



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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COMMITTEE AGAINST TORTURE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 19 OF THE CONVENTION**

**Third periodic reports of States parties due in 1997**

**Addendum**

**COLOMBIA\***

[17 January 2002]

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\* The initial report submitted by the Government of Colombia is contained in document CAT/C/7/Add.1; for its consideration by the Committee, see documents CAT/C/SR. 36 and 37 and Official Records of the General Assembly, Forty-fifth Session, Supplement No. 44 (A/45/44), paras. 313-340.

The second periodic report is contained in document CAT/C/20/Add.4; for its consideration by the Committee, see documents CAT/C/SR.238 and 239 and Official Records of the General Assembly, Fifty-first Session, Supplement No. 44 (A.51/44), paras. 66-83.

The information submitted in accordance with the consolidated guidelines for the initial part of the reports of States parties is contained in document HRI/CORE/1/Add.56/Rev.1.

The annexes to the present report can be consulted in the files of the secretariat.

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- I. Act No. 589 of 2000, defining genocide, forced disappearance, forced displacement and torture
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- V. Act No. 548 of December 1999 - Public Order Exclusion of minors from the armed conflict
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## I. GENERAL CONSIDERATIONS

1. The problem of torture in Colombia must be considered in the context of the violations of human rights and international humanitarian law that are taking place in the country, particularly as a result of the internal armed conflict. Therefore, with due regard for autonomy and the complementarity between the political will to seek peace and the decision to guarantee and protect fundamental human rights, on 19 August 1999 the Government presented its policy for the promotion of, respect for and safeguarding of human rights and the application of international humanitarian law, 1998-2002, to the national and the international community.

2. The basic guidelines of the policy include the intensification of the fight against impunity by promoting the investigation of the most relevant cases, protection of human rights defenders and union leaders, measures to combat self-defence groups and prevent kidnapping, comprehensive care for the displaced population and strengthening of governmental capacity, particularly the modernization of the police and armed forces.

3. The internal armed conflict, which is becoming more widespread, degraded and dehumanized and increasingly affecting the civilian population, is the principal cause of violations of fundamental rights.

4. Consequently, the Government is promoting, together with its human rights policy, a policy of peace with the armed groups through negotiation and international humanitarian law in the interests of peace, security and justice.

5. Bearing in mind the nature of the armed confrontation in Colombia, the Government has broadened the traditional notion of human rights by incorporating international humanitarian law, which restrains the conflict and holds all armed participants responsible. The Government is also promoting the cultural, ethical and legal understanding of human rights in keeping with the current international approach, according to which individuals, organizations or groups are held responsible when they commit crimes. The aim of this approach is not to relieve the State of its duty to provide protection, or of any of its other obligations, but to punish, with greater rigor and objectivity, those individuals and centres responsible for serious violations of human rights and international humanitarian law in the armed confrontation.

### **Violations of international humanitarian law**

6. In 1999, with the escalation of the internal armed conflict, violations of international humanitarian law increased. The number of recorded violations of international humanitarian law has risen in the past three years. Murder is the most frequent offence, and it is increasing dramatically. Attacks on life and personal integrity, acts of terrorism and hostage-taking are common occurrences. Recruitment of minors by illegal armed groups is also on the rise. In recent times there has been a marked increase in the participation of self-defence groups in the conflict, which has aggravated the humanitarian situation.

7. In accordance with the data collected by the non-governmental organization Research and Popular Education Centre (CINEP), on violations of international humanitarian law in 1999, the self-defence groups commit the overwhelming majority of the murders of protected persons (74 per cent) and acts of torture (85 per cent). Guerrillas are responsible for most of the violations involving hostage-taking (98 per cent), threats (77 per cent) and recruitment (75 per cent) and for the wounded (70 per cent). In the context of the war, the police and armed forces are held accountable for 12 per cent of the wounded, 7 per cent of the incidents involving torture, and 2 per cent of murders of protected persons.

8. Information from the General Command of the Military Forces concerning attacks on life and personal integrity as violations of international humanitarian law over the past three years indicate that there has been an increase in such violations by the self-defence groups, as well as by the guerrillas as a whole. In 1998, guerrillas committed slightly fewer crimes of this nature. The Fuerzas Armadas Revolucionarias de Colombia (Revolutionary Armed Forces of Colombia, FARC) is the group that commits the greatest number of violations of international humanitarian law.

9. In the strict sense of international humanitarian law, the deaths of persons who do not participate directly in the hostilities, or who have stopped participating in them, including members of the armed forces who have laid down their arms or have been taken out of combat for various reasons, are considered to be murders. Such murders have been perpetrated on a large scale by guerrilla and self-defence groups. The army command has registered 20 murders falling within the category of deaths of protected persons. There have also been reports of murders committed by members of the police and armed forces.

10. More broadly, the deaths that occurred hors de combat but which fall within the context of the armed conflict, as well as the 1,561 deaths registered by the army in 1999, which involved summary and extrajudicial executions carried out by participants in the conflict, should be considered as murders from the point of view of international humanitarian law. Subversives murder civilians suspected of having ties with self-defence groups or the military, or for failing to comply with their demands; such murders also include summary executions, which are frequently carried out against persons who supply the military or self-defence groups, landowners who do not pay the *vacuna* (compulsory levy), and local leaders, owing to their political position. They also murder members of the police and armed forces who have been deprived of liberty. The urban militias of FARC and the National Liberation Army (ELN), which operate without uniforms, are also responsible for some of the guerrilla murders.

