that direction: in 1996, with the signing of the Social Pact on Productivity,

Prices and Wages; in 1998, with the definition of the minimum wage, and the definition of the basis for calculating tax-like contributions; in December 1999, with a joint statement against violence and in favour of a negotiated settlement to the armed conflict.

As regards the cases pending before the Committee on Freedom of Association, they appear to have a number of elements in common suggesting a common motivation to secure approval for a commission of inquiry. The increase in the number of cases last year, with the postponement of a final decision by the Governing Body, leads to that conclusion. As with the complaint presented against the Government, the particular complaints against specific undertakings must be examined within the country's political and economic context, since it is only in that context that the immediate and more indirect causes of such complaints can be found. The indirect causes include the general state of violence which affects all Colombians, not simply trade unionists, and the division within the trade union movement and the power struggles within the unions themselves. The more immediate causes include above all the economic crisis which has beset the country, the magnitude of which is indicated by the figures given in this document. Another important factor is the new concept of the State, which is not unique to Colombia, according to which the State should act in an advisory and regulatory capacity rather than as an executor. That philosophy has led to the privatization of public bodies with the aim of making them more efficient and effective. The administrative decentralization plan introduced by the 1991 Constitution is another important factor. The redistribution of powers between the national Government, provincial authorities and municipal authorities has led to changes in staffing levels within those authorities and in dependent organizations.

At the same time, within the private sector, the opening up of the economy, which was another immediate cause, obliged companies to restructure in order to compete at international level. It is only natural that the changes brought about by mergers and company break-ups have an impact on the structure of trade unions in the companies involved, but that does not mean that the reasons for such changes are anything but purely economic in nature.

Many of the decisions made necessary by the processes of restructuring have been challenged by workers and their representatives and those challenges, through the procedures in force, have been examined by the relevant administrative and judicial bodies. A number of the complaints presented to the ILO's Freedom of Association Committee have had the effect of reopening the debate on definitive administrative and judicial rulings; this is very detrimental to the principle of legality and of the validity of a *res judicata*.

One unfortunate decision by our Constitutional Court has made the recommendations of the ILO's supervisory bodies binding and stands in contrast to a more recent ruling by the Labour Division of the Supreme Court of Justice. The Constitutional Court ruling has meant that workers and trade unions now regard the Freedom of Association Committee as a new jurisdictional body from which they can obtain rulings in their favour which have been lawfully denied by the administrative and judicial authorities of Colombia. This, rather than the increase in labour disputes, is another reason for the significant increase in the number of complaints presented to the Committee.

According to figures supplied by the Ministry of Labour and Social Security and the National Trade Union School, there was during 1998 a 19.58 per cent increase in the number of collective agreements and an 18.85 per cent increase in the number of collective accords, a fact which suggests that labour relations have not deteriorated in recent years in a way which would justify the avalanche of complaints presented to the Committee on Freedom of Association.

In the light of our preceding comments, we call upon the direct contacts mission and the ILO's Committee on Freedom of Association to take into account the following points in its examination of the cases still pending:

1. The need to maintain equality between the parties involved in such a way that when such complaints refer to the actions of an undertaking, the Committee will see to it that the undertaking is informed of the complaint so that it may reply to any allegations made, independently of any official reply which the Government, as representative of the Colombian State, may wish to make.
2. The need to eliminate any political bias which might inform claims or complaints with a view to securing approval for sanctions against Colombia or for a commission of inquiry on which a decision must be given by the Governing Body in June.
3. The importance of considering all the economic factors that lead to particular decisions aimed at adapting enterprises to the new world economic order.
4. The necessity of ensuring that the existing complaints procedures are not used as a means of undermining the rule of law in our country.

National Federation of Merchants (FENALCO)

FENALCO is the organization representing the largest number of undertakings and is represented at all levels, with offices in 30 cities.

The statement on behalf of FENALCO to the direct contacts mission was made by its President, Mr. Sabas Pretelt, and its Vice-President, Mr. Mario Gómez. They both expressed particular appreciation for the work done by the ILO and said that they regularly took part in the International Labour Conference.

In their view, relations between workers and employers were now good. At the same time, trade unionism was concentrated largely in the state sector and it was there that problems tended to arise.

Workers and employers had worked together in an attempt to resolve the country's most acute problems: poverty and violence. Workers and employers together had founded the "Broad Movement" for peace in the search for a solution to the armed conflict. The Movement had organized joint marches throughout the country in support of a negotiated settlement, which meant that its organizers risked violence at the hands of the guerrilla and paramilitary forces, all of which were enemies of peace.

A few years previously, the Mandate for Peace, a citizens' movement for peace led by the presidents of the CUT and FENALCO, the Church, a number of non-governmental organizations and the *Fundación País Libre*, had managed to bring together 10 million people on the day of the elections.

Mr. Pretelt in particular was involved in talks aimed at finding a settlement with the ELN. The talks had begun before there seemed to be any possibility of peace, and had brought representatives of the Government and of the ELN to the negotiating table. It had then taken them to Germany, where the Puerta del Cielo (Maguncia) Agreement had been signed.

At the present time, the major obstacle to further progress in talks with the ELN was the wish of the latter for a *détente* zone, similar to the one established for the FARC, in the

south of Bolívar, from which the army had been unable to dislodge it for some 30 years. However, the paramilitary groups were also present in that area.

FENALCO also participated very actively in the Consultative Committee which met 15-20 times a year and which, even if it could not always find appropriate solutions (especially in areas such as the budget or minimum wage), carried out a constant and very useful dialogue on a variety of topics, with particular emphasis on social issues and questions such as the possible amendment of the Substantive Labour Code to introduce greater labour flexibility, new working time arrangements or occupational health programmes.

The safety of trade union leaders was a matter of grave concern, although if any sector enjoyed state protection, it was that one. The fundamental fact was that Colombia was a country in a state of war, a situation which affected the entire population. Within that overall context, the sector that suffered most attacks was the employers. Although there were fewer employers than trade union leaders, far more small employers and traders had been killed or kidnapped than trade union leaders. Virtually all the kidnappings (between 2,500-3,000 per year) were of employers, and a few were politicians. A very large number of small entrepreneurs had been victims of the armed conflict, as they came under attack from both guerrilla and paramilitary groups in search of supplies.

In 1999, the FARC, the ELN and the paramilitary groups killed approximately 200 employers. A high percentage of kidnap victims were killed. According to Mr. Pretelt, he would probably not survive for two days without a bodyguard.

They did not believe that trade union leaders and employers were being deliberately targeted, but that the attacks were a consequence of the state of war in the country.

The current peace process had some chance of success, but needed international support. There was no government connivance of any kind with the self-defence groups, although the paramilitary groups were originally linked to the CONVIVIR groups established by law. They became discredited by their activities and ultimately brought discredit on citizens' self-defence. For some time, the army had continued to promote the self-defence groups until they were proscribed, and some officers and soldiers maintained close relations with the common enemy. Such cases were now the exception.

At the same time, the Offices of the Attorney-General and Procurator-General had been doing very important work for some six years and the army was confronting the paramilitary groups. The headquarters of the self-defence groups had been stormed by the army and Carlos Castaño had been forced to flee.

Nevertheless, the self-defence groups did not attack the army, unlike the guerrilla groups.

E. The position of independent sources: Churches, the media, non-governmental organizations, higher education

The Catholic Church: The Archbishop of Medellín

Monsignor Alberto Giraldo Jaramillo, the Archbishop of Medellín, was accompanied by Monsignor Guillermo Vega, an expert on trade union affairs, and various members of the Church with a special interest in social affairs and the world of work.

With regard to the murders and threats that had been directed against trade union leaders, they said that an explanation had to be sought within the overall social context. For example, there had recently been a real genocide in the form of the extermination of the *Unión Patriótica*, 2,500 members of which had been killed. Many had been trade union leaders, although their deaths owed more to their membership of the party than to their trade union activities.

With regard to the complaints concerning violations of freedom of association and the failure to comply with collective agreements, they said that, although the employers did not openly oppose the trade unions, their actions often amounted to a surreptitious and constant war against them. They dismissed unionized workers whenever the opportunity presented itself and there was often an ambience of anti-union warfare.

With regard to ILO Convention No. 87, there was no real protection of the right of association. Employers respected that right inasmuch as it was necessary to avoid sanctions, but preferred to deal with workers who were outside union organizations, especially ill-informed and ill-advised workers.

There were also administrative obstacles in the form of numerous regulations. Obtaining official legal recognition for an organization sometimes took years. There was an excessive amount of what one might call legalistic “red tape”.

There had been a huge fall in trade union membership, which had once been between two and three times its current level. Where there were no unions there were widespread abuses by the employers. Workers were not willing to risk their wages.

On the other hand, the trade union movement had matured considerably. At one time, the trade unions had been a focal point of the class struggle; since then, their views had become more moderate, including those of unions affiliated to the CUT.

The Church had once had a strong presence within the trade unions, and in particular with the Union of Workers of Colombia (UTC). Monsignor Vega as a student had been a member of the *Acción Social Patriótica*, and as a priest had acted as moral adviser on trade union and cooperative matters, participating in the meetings of its executive bodies. That was a trade unionism based not on class struggle, but rather on the social doctrine of the Church.

The UTC leadership had been infiltrated by the drugs trafficking groups.

Recently, the Church had been involved in other ways, for example, through the intervention of the Bishops' Conference in 1998, when grave problems arose among trade unions representing public employees. Another example of church involvement was seen in the training courses provided for workers (including the unemployed) by the Church, or by its support for the striking trade unions through secular association groups. There were also young people working in marginal areas.

Similarly, when plans had been put forward to introduce a bill to increase labour flexibility, a serious study was undertaken from the point of view of the Church's social concerns. In the end, the bill was withdrawn. According to a Church representative, the development plan allowed certain measures to enhance flexibility, including in some circumstances a 30 per cent reduction in wages.

In the view of Monsignor Vega, the ILO could be a vehicle for progress in Colombia, but in reality, beyond participating in meetings of the Conference, little attention was paid to the international labour Conventions or the ILO's guidelines.

As for the violence against trade unionists, it originated sometimes from the guerrilla groups and sometimes from the self-defence groups and was directed against anyone regarded as an ally of the other side. On other occasions it originated from the security forces, which cooperated with or tolerated the activities of the paramilitary groups, although it was not possible to state with any certainty whether this was an official policy. Recently, most killings appeared to have been committed by the extreme right, the paramilitary groups being the worst offenders. However, it was often difficult to identify the culprits, who did not dare show their faces.

The problems raised by the guerrilla groups' activities were also complex. In some areas, the FARC, ELN and EPL had formed a common front to defend themselves against the self-defence groups; in other areas, the groups confronted one another.

Monsignor Vega said that the self-defence groups had started out by engaging in legitimate defence activities, with specific collaborative aims, but that they had become transformed into armies which did not defend but attacked. The paramilitaries had been responsible for massacres and investigations had shown that the security forces had collaborated with them at least by omission (for example, by not obstructing the passage of reinforcements).

The media

The mission conducted a very valuable interview with Dr. Carlos Lleras de la Fuente, Director of the daily "Espectador", former member of the Constituent Assembly of 1991, a man responsible for a number of important studies on the present-day conditions in Colombia and son of the former President Carlos Lleras Restrepo. Dr. Lleras painted a broad historical picture of the violence endemic in Colombia, from the civil wars of the last century, through the renewed bipartisan violence of 1948, to the guerrilla action against the two parties inspired by Ché Guevara and Fidel Castro.

An additional factor in all this had been the illicit trade in narcotics which (together with the landowners) financed the paramilitary groups. Those groups had begun to appear in the 1960s with the rise in drugs trafficking, a trade which from 1992 onwards encouraged the production of huge crops of coca and (more recently) poppy seeds. Those crops now covered 120,000 hectares. The drugs traffickers organized paramilitary groups with the double purpose of defending the crops against the guerrilla groups and terrorizing rural workers in order to drive them off the land which then came under the control of the paramilitaries.

Dr. Lleras said that it was also essential to take social and cultural factors into account. There was a certain gulf between the trade unions and the political parties, and the same was true of the universities. Education was never given a high priority, and teacher training was poor. The situation with regard to university education was also unfavourable, since universities were able to operate without any certification. That had led to the existence of 7,400 different programmes, only 48 of which were properly accredited. Twenty-five per cent of the population were illiterate, 60 per cent were functionally illiterate. While the dictionary of the *Real Academia* contained 300,000 words, the language used by the average Colombian contained only 825 words.

There was a very high level of poverty. Of the country's 34 million inhabitants, 15 million lived in poverty and 7.5 million of those lived in absolute poverty.

The widespread violence was the result of low levels of education. It began within the family and continued outside it.

The Government's peace policy seemed promising, but the Government needed to prepare for peace. When it finally came, there would be 100,000 "unemployed" armed individuals (including soldiers), who for years had been trained for violence alone.

Some of the previous models for demobilizing the guerrilla forces (the 1991 process which had led to the demobilization of the M-19 and EPL and to the Constituent Assembly) would no longer work. It was no longer possible to reintegrate the guerrilla forces within an established framework which they did not want. Symbolically, in this process of dialogue, the guerrilla forces were asking the establishment to negotiate on their own ground. If peace were to be achieved, the guerrilla forces and the "establishment" would need to abandon their own territories and meet somewhere half way in order to build a new country.

As for the *violence against trade unionists*, although it could in principle have a number of different origins, most of the trade unionists who had been attacked or killed had been victims of right-wing forces representing the military, the paramilitary groups or the landowners. There was no state policy of exterminating trade union leaders; no recent Government had encouraged or conducted such a policy. On the other hand, there was no denying that certain sections of the security forces had been behind the paramilitaries (more often in the past than at present). The paramilitaries did not constitute an ideological force, but there was an extreme right-wing element which had been established after so many years of guerrilla activities. That element supported the paramilitaries and was in turn supported by them.

In addition to this, and regrettably, a situation of impunity existed, both with regard to the military courts (in cases where a suspect was of the military, given that the military were then acting as their own judge and jury) and in the ordinary courts, which operated very slowly and had rather low professional and ethical standards conducive to corruption. There have been some positive changes: the new Military Penal Code had made some improvements (although not all the improvements that Dr. Lleras had proposed); judges were now much better paid; there were training courses for judges. Some of the changes introduced by the 1991 Constitution had also been beneficial. These included the possibility of *tutela* proceedings (which were much faster than normal court action) and the Constitutional Court (which had handed down a number of innovative judgements, including the recent ruling of December 1999 which allowed review of a *res judicata* that was thought to be unlawful). Nevertheless, there were still failings in the system, such as the political make-up of the Disciplinary Division of the Superior Council of the Judicature, which was called upon to resolve disputes concerning the respective powers of the ordinary courts and the military courts and which often unjustifiably ruled in favour of the military courts.

Non-governmental organizations

During a working breakfast with Dr. Augusto Ramírez Ocampo, President of the organization PLURAL, and Dr. Armando Novoa, the organization's legal secretary, members of the direct contacts mission were able to obtain very valuable background information on the economic, social and cultural situation of Colombia now and in the recent past, as well as information on the origins and current state of the violence and the prospects for the President's peace plan. Given the circumstances of the meeting, detailed minutes were not taken.

Representatives of higher education

During a working dinner with Professors Fernando Hinestrosa Forero, Rector of Colombia's *Universidad Externada*, Victor Moncayo, Rector of the National University, and Jorge Orlando Merlo, Director of the Libraries and Art Department (Luis Arango Library), the mission was presented with three fundamentally similar points of view, which nevertheless differed in terms of emphasis and focus, and which contributed greatly to its understanding of the general situation, both in terms of the historical dimensions and of the current situation. Again, given the circumstances of the meeting, detailed minutes were not taken.

Office of the United Nations High Commissioner for Human Rights – Office in Colombia

A separate section could be devoted to the international organizations, represented in this case by the Office in Colombia of the Office of the United Nations High Commissioner for Human Rights, which through its Director Anders Kompass and its other officials provided the direct contacts mission with a full, in-depth and independent account of the situation in Colombia with regard to human rights in general and trade union rights in particular, as well as a detailed analysis of the problem of violence in the country.

The two main priorities for the Office were trade union rights and the rights of indigenous peoples and ethnic minorities.

Trade union rights had to be seen within the general context, since their situation depended on actions taken by the Government in the area of general human rights. The failure to adapt Colombia's internal legislation to the requirements of international standards did not affect only trade unions: in the area of civil and political rights, forced disappearances, torture, forced displacements and genocide had not been formally defined as specific crimes. Congress had approved a law relating to those offences and the President had noted it, and had also noted the act to reform the Penal Code, which contained similar provisions, as well as provisions defining violations of international humanitarian law. Despite the restrictive interpretation of the powers of military courts adopted by the Constitutional Court, in practice, the Superior Council of the Judicature was still inclined to grant jurisdiction to the military courts (although they did not claim such powers when the suspects were low-ranking personnel).

The attacks on the civilian population were a cause of great concern, as were the rise in the number of massacres perpetrated by the paramilitaries and the seizure of hostages by the guerrillas and the link between the paramilitaries, military forces and public officials. With regard to the last of those points, which was connected with the matter of military jurisdiction, the authorities were not making great efforts to resolve the problem. According to the Director of the Colombia Office, the paramilitaries presented the principal problem in terms of human rights violations and were undermining the legitimacy of the State. As long as the State failed to dissociate itself from the paramilitaries, his Office in its reports would continue to hold the State responsible for the human rights violations perpetrated by the paramilitary groups. At the moment, there was a double link: a failure by the Government to suppress the paramilitary groups, and on occasions active participation in their activities by the security forces. The Office had confirmed such cases in the field and the Attorney-General's Office had such cases still pending. Such links had been evident at a social level, as officers in the armed forces had been seen drinking with paramilitary leaders. It was hardly surprising that relations between the armed forces and the civilian population were so poor. In areas dominated by

the paramilitary groups (such as Urabá), there was not only no freedom of association; there was no freedom of expression of any kind.

It was not easy to weigh up the overall effects of the peace process on trade union rights. It was possible that the number of killings had fallen, although other, more subtle, changes were taking place. The resurgence of violence against trade unionists in certain areas had caused trade union membership to fall. Some people had been displaced and others had been driven out of the country. Killings of trade union leaders had continued in areas of uneasy truce where trade union activity had continued. In such a climate, who would dare remain a trade union official? Those responsible for the violence often managed to silence trade unionists without killing them. On the other hand, the violence was not directed solely against trade unionists. Academics and journalists – people who formed public opinion – had also suffered over the last year. An enormous number of people had been threatened, and the State was attacking the consequences rather than the root causes.

Dr. Uribe Restrepo, ex-member of the ILO Committee of Experts, had a working lunch with the mission during which he stated that there was no sense in speaking of freedom of association in Colombia because, in the present circumstances, civil and political liberties did not exist. This was however not the State's fault, but rather due to terrorism.

V. The mission's assessment of the situation

For this assessment the mission will base itself on interviews conducted (which are summarized in previous chapters of this report) as well as on informal conversations, written communications provided by some interviewees and on conclusions taken from numerous documents and books. The figures and statistics provided by some of those consulted by the mission do not always coincide with those of others, and depending on individual cases the mission has either decided to reflect the discrepancies or to use the figures that appear the most realistic.

A. The economic and social context

The internal armed conflict that the country has endured for the past 40 years – since the bloody conflict that confronted the traditional political parties between 1948 and 1957 – is currently combined with a particularly delicate social situation that is being exacerbated by the conflict and also by profound social inequalities. The high rates of unemployment (18.1 per cent at the end of 1999²⁴ and probably over 20 per cent at present) and poverty (15 million people according to the Ombudsman – 18 according to other sources), together with the displacement of civilians as a consequence of the armed conflict (between one and one-and-a-half million people), the privatizations and major restructuring processes in the public and private sectors causing redundancies and dismissals affecting thousands of workers, the high levels of child labour (800,000

²⁴ For example, in 1999, according to the National Association of Manufacturers, 250,000 direct jobs in construction were lost in the six main cities.

between 6 and 11 years of age and 1,500,000 between 12 and 17 years of age), underemployment (22 per cent) and informal sector work (55.5 per cent average in the seven main cities), the various 100,000 short-term contracts and the numerous serious cases of public and private corruption that have occurred over the past decade and that continue to occur with the resulting extremely demoralizing effect on the population, are compounded by a downturn in gross domestic product of 5 per cent in 1999, a fall in industry of approximately 13 per cent, a marked reduction in the level of investment and a fiscal deficit of over 6 per cent in 1999. In view of this crisis that the Government attributes, among other factors, to the lax and expansionist fiscal policy of the previous administration, the country is currently undergoing a process of fiscal adjustment that will last until 2002 or 2003 and in this framework, for the first time in its history, it has signed an agreement with the International Monetary Fund. The result has been severe taxation and a restrictive wage policy²⁵ on the one hand (wage adjustment of 9 per cent for workers whose income does not exceed two minimum wages²⁶ and none for those who earn more than two minimum wages) and on the other, bills to render labour more flexible and to regulate social security reform (pension and health systems) and greater restructuring.

The desired objective is gradually to bring economic growth back up to 4.8 or 5 per cent by 2002 or 2003. The measures adopted have had a high social cost but the first signs of recovery are beginning to be seen, for example, interest rates on loans have fallen from 45-50 per cent per year (with an inflation rate of 20 per cent) to 20 per cent (with an inflation rate of 10 per cent).

B. The general context of violence

To this picture must be added extraordinary crime rates attributable to common crime, and also violence – often linked to terrorism – perpetrated by guerrilla groups, the self-defence forces (also called paramilitaries) and drug trafficking with its armed gangs. This environment causes citizens to live their daily lives feeling extraordinarily insecure. The internal conflict has cost 1,200,000 people their lives over a period of 50 years.

Some of the news that appeared in the press around the period the mission spent in the country serves to illustrate this point. There were stories of major motorways and roads being blocked for a week by a guerrilla group with hundreds of civilians trapped, the blowing up of numerous electricity pylons by the same guerrilla group leaving many parts of major towns without power, the murder of a television presenter and a journalist by a guerrilla group, various massacres by the self-defence or paramilitary forces (two of them causing over 40 deaths), fights to the death in prisons between guerrillas and paramilitaries, extortionist groups being masterminded from inside prisons, threats addressed to town councillors and members of Congress, the murder of the chairman of the Communal Board Association of a municipality and of a former mayor, the death or disappearance of police officers, threats addressed by a guerrilla group to a bishop, fighting between 700 paramilitaries and 500 guerrillas, numerous abductions and extortions, robberies, etc.

This bleak panorama is clearly overwhelming the authorities responsible for public order although the situation is being attenuated in the political arena – on the one hand, by

²⁵ According to the Government this favours voluntary retirement, avoiding to the greatest possible extent massive dismissals of public officials and establishing a safety net designed to create employment, for which US\$900 million has been provided.

²⁶ The minimum monthly wage equals approximately US\$130.

a true democracy²⁷ in which the three state powers are supplemented by three institutions that play an active and efficient role for the safeguard of the rule of law and the control of the institutions – the Procurator-General of the Nation, the Attorney-General of the Nation and the Ombudsman – and on the other hand, by a strong institutional human rights policy and a serious peace process between the Government and the insurgent forces, that according to authorized sources has reasonable chances of success, although not in the short term. In the economic sphere, Colombia has extraordinary natural resources, a not insignificant industrial infrastructure, a dynamic and well-prepared enterprise structure and an industrious population with many qualities, and at present the first signs of an initial economic recovery are being seen. In the social sphere, it should be noted that there is a relatively low rate of illiteracy for the continent (approximately 9.5 per cent in 1997 according to the Ministry of Labour, although according to the Ombudsman this rate has risen to 13 per cent), an educational infrastructure with numerous centres at all levels and study programmes and labour legislation that includes established training and social security institutions that cover unemployment, industrial accidents, illness and old age with a not insignificant level of protection although this has deteriorated in recent years (for example, according to the Ombudsman health cover only reaches 57 per cent of the population). In the field of labour relations the country has various negotiation bodies at the sectoral and general levels and has workers' and employers' organizations that are strong, autonomous and aware of their responsibilities during the current stage and that do not only unreservedly support the peace process but are actively involved in it in various ways, in tune with the massive expressions by the civilian population in favour of peace, sometimes in the form of multiple demonstrations that on some occasions have amassed – according to the National Association of Manufacturers – more than 10 million people fed up with the violence unleashed by a small minority situated on the fringes of the law. Likewise, the Colombian people are hugely supportive of one another and can have access to a network of as many as 50,000 NGOs in the social and human rights defence spheres. Certainly the armed conflict, as well as its spectacularly high economic cost, has considerably hindered social progress and exercises a harmful influence on the economy and the daily lives of the Colombian people and as a result peace is society's number one aspiration.

The intensity and frequency of acts of violence is extraordinary – in fact Colombia is the most violent country in Latin America, and one of the most violent in the world. As regards human rights the principal perpetrators can be identified in the following order: common criminals, the self-defence forces, the insurgent guerrilla groups, the drug traffickers who do not hesitate to use armed gangs against anybody who reports them or in any other way damages their interests, and a certain number of members of the security forces. In 1998 the crime figures reflected over 250,000 offences and 855,000 infringements, and the annual average of violent deaths (including those caused by traffic accidents) has stood at around 25,000 over the past decade; the Minister of the Interior quoted the figure of 26,000 homicides per year (equivalent to 60 for every 100,000 inhabitants), 85 per cent of which are the result of common crime. As regards murder, politically or ideologically inspired violence, excluding common crime and armed struggles, kills approximately 2,500 people each year from all social categories – politicians, mayors, governors, judges, prosecutors, senators, members of Congress, journalists, teachers, businessmen, tradesmen, the religious, social leaders, trade unionists, etc.; if massacre victims are included this figure rises – according to the Ombudsman – to 3,500. It is not exaggerated in the context described to speak of a widespread climate of escalating violence. According to the National Association of Manufacturers, in 1999

²⁷ Colombia is one of the few countries in Latin America to have almost always remained a civil democracy during the last century, although it very frequently had recourse to a state of siege.

2,945 abductions were reported within the country, of which at least 12.6 per cent were politically inspired; the overwhelming majority of abductions are perpetrated by insurgent movements or common criminals. According to the Ministry of Defence virtually all abductions can be attributed to guerrilla groups, with 5 per cent being the responsibility of paramilitaries. According to the trade union organizations, the real figures for acts of violence are much higher than those reported.

Exercising specific functions in political, economic or cultural life, expressing critical views against the perpetrators of violence, being situated to the left or the right – depending on specific cases – of the political spectrum, refusing extortion or concrete demands made by violent individuals fighting for peace or, sometimes, not taking sides, constitutes high-risk behaviour that can lead to murder, disappearance or abduction, not to mention the fact that in some regions or hot spots simple residence also involves considerable risks as corroborated by the country's many massacres.

Analysing the violence in Colombia is an extraordinarily complex task, not only owing to its historical causes and roots but also because of the changing nature of relations between its protagonists, who are at times antagonistic and at times in collusion. Many of those interviewed confirmed the existence of ties between drug trafficking and guerrilla or paramilitary groups, maintaining that the former was one of the main sources of financing of the latter. An evaluation of the situation becomes all the more complicated because the distribution of the violence, the positions of its perpetrators and their ties are fluid and vary according to the time and region considered (depending on the period and region in question, drug traffickers could be allied with paramilitary and guerrilla groups or could be confronting them; one guerrilla group could be opposing another;²⁸ likewise, a former guerrilla group could form a paramilitary group; there are also cases of connivance between the armed forces and the self-defence forces or paramilitaries). Furthermore, nothing prevents the perpetrators of the violence, who generally work in small groups, taking people unawares, using gangs of criminals to achieve their aims, and in fact a real "culture" of violence has been established which is extraordinarily sophisticated and efficient. In many cases it hides, disguises or distorts its origins and the minds behind it and even engages in "subcontracting" (mercenaries and hired assassins). At times the violence takes the form of massacres and at times it targets specific individuals. It is always tragic and often, particularly when it involves paramilitary action, it causes the forced displacement of the inhabitants of hamlets, villages and towns. Drug trafficking has a particularly insidious effect in that it fuels violence in major sectors of the guerrilla groups and self-defence forces owing to the economic impact of its financing; these protagonists, who also unscrupulously and tirelessly engage in various types of extortion – *boleteo*, *gramaje*, *vacuna*, etc. – and large-scale lucrative kidnapping (even on a collective basis when it is known as "miracle fishing"), have become a conglomeration of economic interests, which in the case of the guerrilla groups has to some degree detracted from their position as fundamentally political organizations in the service of the armed struggle for political power. In fact, according to government calculations, between 1991 and 1996 the guerrilla groups earned around US\$1,800 million.²⁹

One of the country's principal guerrilla organizations – which are the oldest in Latin America – is the Revolutionary Armed Forces of Colombia (FARC) whose objective is to take power and which, according to the Government, operates along the lines of orthodox

²⁸ For example, according to the Minister of Defence there have been over 800 deaths in connection with confrontations between the FARC and the EPL.

²⁹ According to the Minister of Defence, drug trafficking provides \$1,000 million each year for the insurgent army.

communism with pro-Soviet leanings. It has an advanced military capacity, seven blocs and 66 fronts and is calculated to have between 12,000 and 20,000 armed troops. It is present to a greater or lesser extent in 522 of the country's 1,069 municipalities. The National Liberation Army (ELN) is also fighting for power and, according to the Government, its establishment was inspired by the Cuban revolution and the theory of the revolutionary "focus". It is organized into fronts or columns that act with considerable military autonomy, its dependence on its central command is weaker and more relative than in the case of the FARC. It has between 4,300 and 5,000 troops under arms who have traditionally had recourse to extortion, abduction and attacks on multinationals, in particular those drilling for oil or installing oil infrastructure plants. The Popular Liberation Army (EPL), which according to government sources has about 330 members (although the Procurator-General of the Nation estimates the figure at between 600 and 800), the Jaime Bateman Movement and the People's Revolutionary Organization (which also goes by the name of the Jorge Eliécer Gaitán Movement) are also extreme-left organizations under arms but they have considerably fewer troops and less territorial presence than the two abovementioned organizations. The insurgent groups recruit minors into their ranks who, according to the National Association of Manufacturers, represent between 20 and 30 per cent of soldiers.

The self-defence forces, also called paramilitary forces, are extreme-right groups financed by landowners, large estate owners, cattle farmers, tradesmen, farmers and depending on the region, drug trafficking (many drug traffickers are also large estate owners). They developed from the 1960s onwards in rural areas, with legal protection and often with military support or patronage, with the objective of defending private property (in many cases large estates), the local political power and above all themselves against guerrilla abuse (extortion, abduction and murder). Over the years these self-defence forces began to develop alliances amongst themselves (at times associating with drug traffickers and in some cases attacking rival drug traffickers in the context of the development of drug cartels) before grouping themselves in 1996-97 into a united movement of autonomous groups known as the United Self-Defence Forces of Colombia (AUC), which has a strategy of providing assistance and military and logistic training for the establishment of new groups for regions requesting them. The AUC do not attack the army, they combat guerrilla groups, they are a type of counter-insurgency and have extended their influence in the rural and urban spheres to over 20 of the country's departments in the regions of Córdoba, Urabá, Magdalena Medio, the eastern plains, southern Bolívar, Santander, Caquetá and Putumayo. They are estimated to have between 4,000 and 5,000 troops although they put the figure at over 11,000. According to the Deputy Attorney-General of the Nation, the AUC are responsible for 90 per cent of the human rights violations committed by self-defence forces within the country. They are the principal perpetrators of the murders of and acts of violence against trade union leaders and trade unionists, who they consider to be para-guerrilla (they view human rights defenders in the same way), and also of massacres. Other self-defence and paramilitary forces such as the squadrons of the drug trafficking gangs, have fought the state security forces, eliminating adversaries and competitors within their illicit business and abducting or killing civilian and political personalities who have taken measures contrary to their interests or raised critical voices; they have violently disputed territories with the guerrilla movements in order subsequently to purchase land; and lastly they have used terrorist tactics and their victims have frequently been trade union leaders. Furthermore, according to the Government, a number of paramilitary groups were established from 1991 onwards to protect former members of the Hope, Peace and Freedom Movement (a section of the Popular Liberation Army) reintegrated into civil society from attacks by their former comrades and by the FARC. There were also violent groups engaged in social cleansing whose purpose was to exterminate marginal categories of people.

The perpetrators of the violence used to their advantage the country's geographic features (borders, mountain ranges, coasts, etc.) and the extensive depopulation of many regions.

C. Violence against trade unionists

As already described in general terms, closely linked to the armed conflict there is another type of violence which is principally attributed to the self-defence and paramilitary forces and the guerrilla groups and which specifically targets the civilian population. The aim of these groups is to establish their own power, to consolidate positions of political and territorial power and to strengthen their bargaining capacity and their political influence. For this they use destabilizing tactics – either massacres or targeted assassinations – against individuals in certain posts or professions who profess a given ideology or political affiliation to either the left or the right of the political spectrum, who refuse to support the interests of the violent or who are suspected either rightly or wrongly of collusion, collaboration or hostility with any of the protagonists in the armed conflict, with the exception of some murders which are attributable to state agents. In addition to trade union leaders and trade unionists, the selective violence also affects to a similar or greater extent – although apparently not to such a degree as the trade union leaders – other categories including politicians (above all local ones), tradesmen, teachers, businessmen, journalists, people working in the field of justice and defenders of human rights. For example, according to the National Federation of Merchants (FENALCO) more small businessmen and tradesmen die than trade union leaders; in 1999 the self-defence forces and the FARC abducted 1,000 people and approximately 200 were murdered. The National Association of Manufacturers (ANDI) spoke of the murder of affiliated employers and the threats that are constantly addressed to employers – as they are to trade union leaders – concerning their lives and those of their families, as well as their business premises. The ANDI considers the main causes for these murders to be the same: the internal armed conflict affecting the entire nation, drug trafficking which has undermined civic values, the lack of the appropriate administration of justice, and organized common crime. Without refuting these factors, the trade union confederations note the Government's passiveness with regard to the murder of trade unionists and the lack of political will to put an end to this situation.

The number of trade union leaders and trade unionists murdered in Colombia in the past 15 years is unprecedented. According to Ministry of Labour sources, during the period 1991-99, 593 trade unionists were murdered (132 of them were trade union leaders), while according to sources close to the trade union movement (National Trade Union School) 1,336 trade unionists were murdered (266 of them being trade union leaders). Other trade union sources indicate without specifying any particular period that over 2,700 trade unionists have been assassinated. The Deputy Attorney-General of the Nation in his interview with the mission referred to 1,200 cases of human rights violations against trade unionists (homicides, disappearances, threats, abductions and torture) since 1991.

Virtually all the murders of trade union leaders relate to leaders of the Single Confederation of Workers of Colombia (CUT) and its affiliated organizations. It should not however be forgotten that the leaders of the other trade union confederations (first and foremost the General Confederation of Democratic Workers of Colombia (CGTD) and to a considerably lesser extent the Confederation of Workers of Colombia (CTC)) and of their affiliate organizations have also been the target of murders, and in addition, like the CUT, are currently falling victim to abductions and threats.

There are some 2,600 trade union organizations in the country, with the CUT being the most representative confederation. Autonomous vis-à-vis the Government and the

employers, within the CUT various ideologies and a majority of independent trade unions coexist. In addition it has declared its neutrality vis-à-vis the armed conflict. According to the Government, the vast majority of murdered trade union leaders within this confederation over the past decade belonged to FECODE (academic sector), SINTRAINAGRO (workers from the farming sector), USO (workers from the oil sector) and FENSUAGRO (workers from the farming sector); those murdered were working in the departments of Antioquia (highest proportion by far), Santander, Magdalena, Córdoba, César, northern Santander, Cauca, Valle, Grisalda, Bolívar, Caquetá, Caldas, and Sucre and in the city of Bogotá. According to the National Trade Union School, in 1999 the departments where murders of trade union leaders were committed were Antioquia (highest number of cases by far), Bogotá, César, Cundinamarca, Risaralda, Santander, Valle and Magdalena. The vast majority of murders occurred in regions where the armed conflict was at its most intense and they were also strategic from the point of view of geography, natural resources and communications as well as occurring in areas with a high concentration of drug cultivation or processing. It emerged from interviews with the CUT, the CGTD and the CTC that it is not unusual for trade unionists to find themselves “sandwiched” or “caught in the crossfire” between the various protagonists to the conflict as they are also performing their activities in regions where the armed groups are fighting or operating.

The mission is pleased to be able to inform that since 1998, the year the complaint was submitted under article 26 of the Constitution of the ILO, up until the end of February 2000 there has been a very considerable reduction in the number of murders according to information from the Ministry of Labour and Social Security and the National Trade Union School. The mission must however express its concern about the considerable discrepancy between the figures provided by the two sources and bring this to the attention of the Committee on Freedom of Association.

Tables provided by the Ministry of Labour

Homicides of trade union leaders (1991-99)

1991	1992	1993	1994	1995	1996	1997	1998	1999	NS	Total
10	38	19	26	21	18	30	4	9	5	132

Homicides of trade unionists (trade union leaders and unionized workers) (1991-99)

1991	1992	1993	1994	1995	1996	1997	1998	1999	Total
34	70	73	52	74	128	127	23	12	593

Table provided by the National Trade Union School

Murders of trade union leaders and unionized workers

	1991	1992	1993	1994	1995	1996	1997	1998	1999	Total
Unionized worker	91	98	190	86	149	227	117	62	50	1 070
Manager	18	50	26	27	32	26	39	29	19	266
Total	109	148	216	113	181	253	156	91	69	1 336

According to the figures from the Ministry of Labour the number of trade union leaders murdered during the period 1998-99 fell by 73 per cent with respect to the period 1996-97, while for the National Trade Union School this figure stands at 26 per cent. As regards the total number of trade union leaders and unionized workers murdered the level of reduction is 86 per cent according to the Ministry and 61 per cent according to the School.

This fall in the number of murders of trade union leaders may in part be due (although it is difficult to identify the causes exactly) to the advent of peace in some regions and to the programme implemented by the authorities to protect the lives of trade union leaders and human rights defenders (granting them self-chosen bodyguards, safeguarding trade union premises, arranging trade union leave and transfer authorizations, transfers outside the country, etc.) which has made it possible to save the lives of a number of trade unionists, but some sources also consider that it can be attributed to the effects of fear on the persons under threat. It is difficult to know if the trend seen in the reduction of murders will continue. According to the Government and the documentation submitted by the Minister of the Interior, the programme was boosted in 1999 by a sum of 8,000 million pesos (over \$4 million); protection has been or is still being provided to 41 trade union premises which have been reinforced and 15 further ones are currently the subject of risk and technical evaluations with costs having reached 1.5 million pesos; protection is being provided to 116 leaders and activists, 48 per cent of whom are trade unionists; in some cases these individuals are allocated vehicles; bodyguards (87) are made available to secure the premises (46), and protect the leaders (41), of 21 organizations, involving a cost of 1,934 million Colombian pesos; financial assistance for individual emergencies (46 million pesos) is provided; self-defence courses are given and radios are provided to communicate early warnings to the authorities; a total of 70 leaders are protected using various measures. In a further 36 cases, the Committee for Risk Evaluation considered that no special protection was needed.³⁰ It appears from the available documentation that the system for protecting people at risk from causes related to politically or ideologically inspired violence or to the internal armed conflict dates back to 1996 and has been gradually improved and strengthened.

The trade union organizations consider that these measures and the corresponding budgetary provisions are insufficient given that the murders, abductions and threats against trade unionists are still going on and that apart from the bodyguards, who afford protection for a small number of trade union leaders, the protection provided by the other measures is very limited.

However, it should be pointed out that the fall in the number of murders – which nevertheless continue to be a regular occurrence³¹ – is not repeated – as the trade union confederations have pointed out – as far as the number of death threats addressed to and abductions of trade unionists are concerned. These have continued to rise, as they have

³⁰ The Ministry of the Interior indicates in the documentation submitted to the mission the names of 59 murdered trade union leaders which were not submitted to the Committee on Risk Evaluation (which is comprised of various authorities, two representatives of civil society in which one delegate from the United Nations High Commissioner for Human Rights and delegates from the institutions seeking protection (the latter having the status of guests) participate).

³¹ Between the last examination by the Committee on Freedom of Association of Case No. 1787 in November 1999 and the end of the mission (16 February 1999) the following trade union leaders were murdered: Mr. César Herrera, treasurer of SINALTRAINAGRO, on 13 December 1999 and Mr. Jesús Orlando Crespo García, a member of the Valle departmental board of the CUT and chairman of the Workers' Trade Union of Bugalgrande – Valle del Cauca.

throughout the country as a whole; nevertheless, there have been no recent cases submitted to the Committee on Freedom of Association concerning disappearances. During the interviews held with trade union leaders the mission was handed a very recent anonymous letter threatening the trade union leaders of CUT-Valle and a number of leaders confirmed that they had recently received death threats. As a result, although the number of murders has fallen, the situation continues to be a cause for concern and it will go on being so until these extremely serious acts of violence cease.

According to the Government these murders – which it deplors and about which it expresses its concern – are due to the victims' political affiliation, their active or passive participation in the armed conflict or the simple fact that they live in a violent area; they do not seek per se to obstruct, destroy or restrict the exercise of trade union rights but are instead symptoms of the situation of internal armed conflict prevailing in the country. In a second written communication given to the mission the Government indicates that the victims of aggressions are assaulted “as a result of their political affiliation, their active or passive participation in the armed conflict or the simple fact that they live in a violent area”. Generally speaking, the Government considers violence against trade unionists to be an expression of the internal armed conflict. The Procurator-General of the Nation and the Deputy Attorney-General of the Nation, without denying the existence of political motives in many cases, confirmed that some murders occurred for trade union reasons and the Deputy Attorney-General set this figure at between 5 and 10 per cent of the total.

As regards these declarations, and without trying to establish any percentages, in the view of the mission the fact that most murders of trade union leaders occurred in areas where the internal armed conflict was at its most intense and that this is one of the main causes for violence against trade unionists given that most of the perpetrators of these murders come from armed groups participating in the conflict, does not support a general statement that such murders are unrelated to their status as trade union leaders or to their trade union activities, particularly in the case of areas where social and labour conflicts are particularly hostile. In general, their status as trade union leaders is a fundamental factor in the murders of these individuals, whether or not they are involved in political activities. It is clear, however, that the objectives may be anti-union, political (and/or subversive) or mixed, with the exception of a small number of murders imputable to common crime. Furthermore, the publication entitled “Human Rights Observatory” issued by the Office of the Vice-President of the Republic indicates that “the armed hostilities have a disastrous ripple effect beyond the immediate confines of the conflict”. In fact, the links between types of violence (political or otherwise) are far from clear, particularly bearing in mind the confusion caused by the armed conflict. In this respect it cannot be forgotten that the vast majority of murders of trade union leaders are ascribed to self-defence or paramilitary forces, which the Government classifies as belonging to the far right, and which are financed by individuals who are in all likelihood hostile to any concept of trade unionism and that another part of the murders that have occurred during the last decade is attributable to drug traffickers whose illegal cultivation and processing of drugs are far from compatible with tolerance for trade unionism. The mission also considers that the motives could have been both anti-union and political, particularly where the victims belonged to left-wing organizations or parties such as the Communist Party or the Patriotic Union, legally recognized parties just as the political activities of trade unions have been legally recognized since the 1991 Constitution. As regards trade union leaders affiliated or related to guerrilla groups in part reintegrated into civilian society who were murdered by their former collaborators or by another guerrilla group, it is highly likely that the motive behind the murders was exclusively or predominantly political. It is more difficult to reach conclusions, even approximate ones, as to the murders of trade union leaders labelled as “suspected” of sympathizing or collaborating with – depending on the case – the army, the self-defence forces or a guerrilla group, as this suspicion may be real or a pretext to mask an anti-union act. Having said this, there can also be individual cases of murders for

personal reasons or murders of trade union leaders who were judges or prosecutors, the objective of which was to hinder or prevent criminal investigations or proceedings being carried out. Lastly, determining the motive for the murder of unionized workers who are not trade union leaders comes up against obstacles that are often insurmountable, especially when they occur during massacres in which they die indiscriminately together with many other people (old people, women who perform domestic duties, children, non-unionized workers), all the more so in cases where the complainant organizations limit themselves to indicating the fact without giving any further details (degree of union affiliation, participation in trade union activities, etc.). These considerations concerning the motives for murders cannot be definitive as it is only by identifying and trying those guilty that certainties can be achieved, and, as we will see later, in practice identifying those guilty is somewhat of an exception in such murders. Moreover, although the motive for the murders may be relevant for the ILO, it is not from the point of view of human rights, as one trade union adviser pointed out.

As regards the perpetrators of the violence against trade union leaders, the people interviewed agreed that the vast majority of the violations of human rights are generally attributable to the paramilitary forces (76 per cent according to sources quoted by the United Nations High Commissioner for Human Rights) and to a much lesser extent to the guerrilla groups (18.6 per cent according to the same sources). These percentages were confirmed in similar terms by the Deputy Attorney-General of the Nation with respect to the perpetrators of acts of violence against trade union leaders as in a sufficient number of cases it is possible to identify the armed group behind such acts, although the actual perpetrator may be unknown. Neither is it unusual to know nothing at all about the perpetrator.

Concerning the participation of state agents in human rights violations (4.4 per cent according to the abovementioned sources), the trade union organizations include them among the perpetrators of murders of trade union leaders and trade unionists but do not give any indication as to the proportion and the total number of murders and very rarely refer to specific public agents. According to the Deputy Attorney-General, 64 trials are under way (covering a number of years) relating to 275 accused members of the armed forces and the police for general violations of human rights (i.e. without indicating either the category of victim or the type of violation). The Government indicates that the participation of state agents in human rights violations occurs only occasionally and the Ministry of the Interior underlined that it is a well-known fact that violations attributable to the State have plummeted, falling from 50 per cent five years ago to a current level of only 2 per cent. As we will see in the next section, the Attorney-General and the Procurator-General confirm the reduction of the number of state agents involved in human rights violations.

Various authorities interviewed stated that there have been cases, even recently, although few in their view, of involvement by public agents, particularly the armed forces, in the setting up of self-defence forces, as well as some cases of their passiveness, collusion or collaboration, through act or omission, with such forces.

In one of the communications addressed to the mission the Government declared that it does not tolerate, and in fact on the contrary it seeks out, the negligence, complicity or participation of members of its armed forces in infringements of fundamental rights and international humanitarian law. The Government points out that it ousts from the ranks of its armed forces members under investigation or who have previously been investigated for the types of infringement mentioned above, given that even doubt compromises the integrity of its armed forces. It adds that linkages between members of the armed forces and groups on the fringes of the law have occurred in exceptional and isolated cases and are entirely unrelated to any state policy. In all events, given this unlawfulness such

connections are condemned and sought out by the State. In addition to the legal proceedings that can be instituted in response to offences, the Government states that using its discretionary powers it has stipulated the forced withdrawal from the military service of any officials who, while still in active service, were tried or had been investigated by the judicial or disciplinarian authorities under suspicion of participation in infringements of fundamental rights through omission or negligent acts which could have facilitated such infringements. The Procurator-General informed the mission that in 1998, 99 members of the armed forces, including generals, were sanctioned or discharged.

The trade union confederations and organizations declared that there is a government strategy to eliminate the trade union movement through neo-liberal measures and that over the past ten years government practice is contrary to the right to life and integrity of the individual. Other declarations received by the mission maintain that there is no government policy contrary to the physical integrity of trade union leaders or to persecute them deliberately, and neither is there a policy to promote collusion between state agents and self-defence or paramilitary forces. High-level state bodies declared that they condemned the existence and actions of these groups and referred to forceful combat measures taken by the army against self-defence and paramilitary forces. As regards the cases of collusion between state agents and self-defence or paramilitary forces, these appear to concern practices arising from old and deep-rooted traditions in certain sectors of the army.

However, on all these issues, and going beyond the cases reported and submitted to the authorities, the mission must point out that the content of the reports submitted to the mission by the Inter-American Commission on Human Rights (February 1999) and the United Nations High Commissioner for Human Rights (March 1999) differs considerably to the government view that the linkages between members of the armed forces and groups on the fringes of the law occurred in exceptional and isolated cases. According to the Inter-American Commission on Human Rights (part of the "Executive summary"):

Even when in recent years the State has declared its interest in combating the paramilitaries, the Commission has continued to compile and receive information reflecting the various degrees of cooperation between the paramilitary groups and the state security forces in certain areas of the country.

The information and testimonies received during the on-site visit reveal that members of the army and paramilitaries are pursuing joint operations. The report indicates that, in these cases, the members of the paramilitary groups should be considered as state agents. The available information suggests that, in other cases, even where they are not carrying out joint operations, the members of the army and the paramilitaries maintain strong linkages at a variety of levels. These connections frequently allow the state security forces to ask the paramilitaries to perform certain unlawful acts with the understanding that they will not be investigated, judged or sanctioned.

In other cases state agents acquiesce to the actions of the military groups or are responsible for omissions that allow these groups to commit acts of violence. It should be noted that even where state agents do not participate directly in the acts of violence, the State may be internationally responsible for the consequences of such acts whenever it acquiesces or does not take the reasonably necessary measures to prevent the violation or to judge those responsible in an appropriate manner.

According to the High Commissioner:

In many places, including Dabeiba and Virgía del Fuerte (Antioquia), southern Bolívar, Tolima, San José de Guaviare, Rionegro (Santander) and Carmen de Atrato (Chocó), the Colombia Office detected, either through direct observation or through first-hand information that, despite the denunciations

made by it and by other state and non-governmental entities, the collusion between the paramilitaries and the public security forces or civil authorities was ongoing, in some cases lasting for over a year. With respect to the cases the Office reported to the Government, for most of them no information was received concerning progress made in investigations or corrective measures. Its own observations, the statements by the actual paramilitary groups and consultations with independent experts led the Office to conclude that the paramilitary groups are not acting against the Government and that many of their actions are performed in conjunction with sectors of the security forces and some civil bodies. Action by the security forces against the paramilitary groups has been occasional and is not in proportion to the participation of these groups in the severe violations of human rights. Among the factors that indicate the lack of intention to effectively combat the paramilitary groups, emphasis should be placed on the fact that the location of many of their areas of concentration and training is public knowledge – of both the inhabitants and the authorities. Despite the fact that many of these places are also known to the Attorney-General's Office, the latter cannot intervene as it lacks the necessary support of the public security forces (police and military). Likewise, extensive information has been received concerning the use of helicopters by paramilitary groups to spread propaganda and for combat activities, such as in southern Bolívar in November 1998. It is not known how these numerous flights can escape air traffic control, which is very strict in Colombia.

Referring to the paramilitary groups the Ombudsman “noted with concern and informed the Government accordingly that it is becoming increasingly imperative to draw up an integral policy of state action to address this phenomenon, with the understanding that no approaches to achieving a solution should be ruled out and that it is up to the national executive to assume the leadership against this scourge, to bring the legitimate monopoly of force into state hands”.

Moreover, as regards the “Special Vigilance and Private Security Services” and the “Community Vigilance and Private Security Services” (known for a time as “CONVIVIR” associations), regulated by Decree No. 364 of 1994 and considered by certain sectors as an inducement to paramilitarism and which according to the Ministry of the Interior became self-defence forces, their strength was fortunately checked as a result of the Constitutional Court ruling C-572/97 of 7 November 1997, which restricted the functions of such services and declared invalid the paragraph of article 39 of the Decree that authorized the Special Vigilance and Private Security Services to use guns (and ammunition) on a restricted basis and ordered that they be returned to the general command of the military forces. According to the Ministry of the Interior the “CONVIVIR” associations no longer exist. They were originally intended as a form of cooperation with the security forces (sharing information and communication teams) but they turned into armed organizations. According to the Office of the High Commissioner, there are very few “CONVIVIR” associations now and they do not constitute the problem today. In March 1999 the Vigilance and Private Security Superintendence indicated that of 416 original “CONVIVIR” associations only 23 remained.

D. Impunity and measures adopted by the authorities to protect human rights

For most of the people interviewed, the shortcomings in the administration of justice constituted one of the principal causes of violence, and the lack of confidence in the effectiveness of the judicial system is well known throughout the country. The complexity of many judicial procedures and the excessive delays in the administration of justice in relation to both penal and labour issues (in the latter sphere particularly in specific districts) is also common knowledge, as are the excessive formalities or red tape seen in

many aspects of the country's administrative framework and in particular in the judicial sphere where it is not uncommon for similar legal actions to be won or lost for procedural reasons.

Although the Government recognizes that there is impunity in the country and it is very concerned about the human rights situation and particularly about the violations affecting trade unionists, it considers that the efficiency and effectiveness of the administration of justice cannot be evaluated in the same way as in other countries, as in Colombia, in addition to very high rates of common crime, an internal armed conflict of enormous proportions and extreme complexity is being waged in which the authorities' opponents have considerable military power, use irregular war strategies and have the capacity to resist intervention by the authorities. In this respect the Deputy Attorney-General told the mission that each prosecutor has a workload of an average of 300 investigations. Various people emphasized witnesses' fear of testifying.

The Government explains that given this situation it has taken all reasonably possible measures and underlines that considerable inroads have been made in bringing the major players in drug trafficking to justice. Furthermore, the Government notes that arrest warrants have been issued for the principal leaders of the United Self-Defence Forces of Colombia and of the guerrilla groups and that measures have been taken against a large number of their members, without forgetting those taken against members of the armed forces responsible for human rights infringements.

The authorities have also taken other steps to overcome impunity: increasing the legal budget by 49 per cent for the period 1992-97 (the highest in the Andean countries, to finance the highest number of judicial employees in those nations); purging and carrying out general restructuring in the national police force; various measures to relieve pressure on the justice system; new criminal categories in the Military Penal Code; the disciplinary actions of the Office of the Procurator-General of the Nation; the establishment in the Office of the Attorney-General of a Human Rights Unit and the creation of 25 special investigative subunits, one of which is responsible for cases of human rights violations of workers; the existence of various high-level committees responsible for organizing information, coordinating, monitoring and giving impetus to investigations (Inter-Institutional Commission for Workers' Human Rights – which includes representatives of the authorities, trade union confederations and NGOs; a special committee to give impetus to the investigation of the most relevant cases). Likewise, in the framework of the protection and promotion of human rights, mention should be made of the work of the National Standing Committee on Human Rights and International Humanitarian Law, the establishment of the National Consultative Committee (for state entities), the Monitoring Centre for Human Rights and International Humanitarian Law, and the National Information System on Human Rights and International Humanitarian Law, as well as the decision to set up a coordination centre for the struggle against the self-defence forces to include high-level political, military and supervisory entities. As far as prevention is concerned, particular mention should be made of the Programme for the Protection of Human Rights Defenders and Trade Union Leaders (more than US\$4 million), including bodyguard services and the safeguarding of trade union premises, the Committee for the Regulation and Evaluation of Risks which is part of the Ministry of the Interior, early warning systems and numerous training and awareness-raising activities targeting the armed forces and the civilian population. In addition, the Government referred to various important drafts of penal and procedural legislation and to various pieces of human rights legislation.

Furthermore, the Ministry of Labour has elaborated, adopted and implemented a plan of action for the promotion and protection of workers' human rights and the fundamental

rights of labour, with emphasis on freedom of association, as well as setting up and operating a specialized group to ensure the implementation of the plan.³²

Likewise, the Minister of Labour requested the Vice-President of the Republic to include cases which affect trade unionists on the agenda of the Special Committee to Promote Human Rights Investigations. The Ministry's database on human rights has been developed and the appropriate attention has been paid to the monitoring of cases before the ILO by the various state entities, particularly in the framework of the Inter-Institutional Committee.

The Office of the Attorney-General of the Nation, which deals with the criminal actions concerning serious violations of human rights, considers that the degree of impunity is approximately 40 per cent. It provided the mission with written information relating to the measures and proceedings taken against state agents and paramilitaries for the violation of human rights in general (i.e. without indicating categories of victims or types of violation). Sixty-four proceedings (covering a number of years) relate to cases where the perpetrators of the violence were members of the public security forces and/or state agents and charges have been brought against 275 members of the armed forces and the police. In 1997, according to the Attorney-General's Office, the number of state agents sentenced for various types of human rights violations was 111, in 1998 it was 175 and in 1999 it was 78. Between 1997 and 1999 there were 198 decisions on substance (judgements and the termination of procedures) which related to torture, disappearances, multiple homicides, violations of international humanitarian law and massacres. The regions most affected by these abuses were Santander, Santa Fe de Bogotá, Antioquia, Bolívar and César, which is explained in part either by the concentration of social problems or by the incidence on these regions of the internal armed conflict. The Procurator-General of the Nation confirmed the positive trend as regards a lower number of human rights violations attributable to state agents. With respect to the self-defence forces and the paramilitaries there are 105 proceedings and 119 investigations under way (pre-trial or preliminary), 447 people have been charged, 163 have been detained and 236 arrest warrants have been issued (including leaders). Security measures have been taken against 430 paramilitaries and 250 indictments have been handed down against paramilitaries, with 26 anticipatory judgements having been pronounced (confession with benefits). According to the Deputy Attorney-General arrest warrants were issued for all the leaders belonging to the United Self-Defence Forces of Colombia (AUC), which is the paramilitary organization that encompasses 90 per cent of all paramilitaries. As regards acts of violence caused by guerrilla groups, the Office of the Attorney-General stated that there are 26 proceedings and 118 charges pending; the Human Rights Observatory under

³² This plan includes the following aspects: the reactivating of the Standing Inter-Institutional Commission for the Promotion and Protection of Workers' Human Rights, as well as the establishment and integration of the Inter-Institutional Management System with the same objective; the protection and early warning programme concerning the violation of workers' human rights; the project for the promotion and dissemination of workers' human rights; the establishment of the network of promoters of workers' human rights; the forming of tripartite regional groups for the promotion of workers' human rights; and a promotional campaign for workers' human rights. In this connection, the Programme for the Promotion and Protection of the Fundamental Rights of Labour, with emphasis on freedom of association, includes: a special project for attention to workers' complaints and claims; the reactivation of the project for a new approach to industrial relations; the development and implementation of mechanisms for the promotion and protection of the fundamental rights of labour, with emphasis on freedom of association; the Programme for the Promotion and Protection of the Fundamental Rights of Labour, with emphasis on freedom of association; the publication of ratified ILO Conventions; and the elaboration and publication of educational and informative leaflets concerning agreements reached.

the Office of the Vice-President told of 272 arrest warrants issued for guerrillas, 20 detainees and 785 combat casualties.

The Deputy Attorney-General told the mission that maximum priority had been given to the 105 cases submitted to the Committee on Freedom of Association in order to concentrate the cases in the hands of a small number of prosecutors as there is information that is common to a number of cases. According to the Deputy Attorney-General, of the 105 cases of violence against trade unionists contained in Case No. 1787 before the Committee on Freedom of Association, in three cases the perpetrators were identified and brought before the courts to be tried; in ten cases a formal investigation was opened in connection with specific individuals (suspects), an investigation was initiated and security measures were taken; in 79 cases preliminary proceedings were instituted and it has been possible to locate the group involved but not the actual perpetrators, nor has it been possible to assign responsibility; in 12 cases the proceedings were suspended – although not filed – following the expiry of the legal deadline; a further case fell outside the competence of the Attorney-General's Office and was transferred to the military criminal justice system.

Furthermore, in accordance with Constitutional Court pronouncement C358 of 1997, which established the cases which correspond to the civil courts and those that correspond to the criminal courts, assigned to the former court crimes of humanity that include serious violations of human rights, and in consequence a total of 505 cases have been transferred from the military criminal courts to the ordinary criminal courts. In this ruling the Constitutional Court confirmed the jurisdiction of ordinary courts in cases of human rights violations and crimes against humanity originating in actions by the armed forces. However, when there are conflicts of jurisdiction between the civil and the military courts the Superior Council of the Judicature (the competent body for hearing such disputes), according to a statement by the Deputy Attorney-General of the Nation to the mission, has relatively frequently adopted decisions in favour of the latter against the opinion expressed by the Office of the Attorney-General. According to the Human Rights Observatory under the Office of the Vice-President, in 1998 79 jurisdictional disputes were settled between the military and the ordinary criminal courts, it being decided by the Superior Council of the Judicature to transfer 49 cases to the ordinary criminal courts. During the second quarter of 1999 the military courts adopted 56 sentences, 32 acquittals, 16 absolute discharges and nine temporary discharges of members of the army. Likewise, as already mentioned, the Office of the Procurator-General of the Nation has in some cases taken the disciplinary measure of withdrawing army generals, high-level officers and junior officers from service.

The Office of the Procurator-General of the Nation has noticed that in the few cases submitted to the ILO concerning human rights violations of trade unionists attributable to state agents (homicides, disappearances, arbitrary detentions and threats) insufficient concrete information has been provided for the Office to carry out disciplinary procedures and it explained that this would not be possible until the complainant organizations provided further details.

While it is true that with respect to human rights in general there have been many encouraging initiatives and recent advances in the struggle against impunity that translate into the detention and sentencing of a large number of paramilitaries, guerrillas and state agents – including very high-level officers in the armed forces – and of an extremely high number of drug traffickers, and also that more cases have been submitted to the ordinary courts as opposed to the military ones and many actions and programmes have been implemented with the objective of promoting and enhancing respect for human rights and strengthening the institutions, the fact remains that, as mentioned previously, cases where the instigators and perpetrators of the murders of trade union leaders are identified are

practically inexistent, as is the handing down of guilty verdicts, which is why efforts in the struggle against impunity should continue. Nevertheless, three provisos should be made: the first is that the Human Rights Unit for Workers' Human Rights, under the Attorney-General's Office has been able to identify and capture most of the alleged perpetrators of two particularly relevant and symbolic crimes of people linked to the trade union movement, namely the case of the murder of Jorge Luis Ortega, Vice-President of the CUT and of Eduardo Umaña Mendoza,³³ well-known adviser on trade union and human rights issues, as well as the case of a third trade union leader, and has formally initiated the investigation relating to specific individuals (suspects) in ten further cases, with security measures having been taken. The second proviso is that according to reports issued by the Office of the Procurator-General (1999) and the Office of the Attorney-General (1998-99) drug trafficking, one of the most vicious sources of direct violence against trade union leaders and trade unionists, has certainly felt the impact of the measures adopted by the Government, the Office of the Attorney-General and the judicial authorities. More specifically, the Office of the Attorney-General provided the following information concerning drug trafficking (1998-99 report): arrested for drug trafficking – 1,418; arrested for unlawful enrichment – 68; total arrests – 1,486; security measures with detention – 4,541; indictments – 2,615; anticipatory judgements – 1,636. The Medellín and Cali cartels have already been dismantled but smaller cartels and many drug traffickers still remain at large. Recent attempts on the lives of trade union leaders and trade unionists by drug traffickers have not been reported to the ILO but all manner of sources have confirmed the pernicious effect of drug trafficking since the 1980s on the dynamics of violence and public and private corruption and on the financing of the illegal armed groups in exchange for protection provided for the crops and laboratories where the narcotics are produced.

E. Trade union legislation from the point of view of the application of ILO Conventions Nos. 87 and 98

One of the questions raised in the complaint under article 26 of the Constitution of the ILO in 1998 refers to the lack of compliance of legislation with Conventions Nos. 87 and 98 (ratified by Colombia in 1976), despite repeated observations and requests by the Committee of Experts on the Application of Conventions and Recommendations and by the Conference Committee on the Application of Standards with reference to 17 questions. This problem has been emphasized over the years by the trade union confederations CUT, CGTD and CTC.

The mission took note of Bill No. 184 submitted to the Congress of the Republic, the aim of which is to harmonize the legislation with the majority of observations made by the Committee of Experts. This Bill was approved by the 7th Senate Committee in first discussion on 9 June 1999. Subsequently, after having taken into account the observations made by the National Association of Manufacturers (ANDI) and having been presented with a series of proposals by the Single Confederation of Workers of Colombia (CUT), the majority of which were considered to be viable by the Government, successive meetings were held in the 7th Senate Committee in which representatives of the trade union movement and of the Ministry of Labour participated. The Bill was passed by the Senate in plenary on 15 December 1999, and all that remains is its legislative discussion before the

³³ This second case at least is linked to action taken by the Committee for the Monitoring of Investigations into the most serious human rights violations and infringements of international humanitarian law, which seeks to improve the coordination between the entities responsible for conducting investigations and to improve their speed (this Committee is made up of high-level government authorities and entities with investigatory functions; it involves the NGOs in its work).

House of Representatives. The Government classified this Bill as urgent and convened the Congress of the Republic for extraordinary sessions during which the Bill was to be discussed and finalized before 16 March 2000.

The mission would like to indicate that at its November meeting the Committee of Experts noted that Bill No. 184 repealed or modified 11 points that it had been denouncing for a number of years. In particular, the Bill repeals or modifies the provisions of the Substantive Labour Code listed below:

- it repeals section 365(g) on the requirement, in order for an enterprise trade union to be registered, that the labour inspector must certify that there is no other union;
- it repeals section 380(3) which provides that any member of a trade union executive who has been responsible for the dissolution of a union as a sanction may be denied the right of trade union association for up to three years;
- it repeals section 384 on the requirement that, in order to form a union, two-thirds of its members must be Colombian;
- it modifies section 388(1)(a) and section 442(1) on the need to be of Colombian nationality to hold executive office in a trade union or higher level organization in the sense that the Bill provides that “in no case may the trade union executive be made up of a majority of foreigners”;
- it modifies section 388(1)(f) which requires that a person must not have been condemned to a serious penalty (unless he or she has been rehabilitated) nor sued for ordinary offences at the time of election, in the sense that the Bill leaves the trade union organization to determine in its statutes the requirements to hold executive office in a trade union in addition to being a member of it;
- it deletes section 422(1)(c) on the need to have exercised the activity, occupation or position characteristic of the trade union in order to hold office in a federation or confederation and the Bill leaves it to the trade union organization to establish in its statutes the requirements to hold executive office in a federation or confederation, in addition to being an active member of an affiliated organization (this provision not being required if it is found that the worker in question was dismissed or persecuted on the grounds of his trade union activities);
- it deletes section 422(1)(f) which requires that a person wishing to hold office must not have been condemned to a serious penalty, unless he or she has been rehabilitated, nor sued for ordinary offences at the time of election;
- it modifies section 432(2) on the requirement to be of Colombian nationality in order to be a member of a delegation submitting to an employer the list of claims that are being made, in the sense that the Bill deletes this requirement;
- it modifies section 444, last subsection, on the presence of the authorities at general assemblies convened to vote on the referral of differences between the parties to arbitration or on the calling of a strike, in the sense of leaving the trade union organization the option of having a labour authority present or not;
- it modifies section 448(3) which provides that “when a strike is called, the Minister of Labour and Social Security, ex officio or at the request of the trade union or trade unions representing the majority of workers at the enterprise, or if not, of the workers gathered in a general assembly, may, once a strike is called, submit to a ballot by all the workers in the enterprise whether they wish to submit the remaining dispute to

arbitration”; the Bill removes the possibility of the Minister of Labour being able *ex officio* to submit to a ballot by the workers at the enterprise the summons to the court of arbitration in the case referred to; and

- it modifies section 486 on the administrative supervision of the internal management of trade unions, in the sense that it can only be required for trade union leaders and affiliates to submit information and documents and take preventive measures to avoid legislative violations when there is a request by the trade union and/or the second or third level organizations to which the trade union organization is affiliated.

In addition, Bill No. 184 contains other amendments that include further important improvements and in particular removes the obligation for trade union statutes to regulate matters concerning the refund of dues or contributions to affiliates in the case of voluntary withdrawal or expulsion. It provides that entry on the trade union register is intended to continue to authorize statistics on active trade union organization. It provides that the statutes rather than being recorded are instead deposited with the Ministry of Labour and Social Security. It provides that the certificate of inscription is not registered with the Ministry but is instead recorded and provisions are made for the possibility of the inscription being carried out before a mayor when there is no Ministry office available. The Bill establishes express recognition of work stoppages or standstills in the event of strikes attributable to the employer due to failure to comply with wage obligations. It also establishes the rights of trade union federations and confederations or central organizations to the deduction and payment of federal dues that the affiliated trade union is required to pay, and regulates the proof of the existence of trade union immunity, also extending that immunity to public servants except in a very limited number of cases. It recognizes the right to trade union leave in public entities and makes provision for the legal regulation of this right in consultation with the trade union central organizations. Lastly, it restricts compulsory arbitration to the essential public services instead of public services in general.

The trade union confederations CUT, CGTD and CTC fully support the observations of the Committee of Experts and also Bill No. 184.

The National Association of Manufacturers (ANDI) understands most of the observations made by the Committee of Experts and in general accepts Bill No. 184, but objects that certain points do not guarantee equality of treatment for employers and that the proposed wording of others is not always technically correct or jeopardizes legal security.³⁴

Furthermore, the mission took note of two draft bills prepared by the Ministry of Labour. One of them lists the essential public services in which strikes can be prohibited and compulsory arbitration imposed and the other regulates the right of public employees respectfully to present statements of claims to the authorities. In consultation with the

³⁴ In the view of the ANDI, the Bill does not take sufficient account of the significance of the trade union register and the effect of publicity of and opposition to its contents on third parties, including employers. Likewise, because it restricts labour inspection only to the employer, while it should extend to the parties involved in the legal labour relationship, that is to say employer, worker and trade union. It also considers that in assemblies where votes are going to be taken on strikes or summons by the court of arbitration, the inspection body should be informed so that if it sees fit it can attend as guarantor of compliance with the legal quorum and with the formalities to adopt the decision in question. As regards the question of essential public services, this organization maintains that first of all there should be a definition of what is understood by such services in the context of Colombia and given the prevailing situation in the country (which in its view render essential for example banks, education, the judiciary and oil), while the workers would like a list of these to be established. It declared that it was ready to hold discussions and reach agreements on any labour or wage-related matter.

competent officials from the Ministry of Labour, the mission formulated proposed amendments to these draft bills, after indicating that these would not preclude possible observations by the Committee of Experts or other supervisory bodies and stressing that particular care should be put into ensuring that these proposals were in line with ILO principles in the areas of freedom of association and collective bargaining and with all the requests of the Committee of Experts. For this reason, the proposed amendments also include other points that were not contained in the draft bills prepared by the Ministry of Labour, for example the possibility of summary proceedings before the judicial authority against the decision of the administrative authority to declare the illegality of strikes, the express inclusion of the expression “collective bargaining of public employees”, the right to strike of federations and confederations and the conversion of compulsory arbitration, on the request of the Minister of Labour when strikes extend beyond 60 days, into arbitration that must be ratified by the parties to the conflict after 30 days of strike. The Minister of Labour agreed to discuss the draft bills prepared by the Ministry and the texts drawn up by the mission (proposing amendments to the former and also covering other issues) with the social partners in accordance with the country’s legally established procedures, in order to submit them to Congress with any resulting changes. One of the Minister’s advisers indicated that the texts could pose problems of unconstitutionality. The Government committed itself to completing the formalities as soon as possible for the ratification of ILO Conventions Nos. 151 and – if the Constitutional Court declares it to be compatible with the Constitution – 154, which relate to the collective bargaining of public employees and which have already been approved by Congress. The Constitutional Court has already verified the constitutionality of the Labour Relations (Public Service) Convention, 1978 (No. 151) with a positive outcome and should reach a decision on the Collective Bargaining Convention, 1981 (No. 154) before 16 May 2000.

The President of the Republic, like the Minister of Labour, expressed willingness to adapt legislation to the requirements of ILO Conventions Nos. 87 and 98 and to ratify Conventions Nos. 151 and 154 (with the reservation that the Constitutional Court approves the latter). The Minister of Labour requested the presence of the ILO during the discussion of the abovementioned draft bills.

As regards two issues raised by the Committee of Experts (recognition of the right to collective bargaining of federations and confederations and the majority required for collective bargaining with the industrial union), the mission considered it best not to include them in its proposed amendments, bearing in mind the technical information provided by the competent officials at the Ministry of Labour, and instead to submit the information to the Committee of Experts for evaluation. More specifically, the officials explained that federations and confederations, with the exception of the calling of strikes (a question which is addressed in the proposed amendments suggested by the mission), have the same powers as the trade unions (including the right to collective bargaining) under section 417 of the Substantive Labour Code; in addition, section 467 makes express reference to the right to collective bargaining of federations without forgetting that trade union central organizations have concluded agreements at a centralized level. As regards section 376 of the Code, which relates to the requirement for the trade union to comprise more than half the enterprise’s workers, this refers to a situation in which the effects of the collective agreement apply to all workers; when no trade union (enterprise or industry) meets the legal conditions to negotiate on behalf of all the workers, it can negotiate on behalf of its members even if there are not very many of them; the difference lies in the fact that when over a third of the workers in an enterprise belong to an enterprise union the collective agreement applies to all workers whether they are unionized or not (section 471), while in the case of an industrial union this proportion is replaced by the membership of the majority of workers in order for the same effect to be achieved.

In a communication from the three Colombian trade union central organizations (CUT, CGTD and CTC) addressed to the mission, the organizations referred to 49 provisions of the Substantive Labour Code which in their view violate all or certain aspects of Conventions Nos. 87 and 98. The mission found that the majority of these provisions had not been commented on by the Committee of Experts and that some others were being addressed in conjunction with the bills or draft bills of legislative reform under way. It therefore submitted the communication to the attention of the Committee.

The Ministry of Labour has established a programme, in which the three social partners are to be involved, to bring legislation into line with ILO standards in general.

F. Labour relations and the Standing Negotiation Committee on Wages and Labour Policies

This Standing Committee established by the national Constitution of 1991 is of tripartite composition, it adopts its decisions by consensus, it can meet on the request of any sector represented and it has wide-ranging functions that go from contributing to the solving of conflicts and setting labour policy and minimum wages to preparing legislative bills and dealing with the various questions relating to the ILO. Some of these functions are also entrusted to the departmental consultative committees.

The Consultative Committee is a valuable tool for labour relations in that – with the exception of the successful experiences of concluding pacts and agreements in 1996 and 1998 – has helped to establish good personal relations between the members of the sectors represented, and irrespective of results, it remains at least a forum for the exchange of information and for consultations between the Government and the social partners on the big questions: unemployment, fall in labour revenue, economic recovery, fiscal policy and budgetary issues, etc.

During the past year various exchanges and meetings took place. In the previous two years the subject of the legal minimum wage had been discussed but no agreement was reached. At the end of 1999, the parties nevertheless reached agreement – and this is more important than it may seem – on presenting a joint declaration for peace and against violence in which they expressed their commitment to a political solution to the armed conflict and their objective of building a country where social justice would prevail, while urging the warmongers to cease their acts of violence.

The trade union confederations CUT, CGTD and CTC and also the ANDI agreed on the need to make progress in the implementation of a new culture of labour relations. The ANDI put the accent on setting aside the old confrontational approach and the advantages of having recourse to the Consultative Committee. The CUT, CGTD and CTC regretted that this Committee was only a forum for discussion and thought the political will to reach agreements was lacking. The mission had the impression that the role of the Committee could be broadened and thought that could be achieved if, independently of their differences concerning the economic model, all members took a pragmatic approach. The ILO technical assistance requested by the Government could play an important role in enhancing the influence of this Committee within the labour relations system. Furthermore, in addition to the Consultative Committee, the country also has a number of sectoral level negotiation bodies.

According to the ANDI, labour relations have not suffered to such an extent in recent years as to justify the avalanche of complaints submitted to the Committee on Freedom of Association (the purpose of which is to apply pressure for the approval of a commission of inquiry) as demonstrated by the fact that in 1998 collective agreements rose by 19.58 per

cent. In contrast, according to the trade union confederations CUT, CGTD and CTC, the situation of labour relations and trade union and labour rights is worsening not only as a result of violence against trade unionists but also because of the Government's economic policy, the International Monetary Fund programme, restructuring and privatization, as well as the current risk of a possible new law on labour flexibility and new social cuts affecting health and pensions, not to mention the overwhelming incidence of anti-union discrimination and obstacles to the right to organize that they denounce, nor the excessive delays in judicial proceedings.

G. The peace process and Plan Colombia

Plan Colombia, which is the principal government project, interweaves a series of concrete objectives and strategies around social justice, the promotion and defence of human rights, general prosperity and the strengthening of the State. It is financed using Colombian budgetary resources (US\$7.5 million) and also assistance from other countries (over US\$1,000 million were being negotiated in the United States Congress; donations from other countries, etc.) and resources from other international bodies such as the Inter-American Development Bank (the first payment totalled US\$600 million intended for the Social Emergency Fund) and those sought by the United Nations representation in Colombia. The strategies are: economic (with emphasis on employment creation), fiscal and financial, peace (aiming for a negotiated and peaceful agreement with the guerrilla groups), national defence (modernization and restructuring of the armed forces and police, intended to ensure the well-being of the community and respect for human rights), judicial and human rights, anti-drug trafficking, alternative development, social participation (increasing collective awareness), human development and the struggle against drug trafficking. In this way, Plan Colombia intends to give an in-depth, gradual, global and modern response to the region's principal problems, including violence, impunity, corruption, social inequality and poverty. This Plan also seeks to involve the international community and Colombian society in providing assistance in a joint effort to achieve the above objectives.

Within this government project, the peace process conducted by the Government with the insurgent groups is advancing significantly with reasonable possibilities of success given the degree of confidence it has inspired. In fact, in addition to the numerous direct contacts between the Head of State and the FARC leadership, whose political nature has been recognized by the Government, mention should be made of the establishment of an "area of détente" or clearance zone for the holding of negotiations, the definition of a "Common Agenda" for negotiation on 6 May 1999 that includes items relating to politics, social and labour issues, international relations, security and justice; the official start of negotiations on 24 October 1999 and the establishment of a National Negotiating and Consultation Team with assistance from a National Thematic Committee (which includes representatives of the Government and civilian society). An agreement has been reached on timing and specific procedures for three stages of negotiations by subject to be completed within a period of 18 months. Lastly, some of the negotiators went to Europe to examine successful economic experiences. In October 1999 dialogue and talks were resumed with the National Liberation Army (ELN), the second largest insurgent group, in order to re-establish the necessary conditions to return to the negotiating table; this group has also demanded a clearance zone and that a "National Convention" be instituted. On another level, talks are being held with the United Self-Defence Forces of Colombia (AUC), the main paramilitary organization in armed combat with the guerrillas.

The Government considers that by achieving political peace agreements with the principal perpetrators of the violence whose actions are politically motivated, the Government would be in a position to offer better guarantees as regards the exercise of

fundamental rights in all sectors of the population which are under attack as a result of the internal conflict. Nevertheless, the Government has so far not managed to broker a ceasefire by the insurgent groups or the self-defence forces.

H. Other issues

In their extensive and numerous spoken and written statements, the trade union organizations have given a full picture of the violations of trade union rights which cover many more aspects than just violence. The majority related to new issues that did not fall within the mandate of the mission and have been addressed as a whole in Part IV(D) of this report. Many of the communications were submitted to the Committee on Freedom of Association or, on the request of the entities concerned, have been the subject of ILO intervention with the Government.

Nevertheless, on the specific request of the trade union organizations CUT, CGTD and CTC contained in individual written communications, the Committee calls attention to the fact that the number of “collective accords” between employers and non-unionized workers’ groups is unusually high (in 1998 it rose by 18.85 per cent) and that they are even concluded in enterprises with one or more trade unions. Statistics provided by the Ministry of Labour to the trade union organizations reveal that “collective accords” exist in hundreds of enterprises. There have even been cases in which the collective accords offered better terms than those achieved by the trade union, as the Constitutional Court informed the mission. The trade union central organizations also referred to 46 legal provisions that in their view violated Conventions Nos. 87 and 98. They criticized the system for the appointment of arbitrators to the courts of arbitration, as well as the existence of judicial decisions that are contrary to the two above Conventions.

The ANDI – the principal employers’ organization – and also two magistrates from the Constitutional Court and a number from the Supreme Court of Justice³⁵ expressed their concern about Constitutional Court Decision No. T-568/99 of 10 August 1999 (upheld by the edict of the full assembly on 9 December 1999) that makes recommendations made by the ILO supervisory bodies binding even vis-à-vis judgements that had acquired the “force of *res judicata*” thus making the Committee a jurisdictional body. The ANDI requested the mission to convey its concern to the International Labour Organization and the ILO Governing Body and the mission is therefore recording it in this report. The mission considered that this matter was outside its mandate and it was not for it to give any views on the matter. The ANDI pointed out that the background to the decision mentioned was an appeal for the protection of constitutional rights (*amparo*) in which the applicant sought compliance with the recommendations of the Committee on Freedom of Association concerning the reinstatement of the workers of *Empresas Varias* of Medellín, and also that in its reply to the Committee on this case the Government had neither consulted nor requested information from the enterprise. The ANDI asked that in its assessment of the cases submitted to it the Committee on Freedom of Association should take steps to ensure that the affected enterprises are notified of the complaints in order for them to be able to present their position.

The CUT, CGTD and CTC, unlike the ANDI, view as very positive the Constitutional Court judgement that makes ILO supervisory body recommendations binding.

³⁵ The views of members of the Constitutional Court and the Supreme Court of Justice on these matters can be found in the part of this report relating to interviews held.

Furthermore, the Minister of Labour requested ILO technical assistance on the following subjects as well as on matters relating to the reform of trade union legislation currently under way: modernization and strengthening of the function of inspection, monitoring and security; the promotion and protection of workers' human rights and of fundamental rights at work; technical cooperation in the framework of the peace process; training to learn about programmes targeting displaced and demobilized persons and a programme targeting minors involved in the conflict.

VI. The mission's final observations and conclusions

1. The mission wishes to stress that it received every assistance from the Government as well as its full cooperation and that of all the authorities, trade union organizations and confederations and employers' organizations, for which it conveys its sincere appreciation. The interviews conducted demonstrated a frank and constructive spirit, thorough preparation by the main political, trade union and business leaders, solid democratic convictions and conduct and the firm intention to solve the principal problems facing the country, as well as considerable confidence in the International Labour Organization.

Violence against trade unionists and impunity

2. The number of assassinations, abductions, death threats and other violent assaults on trade union leaders and unionized workers in Colombia is without historical precedent. The Government and the trade union confederations (CUT, CGTD and CTC) have provided extremely divergent figures on the number of victims during the period 1991-99 and it is important that these discrepancies be clarified, but whatever the case may be the figures are extremely alarming.³⁶ Virtually all the assassinated trade union leaders belonged to the Single Confederation of Workers of Colombia (CUT) and its affiliated organizations, including in particular FECODE, SINTRAINAGRO, USO and FENSUAGRO. The leaders of the CTDC and the CTC and of their organizations are above all the target of death threats and abductions although there have also been cases of assassinations. The departments where most assassinations have occurred were mentioned in the previous chapter of the report, but the most violent department by a long way is Antioquia.
3. The interviews and information obtained paint a picture of widespread and extraordinarily complex violence in the country which each year results in some 25,000 deaths. Of these – excluding those arising from direct armed combat between the army, the insurgent groups and the self-defence or paramilitary forces and those that are due to massacres and common crime – some 2,500 have political/ideological motivations closely linked with the conflict or seek to present themselves as such. This category of victims probably encompasses most assassinated trade union leaders and workers as well as other categories of the civilian population (politicians, small businessmen and tradesmen, judges, etc.) who are also affected by the violence, sometimes to a similar or even greater extent, particularly in the zones where the internal armed conflict is at its most intense. At the same time the

³⁶ According to the Government, during the period 1991-99 there were 593 assassinations of trade union leaders and unionized workers; according to the National Trade Union School there were 1,336 and according to other trade union sources that did not specify the period under consideration, there were over 2,700. It should be recalled here that according to reports by the Committee on Freedom of Association, hundreds of assassinations occurred during the period 1986-90. In 1999, according to the Government, nine trade union leaders and 12 unionized workers were assassinated, while according to the School the relevant figures are 19 and 50 respectively.

social situation is particularly delicate with problems of considerable magnitude and an economic recession over which the armed conflict has a devastating influence.

4. As regards the Government's statements about the reasons behind the assassinations of trade union leaders, in the opinion of the mission, despite the fact that the majority of assassinations of trade union leaders have occurred in zones where the internal armed conflict was at its most intense and that this is one of the principal causes of violence against the trade union movement to the extent that for the most part the assassins come from armed groups participating in the conflict, it cannot be categorically said that the assassinations are unrelated to the status of trade union leader or to trade union activities. In general the status of trade union leader is a fundamental factor in these assassinations, irrespective of whether the victims were politically active. It is true, however, that the objectives or motives can be anti-union, political (and/or destabilizing) or a combination, setting aside a small number of assassinations resulting from common crime. As for the assassinations of unionized workers, attempts to determine the motive (trade union or other) came up against often insurmountable obstacles particularly when they occur in conjunction with indiscriminate massacres of the civilian population, all the more so in cases where the complainant organizations simply report the assassinations without providing any further information (level of trade union membership, participation in trade union activities, etc.).
5. As regards the perpetrators of violence against trade union leaders, the vast majority of violations are committed by the paramilitaries, to a much lesser extent by the guerrilla groups and, in some cases, by the members of the security forces. Nevertheless, the actual perpetrators are frequently unknown, nor is it known whether they belong to an armed group. As regards the participation of public officials (in particular of members of the armed forces) in the establishment of self-defence or paramilitary forces and in cases of passivity, collusion or collaboration by such officials through action or omission with these forces resulting in human rights violations in general, it is clear from the report of the Inter-American Commission on Human Rights and the United Nations High Commissioner for Human Rights that such cases are far from being exceptional or isolated. Such practices appear rather to obey old and deep-rooted traditions in certain sectors of the armed forces. It is however very disturbing to observe that so far no in-depth global investigations have been undertaken at the institutional level against these practices for the purpose of imposing sanctions and neither have radical and systematic measures been adopted to dismantle the self-defence forces in all the areas where they operate and to neutralize and suppress all their leaders, members and financiers, measures which in the view of the mission are absolutely imperative and urgent, particularly regarding the disbanding of the United Self-Defence Forces of Colombia, where no really effective progress has been made.
6. The trade union confederations and organizations have emphasized that there is a strategy by the Government to liquidate the trade union movement using neo-liberal measures and that for the past ten years complaints have been submitted to the ILO against government practices that are contrary to the right to life and to the integrity of the individual. According to the other statements received by the mission, there is no government policy targeting the physical integrity of trade union leaders or to persecute them deliberately, neither to promote collusion between state agents and self-defence or paramilitary forces.
7. The mission established that the Government has earmarked considerable human and financial resources for a programme for the protection of human rights defenders which has extended to a certain number of trade union leaders. This programme includes security systems and bodyguard services for threatened trade union leaders (52 bodyguards who

protect 41 leaders and 46 bodyguards who protect 21 trade union premises)³⁷ and services to safeguard trade union premises (41), possibilities of financial assistance and moves abroad, etc., with a budgetary allocation of 8,000 million pesos (more than US\$4 million). These measures which have certainly prevented assassinations are, in the view of the trade union organizations, insufficient and the mission considers that the budgetary allocation should certainly be substantially increased and further supplementary measures should be examined in consultation with the trade union organizations.

8. While the causes cannot be precisely identified, during the period 1998-99 there was a considerable reduction in the number of trade union leaders and unionized workers to be assassinated in comparison to 1996-97,³⁸ but assassinations nevertheless continue to be a regular feature. For example, between November 1999 (date of the most recent examination of the cases by the Committee on Freedom of Association) and the end of the mission (16 February 2000) the assassinations of two trade union leaders and a number of unionized workers were reported to the Committee. However there is an enormous difference between the figures provided by the various sources that noted this reduction and, as the mission has already indicated, this problem should be clarified. Nevertheless, a considerable increase in death threats was observed, which are counted by the hundreds. An increase was also seen in the temporary abductions of trade union leaders and unionized workers which are perpetrated by the self-defence forces in particular and above all by the guerrilla organizations. There have also been attacks on trade union premises and detentions. However, in 1999 there were no cases relating to disappearances. It is difficult to know whether the trend seen in the reduction of assassinations will continue. In view of all the above, trade union rights are often exercised, particularly in specific zones, in a climate of intimidation that manifestly hinders the normal development of trade union activities, even though new trade union organizations are being set up in the country, numerous collective agreements are being concluded and the right to strike is exercised, above all in the public sector, even in the form of general strikes. The situation therefore remains disturbing, which is how it was described by all those interviewed, and it will go on being so until these very serious acts of violence cease.
9. From a more general point of view, the lack of confidence in the authorities' ability to guarantee security is common knowledge in the country and many of those interviewed stressed the State's weakness or fragility and the powerlessness of the successive governments to eradicate the widespread violence caused by both the illegal armed groups and common crime (which is the main source of violence), irrespective of their will and efforts. They also pointed out that the authorities are the target of threats, abductions and assassinations and that they are unable to take effective control of important zones dominated by the self-defence forces and the guerrillas.
10. With respect to impunity, without forgetting the numerous measures taken by the authorities to combat impunity in general, it is particularly alarming that as regards the material perpetrators and the instigators of the assassinations of trade union leaders and trade unionists, the number of proceedings that result in sentences are very few and far between and only exceptionally is it possible to clarify the facts, identify those responsible and apply the appropriate legal sanctions. This is clearly illustrated in the information

³⁷ A total of 70 people are protected by various methods.

³⁸ According to the Government, in 1996-97, 38 trade union leaders were assassinated and in 1998-99 the number fell to 13; according to the National Trade Union School, these figures are 65 and 48 respectively. Government figures place the total number of assassinations of trade union leaders and unionized workers in 1996-97 at 255 and in 1998-99 at 35; for the School these figures are 409 and 160 respectively.

provided by the Office of the Attorney-General of the Nation on 105 cases submitted to the Committee on Freedom of Association that are under investigation. To this should be added the slowness of and the excessive delays in many judicial proceedings and the people's lack of confidence in the judicial system. Although the mission has taken into account that the perpetrators of the violence use irregular war techniques, operate clandestinely, carry out targeted attacks and use a wide variety of methods, substantial additional efforts must be made to combat the very serious and intolerable situation of impunity, which is one of the main causes of the violence.

Measures taken by the authorities

11. While the human rights situation in general, and in particular in the trade union sphere, continues to be precarious, the information contained in this report reflects efforts made by the Government as well as some points where there has been progress that should be encouraged. These include: the progressive development of a network of institutions to promote and protect human rights and to coordinate joint action to prevent human rights violations and combat immunity; the detention, prosecution and conviction of a considerable number of paramilitaries,³⁹ guerrillas and state agents (including some very high-level officials from the armed forces) for human rights violations; a significant reduction in the number of state agents involved in violations of this kind; the hearing by the ordinary courts of a higher number of cases against members of the armed forces; the radical reduction in "CONVIVIR" associations (which in many cases had become self-defence forces) from 416 to 23; likewise, drug trafficking, one of the most vicious sources of direct violence against trade union leaders in recent years, seems to have felt the effect of the detention (1,418), prosecution (2,616) and conviction (2,615) of a very high number of drug traffickers, as well as of a considerable number of measures taken by the Government and other state entities; the major reduction in the number of assassinations of trade union leaders and unionized workers in the past two years and the lack of any cases of disappearance of trade union leaders in 1999; the programme for the protection of trade unionists; the decision to set up a coordination centre against self-defence forces; and the establishment of the special subunit for workers' human rights within the Office of the Attorney-General of the Nation.

12. From another point of view, given that the trade union leaders and their organizations fulfil a special function in the promotion of social progress and the raising of the standard of living, the weakening of the trade union movement caused by assassinations, death threats and other acts of violence can but have extremely negative repercussions on the struggle against social problems and inequalities and on the promotion of general well-being. In the current context of economic and social crisis, globalization and fiscal adjustments, restructuring and privatization and measures to enhance labour flexibility, the trade union movement has a very important role to play to contribute to these objectives and the success of the peace process, which cannot be dissociated from social justice as in one way or another the result would be rebellion and insurgency. The mission would like to emphasize here the importance of developing further tripartite negotiation within the Standing Negotiation Committee.

³⁹ One hundred and sixty three paramilitaries were detained, arrest warrants have been issued for 236 and security measures have been taken against 403.

Trade union legislation

13. With regard to the critical comments made by the supervisory bodies and particularly the Committee of Experts concerning the non-compliance of legislation with Conventions Nos. 87 and 98, developments have been positive in this area. More specifically, Bill No. 184, in the elaboration of which the trade union confederations and the National Association of Manufacturers (ANDI) were involved, was approved during its first reading by the Senate and amends, in the manner indicated by the Committee of Experts, 11 provisions of the Substantive Labour Code and also notably strengthens trade union rights in other important aspects. The Government has processed this Bill on a priority basis and it is to be hoped that it will very shortly be adopted by the House of Representatives. As to the questions raised by the Committee of Experts, the executive power has committed itself to ratifying in the near future Conventions Nos. 151 and – if the Constitutional Court approves it – 154 (which relate to the right to collective bargaining of public employees) and has prepared draft bills which together with texts of proposed amendments prepared by the mission in keeping with the requests of the Committee of Experts, will be communicated to the social partners and subsequently submitted to Congress with any resulting changes. These draft bills relate to the essential public services where strikes can be prohibited, the right to collective bargaining for public employees and other issues raised by the Committee of Experts.

The Government's reply to the cases

14. Given that one of the objectives of the mission was to obtain replies concerning the many cases and allegations pending before the Committee on Freedom of Association (Cases Nos. 1787, 1973, 1962, 1964, 2015, 2046, 2051 and 1925), the mission wishes to stress the Government's collaboration and in particular that of the officials at the Ministry of Labour and Social Security which permitted replies to be submitted on most allegations. The content of the Government's replies to the cases in question was communicated to the Committee on Freedom of Association, as was that of the documentation provided by the enterprises involved, which in accordance with the Committee's procedures will only be taken into account if the Government expressly requests it. The mission gave the secretariat of the Committee on Freedom of Association copies of the complaints addressed to the Committee that were submitted to the mission, as well as additional information and new allegations presented by organizations that were already complainants in the pending cases. The Government underlined in reference to some of the recommendations by the Committee on Freedom of Association that specific powers of another branch of public power cannot be bypassed, for example in the case of '*res judicata*'. The mission transmitted to the Director-General of the ILO the requests for intervention submitted by other trade union organizations during its stay. It gave copies to the Committee of Experts on the Application of Conventions and Recommendations of communications from the Colombian trade union confederations criticizing legal and judicial provisions from the point of view of Conventions Nos. 87 and 98.

15. In short, the Government has made visible efforts to try to solve the questions that gave rise to the mission. In this respect some results could be seen, but they are clearly insufficient as regards the protection of the lives of trade union leaders and trade unionists and also as regards impunity. Concerning the measures adopted and commitments made to amend legislation, and also concerning the submission of replies to the questions raised by the Committee on Freedom of Association in November 1999, the results are positive

although the Government has yet to confirm the outcome of the measures taken and commitments made in the legislative sphere.

- 16.** During its stay in Colombia the mission made it clear that it was not its role to express judgements as to the decision of whether or not to appoint a commission of inquiry. It must, however, transmit the views of the authorities and the social partners which were as follows: the Government, the Ombudsman, at least some of the judges from the Supreme Court of Justice and the employers' organizations are clearly opposed, while the trade union confederations and the trade union organizations interviewed are clearly in favour. Their explanations concerning their positions have been set out in this report.
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- 17.** The mission wishes to highlight the importance of the "Plan Colombia". Above all it would like to emphasize the supreme importance of the peace process initiated by the Government with the insurgent forces, supported without reservation by the country's workers' and employers' organizations and by the whole of society, which has reasonable chances of success and which deserves the full support of the international community and of course of the International Labour Organization. The mission is convinced that as this process progresses the problem of violence will gradually diminish.

- 18.** Lastly, the mission wishes to pay tribute to the vast number of trade union leaders and trade unionists who have been assassinated for defending workers' interests and to those who continue to exercise their functions in hazardous circumstances, and it hopes that this report will go towards bringing this dramatic situation to a close.

18 April 2000.

(Signed) Cassio Mesquita Barros,

Alberto Pérez Pérez.

Appendix

People interviewed or spoken to by the mission

Executive power

His Excellency Mr. Andrés Pastrana Arango, President of the Republic
 His Excellency Mr. Gustavo Bell Lemus, Vice-President of the Republic
 Ms. Gina Magnola Riaño Barón, Minister of Labour and Social Security
 Mr. Guillermo Fernández de Soto, Minister of Foreign Affairs
 Mr. Nestor Humberto Martínez Neira, Minister of the Interior
 Mr. Luis Fernando Ramírez Acuña, Minister of National Defence
 Mr. Rómulo González Trujillo, Minister of Justice and Law
 Mr. Mauricio Cárdenas, Director of the National Planning Department

Other executive power authorities

Mr. Jaime Arrubla, Legal Secretary of the Office of the President of the Republic
 Mr. Mauricio González, Deputy Minister of Justice
 Mr. Jaime Montoya, Vice-Chancellor and Head of Multilateral Entities of the Ministry of Foreign Affairs
 Lieutenant Colonel Germán Jaramillo, Director of the Security Administrative Department (DAS)
 Colonel Guzmán, official in charge of the System of Protection (DAS)
 Ms. Claudia Gómez, Director of Human Rights (Ministry of the Interior)
 Mr. Alberto Builes Ortega, Governor of the Department of Antioquia
 Mr. Juan Gómez Martínez, Mayor of Medellín
 Mr. Luis Alfredo Rodríguez Pérez, Brigadier General, Commander of the Metropolitan Police of the Valley of Aburrá (Medellín)

Senior officials

Mr. Juan Enrique Niño Guarín, Secretary-General of the Ministry of Labour and Social Security (MTSS)
 Mr. Jorge Iván Palacios, adviser to the Minister – legislative harmonization (former President of the Labour Division of the Supreme Court of Justice), MTSS
 Mr. Luis Carlos Sáchica, adviser to the Minister – legislative harmonization (former President of the Supreme Court of Justice), MTSS
 Mr. Orlando Rodríguez, adviser to the Minister
 Mr. Ricardo Sanín, adviser to the Minister – legislative harmonization
 Mr. Jorge Villada, Head of the Office of Human Rights, MTSS
 Ms. Diana Muñoz Jiménez, Head of the Office of International Affairs, MTSS
 Ms. María Teresa Losada, Office of International Affairs, MTSS
 Mr. Rubén Caballero, Office of International Affairs, MTSS
 Mr. Diego Cadena, Multilateral Entities, Ministry of Foreign Affairs
 Ms. María Teresa Garcés, adviser to the High Commissioner for Peace
 Ms. Consuelo Cañón, adviser to the High Commissioner for Peace
 Mr. Augusto Ibáñez, adviser to the High Commissioner for Peace
 Mr. Gonzalo de Francisco, consultant for coexistence and citizen security

Legislative power

Mr. Luis Elmer Arenas Parra, President (E) of the Senate of the Republic
Mr. Armando Pomarico Ramos, President H. House of Representatives
Ms. Edilsa Caro de Pulido, President of the 7th Committee, H. House of Representatives
Mr. Edgar José Perea Arias, President of the 7th Committee, H. Senate of the Republic
Mr. Gustavo Bustamante Morato, Secretary-General, House of Representatives
Mr. Manuel Enríquez Rosero, Secretary-General, Senate of the Republic
Mr. Gustavo Castro Guerrero, adviser of the Office of the President of the Senate

Judicial power

Supreme Court of Justice

Mr. Nilson Pinilla Pinilla, President of the Supreme Court of Justice
Mr. Carlos Isaac Nader, President of the Labour Court of Cassation
Mr. Edgar Lombana Trujillo, President of the Criminal Court of Cassation
Mr. Francisco Escobar Hénriquez, Judge at the Labour Court of Cassation
Mr. José Roberto Herrera Vergara, Judge at the Labour Court of Cassation
Mr. Rafael Méndez Arango, Judge at the Labour Court of Cassation
Mr. Luis Gonzalo Toro Correa, Judge at the Labour Court of Cassation
Mr. Germán Gonzalo Valdés Sánchez, Judge at the Labour Court of Cassation
Mr. Fernando Vásquez Botero, Judge at the Labour Court of Cassation

Constitutional Court

Mr. Alejandro Martínez Caballero, President
Mr. Antonio Borrena Carbonell
Mr. Alfredo Beltrán Sierra
Mr. Eduardo Cifuentes Muñoz
Mr. Carlos Gaviria Díaz
Mr. José Gregorio Hernández Galindo
Mr. Fabio Monzón Díaz
Mr. Vladimiro Navarro Vera
Mr. Alvaro Tapur Galves

Council of State

Mr. Mario Alario Méndez, President of the Corporation
Mr. Manuel Santiago Urueta, Vice-President
Mr. Alberto Arango Matilla, President of the Second Section
Mr. Carlos Arturo Orjuela, President of the Second Subsection

Superior Council of the Judicature

Mr. Julio Cesar Ortiz, President

Other authorities

Mr. Jaime Bernal Cuéllar, Procurator-General of the Nation
 Mr. José Fernando Castro Caicedo, Ombudsman
 Mr. Jaime Cordoba Triviño, Deputy Attorney-General of the Nation
 Mr. Roberto Serrato, adviser to the Procurator
 Mr. Bolmar Pérez, official in charge of complaints at the Office of the Ombudsman
 Mr. Carlos Maldonado, economic delegate and coordinator of the area of détente, minorities, prisons, etc.
 Ms. Pilar Gatean, Director of International Affairs of the Office of the Attorney-General
 Mr. Pedro Díaz, Director of the National Human Rights Unit at the Office of the Attorney-General
 Mr. Jaime Arias, President of Social Security

Workers' organizations

Mr. Luis Eduardo Garzón, President of the Single Confederation of Workers of Colombia (CUT)
 Mr. Julio Roberto Gómez Esguerra, President of the General Confederation of Democratic Workers of Colombia (CGTD)
 Mr. Apecides Alvis, President of the Confederation of Workers of Colombia (CTC)
 Mr. Janek Kuczkiewicz, Assistant Director of the Department for Trade Union Rights of the International Confederation of Free Trade Unions (ICFTU)
 Mr. Luis Enrique Marius, Assistant Secretary-General of the Latin American Central of Workers (CLAT)
 Mr. Ivan González, Coordinator of Human Rights and Social Security Programmes of the Inter-American Regional Organization of Workers (ORIT)
 Mr. Héctor Fajardo, Secretary-General of the CUT
 Mr. Carlos A. Bedoya, Vice-President of the CGTD
 Mr. L. Miguel Morantes, Secretary-General of the CTC
 Mr. Yezid García Abellio, Assistant Secretary-General of the CGTD
 Mr. Fortunato Mendoza Lozano, Secretary-General of the Confederation of Pensioners (CPC)
 Mr. Alberto León, trade union legal adviser and member of the Colombian Commission of Jurists
 Mr. Enrique Borda, trade union legal adviser
 Mr. Jorge Humberto Valero, trade union legal adviser, Association of Workers' Labour Lawyers
 Mr. Cequolo Bautista, Treasurer, CGTD
 Mr. Jesús Bernal, President, SINTRACREDITARIO
 Mr. Freddy Villaquirán L., Secretary-General, SINTRACREDITARIO
 Mr. Alfredo Wilehes C., Secretary-General, SITTELECOM
 Mr. Javier García Londoño, legal representation, SINTRAPROAN
 Mr. William Millán Monsalve, legal representation, SINTRAPROAN, UTRADEC — CGTD
 Mr. Ricardo Diaz, President, FUTECH
 Mr. Guzmán Reyes, FEDESALUD
 Mr. Jorge Espinosa P., Organization secretary, CGTD
 Mr. Carlos A. Flores L., National President, SINTRAENSDES
 Mr. Jesús A. González, Director of the Human Rights Department, CUT
 Mr. Jorge H. Valero, labour adviser
 Mr. Alfonso Velázquez, administrator, CUT
 Mr. Rodrigo H. Acosta B., administrator, SINTRATELEFONOS – CUT
 Mr. Luis E. Martín, President, Trade Union of Hotel Workers

Mr. Juan Gurinavidos, President, ASEINPEC
Mr. Rodrigo Uribe, training secretary, CGTD – Antioquia
Ms. Olga Fanny Ruiz J., representative of the Departmental Committee of Threatened Persons, ADIDA
Mr. Esteban Buesto, SINTRABECOLICAS
Mr. Jesús Ruiz, Director of the Organization Department, CUT – Antioquia
Mr. Pedro Hincapi, President, COTDS
Mr. Rangel Ramos Z., Vice-President, SINTRADEPARTAMENTO
Mr. Hernán Correa M., National Treasurer, SINTRAINAGRO
Mr. Héctor Manuel Castellón, Treasurer, SINTRAPORCE II
Mr. Reinaldo Medina, President, SINTRAITABACO
Mr. Fernando Péalez, National Board, SINTRAVIDRICOL
Mr. Gustavo Valcárcel, SINTRATEXTIL
Mr. Anibal Meneses, President, SINALFRODIVITEXCO
Ms. Laura M. Molina, President, SINTRATEXTIL, Medellín
Mr. Arturo Ocampo, President, SIMTRAOFAM
Mr. Eduardo Vanegas, representative of the merchant marines, CUT
Mr. Ricardo López, UNEB
Mr. Carlos Jaramillo, SINTRABRINKS
Mr. Juan Ramírez, ANALTRARADIO
Mr. Yesid Camacho, ANTHOC
Mr. Aldo Cadena, SINDESS
Mr. Clemencia Mayorga, ASEMIL
Mr. Miguel A. Bahamón., SINTRA–CAJANAL
Mr. Ebert Maradiago, SINALTRABAVARIA
Mr. Luis Miguel Martín, SETT
Mr. José Cipriano León, SETT
Mr. Serafín Rodríguez, ADE
Mr. Saúl Peña Sánchez, SINTRAISS
Mr. Carlos Arbey González, SINTRAUNICOL – CUT VALLE
Mr. Ismael Jiménez, SINTRAMINTRABAJO
Mr. Yesid Rivera, SINDECOMEX
Mr. Hernando Rodríguez, FENGRICOL
Mr. Félix Herrera, SINTRACOL
Mr. Luis Alfredo Sánchez, ACEB
Mr. Francisco Ramírez, SINTRAMINERALCO
Mr. Ariel Díaz, CUT VALLE
Mr. Pedro Gustavo Moreno, SINTRA VA
Mr. Doris Rodríguez, SINTRAGUIM
Mr. Víctor Carrero, SINTRACULTURA
Mr. Carlos Castañeda, SINTRABENEFICIENCIA
Mr. Percy Oyola, UTRADEC
Mr. Joaquín Rivas, SINTRAMIENERGETICA
Mr. Jesús Antonio González Luna, Director of Human Rights, CUT
Mr. Jorge Galindo, USO

Mr. José Galvis, FENSUAGRO
 Mr. Oscar Tascon, SINALTRAINAL
 Ms. María Clara Baquero, President, ASODEFENSA
 Representatives of SINTRAEMDS, SINTRAMINTRABAJO, SUTIMAC-Caracol and Colombian
 Peasant Action

Employers' organizations

National Association of Manufacturers (ANDI)

Mr. Nicanor Restrepo, President of the Board of Management, ANDI
 Mr. Carlos Arcesio Paz, Vice-President of the Board of Management, ANDI
 Mr. Julio Manuel Ayerbe, President of the Board for the Bogotá district, ANDI
 Mr. Hernán Puyo, Foreign Trade Vice-President, ANDI
 Mr. Ricardo Correa, Secretary-General, ANDI
 Mr. Alberto Echevarría, Legal Vice-President, ANDI
 Mr. Carlos Álvarez Pereira, member of the Committee of the labour lawyers
 Mr. Jaime Ceron Coral, member of the Committee of the labour lawyers
 Ms. Mario Rodríguez Jacome, member of the Committee of the labour lawyers
 Mr. Pedro Charria Angulo, member of the Committee of the labour lawyers
 Mr. Eduardo López, Federation of Coffee Producers of Colombia
 Mr. Carlos Ernesto Molina, Corona Organization
 Ms. Martha Pacheco R., Ardila Lulle Organization

National Federation of Merchants (FENALCO)

Mr. Salas Pretelt de la Vega, President
 Mr. Mario Gómez, Vice-President

Other private entrepreneurs and advisers

Mr. José Fernando Torres Fernández de Castro, Administrative Vice-President of Bavaria, S.A.
 Mr. Marco Aurelio Tamayo Montoya, Administrative Director of AVIANCA
 Mr. Pedro Luis Franco, legal adviser to AVIANCA
 Mr. Ricardo Torres López, Administrative Manager of CONALVIDRIOS, S.A.
 Ms. Piedad Oliveros Moreno, Director of Development and Labour Welfare of CONALVIDRIOS,
 S.A.
 Mr. Alvaro Brún Salón, Director of Human Resources
 Mr. Fernando Osorio Cuenca, Director of Industrial Relations of the National Federation of Coffee
 Producers of Colombia
 Mr. Mauricio Galarce, Legal Director of the Federation
 Mr. Eduardo López Villegas, labour adviser of the Federation
 Mr. Luis Fernando Arango Arango, President of Cervecería Union, S.A.
 Mr. Rodrigo Valencia Murillo, Administrative Director of Cervecería Union, S.A.
 Mr. Jon López, Head of the Department of Industrial Relations of Cervecería Union, S.A.
 Ms. María Luisa Mejía Arango, President of Confecciones Colombia, S.A.
 Mr. Hernando Villa, Human Resources Manager of Confecciones Colombia, S.A.
 Mr. Carlos Mario Giraldo, President of Industrias Alimenticias Noel, S.A.
 Mr. Octavio del Río, Secretary-General of Industrias Alimenticias Noel, S.A.

Mr. Jeff Dollet, accounts official for the Compañía de Galletas Noel, S.A.
Mr. Jorge Mario Montoya, Human Resources Director for the Compañía de Galletas Noel, S.A.
Mr. Elkin Alonso Escobar Mahecha, General Manager of Industrias Metalúrgicas Apolo, S.A.
Mr. Guillermo Botero, labour adviser to Apolo, S.A.
Mr. Enrique Valderrama Jaramillo, manager of Empresas Varias of Medellín
Mr. Jesús Vallejo, legal adviser to Empresas Varias of Medellín
Ms. Claudia Restrepo, executive of Empresas Varias of Medellín
Mr. José Raúl Morales, executive of Empresas Varias of Medellín

Public or state enterprises

Mr. Ramiro Valencia, manager of Empresas Públicas of Medellín
Mr. David Suárez Tamayo, Secretary-General of Empresas Públicas of Medellín
Mr. William Castro, Head of Labour Relations at Empresas Públicas of Medellín
Mr. Alvaro Pío Valencia Vélez, manager of the spirits factory of Antioquia
Mr. Juan de Pérez, President of the Banco Agrario
Mr. Hernando Herrera Vergara, adviser to the Banco Agrario
Mr. Andrés Rodríguez Medina, legal adviser, Ministry of Defence
Mr. Manuel A. Bernal G., legal adviser, Ministry of Defence
Mr. Carlos González T., adviser to the management of the INAT
Mr. Cesar Zapa Salgado, adviser to the Secretary-General of the INAT
Mr. Tobías Rengifo Rengifo, adviser to the town council of Neiva
Mr. Jorge Lorenzo Escandon Ospina, Mayor of Neiva
Ms. Stella Wilches S., lawyer, legal adviser to the town council of Neiva
Mr. José William Sánchez Plazas, external legal adviser to the town council of Neiva
Mr. Sergio Regueros, President of the Telephone Company of Bogotá
Mr. William Cruz, outside lawyer to the Telephone Company of Bogotá
Mr. Mario Ines Pacheco, Head of the Legal Officer of the INAT

Other people interviewed

Mr. Jaime Pinzón, Mr. Jorge Carrillo, Mr. Diego Younes, Ms. María Sol Navia, Mr. Orlando Obregón and Mr. Hernando Yepes, former Ministres of Labour
Mr. Antonio Díaz, former Minister of Communications and former Secretary-General of the Ministry of Labour
Mr. Carlos Lleras de la Fuente, Director of the newspaper *El Espectador*
Mr. Fernando Hinestrosa, Rector of the Universidad Externado de Colombia
Mr. Víctor Moncayo, Rector of the Universidad Nacional de Colombia
Mr. Jorge Orlando Melo, Director of the Department of Libraries and Arts (Luis Angel Arango Library)
Mgr. Alberto Giraldo Jaramillo, Archbishop and President of the Episcopal Conference
Mgr. Guillermo Vega, member of the Commission of Justice and Peace
Mr. Augusto Ramírez Ocampo, President of the NGO Plural
Mr. Armando Novoa, Legal Secretary of the NGO Plural
Mr. Fernando Uribe Restrepo, former member of the ILO Committee of Experts on the Application of Conventions and Recommendations