11. Guerrilla and self-defence groups resort to massacres of civilians as war practices. During such massacres, the victims are often tortured before they are killed. Massacres by the self-defence groups have increased markedly since 1995. The self-defence groups have been involved in the practice of torture. In most cases, the tortured person is later found dead. Many of the acts committed by the self-defence groups, such as torture and selective executions (lists, graffiti, threats), are intended to intimidate and spread terror among the civilian population, and cause displacements. It should be borne in mind that the military strategy of the self-defence groups focuses on attacks on the population.

12. On the other hand, guerrillas contribute to the cruelty of the war by executing their own members. The army estimates that some 300 guerrillas were executed in 1999 following revolutionary trials. Many other guerrillas killed in combat have not been properly identified. According to information from the General Command of the Military Forces, the number of cases of persons “disappeared” by the self-defence groups has increased from year to year; such persons are often discovered in common graves, with visible traces of torture and mutilation.

13. The guerrilla carries out attacks and raids on settlements. In 1998, 58 settlements and, in 1999, 47 settlements were attacked. In 1999, guerrilla and the self-defence groups attacked 106 of the country’s settlements, or 9.7 per cent of Colombian municipalities, according to the General Command of the Military Forces.

14. Subversive groups often attack property that is normally considered to be civilian, such as cars, buses, shops or residences; they set fire to buses, trucks and taxis; and they have attacked electrical towers and oil pipelines. The use of car bombs, grenades and other explosives by guerrilla groups affects civilians and combatants without distinction. The guerrilla has used pipettes filled with dynamite to destroy police stations, causing indiscriminate damage to houses of civilians and to private concerns.

15. Violations of international humanitarian law that take the form of attacks on works and installations containing destructive forces, dams, dikes, energy plants and oil pipelines by the guerrilla have increased from 68 to 77 and 80 cases over the past three years, according to information from the General Command of the Military Forces. Two cases were registered as having been perpetrated by the self-defence groups in 1999.

16. The destruction of energy towers is a common practice of the ELN group, which in 1999 blew up 145 towers and this year, up to 15 February, 76 towers. In 1999, FARC attacked 83 energy towers, and the United Self-Defence Groups of Colombia (AUC) attacked four. Oil pipelines are destroyed by both FARC and ELN; such incidents were particularly frequent in 1998.

17. According to the figures provided by the General Command of the Military Forces, plunder, which includes attacks on government and private entities, theft of and attacks on vehicles, and hijacking, is a frequent practice of subversive groups; it is less common among the self-defence groups.

18. Guerrilla and self-defence groups have attacked medical personnel and medical facilities and vehicles, including those used by the Red Cross. They have also blocked the transport of medicines, food and provisions. It is known that the self-defence groups also control food and medicines and limit or completely block the transport of supplies to certain parts of the country. Moreover, guerrilla groups attack religious personnel (according to data supplied by the army, 36 ministers and one priest were murdered in 1999), and religious headquarters and temples.



19. Guerrilla and self-defence groups continue to involve boys and girls in the conflict. According to the Office of the Ombudsman, approximately 2,000 children between the ages of 13 and 17 are members of self-defence groups and, in particular, guerrilla groups. According to the Children's Movement for Peace of the United Nations Children's Fund (UNICEF), 18 per cent of the minors involved in such groups have killed a person. In 1999, the army rescued 13 girls between the ages of 14 and 17 who were members of guerrilla groups.
20. With respect to the use of anti-personnel mines and booby traps in the Colombian conflict, Colombia has ratified the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction. According to partial estimates, there are currently at least 70,000 anti-personnel mines situated in approximately 105 municipalities in 23 departments. This means that the inhabitants of 10 per cent of the country's municipalities are, or can be, exposed to the effects of these devices. Civilians and members of the armed forces become victims of anti-personnel mines that the guerrilla has planted indiscriminately in pastures on village roads and in community facilities. An estimated 50,000 mines have been laid by guerrillas. The military forces have planted 20,000 mines in order to defend installations. To date, 2,205 adults and 5,250 boys and girls have been affected by the detonation of mines. In 1999, 22 members of the army were wounded or killed by *quiebrapatas* ("leg-breaking") mines, most of which were constructed by ELN and FARC. Between 1997 and February 2000, 87 members of the military forces (80 per cent of whom were soldiers) were killed by *quiebrapatas* mines, and 269 were disabled. No data is available on the affected civilian population.
21. Guerrilla and self-defence groups, particularly FARC, are using gas cylinders filled with various kinds of explosives in their attacks on civilians and members of the armed forces; such attacks damage installations and cause suffering to the victims. Between 1998 and 1999, 21,725 cylinders were stolen, 69 per cent by FARC.
22. The self-defence groups, together with the guerrilla groups, are the major cause of mass displacements of the rural population. In 1999, 19,194 families - 86,511 persons (4.5 persons per family) - were registered as having been displaced by the violence; according to the Social Solidarity Network's programme of care for displaced persons, the displaced families requested assistance from government programmes. According to the figures supplied by the Advisory Office for Human Rights and Displacement (CODHES), in 1999, there were 288,127 displaced persons, or 57,627 families. These figures reflect internal population movements and include persons who pass through various municipalities; such figures are not limited to the segment of the population displaced by the violence.
23. The Social Solidarity Network's system for estimates of forced displacement by contrasting sources (SEFC) was created for the purpose of providing information to show the extent of displacement in the year 2000. SEFC has indicated that, in 2000, there were 1,351 displacement events that forced 128,843 persons, belonging to 26,107 families, to migrate. In the first half of 2000, 51,515 persons, or 40 per cent, were displaced and, in the second, 77,328 persons, or 60 per cent; this represents an increase of 45 per cent.

24. Of the 128,843 displaced persons, the place of expulsion of 96 per cent (124,187 persons, from 25,979 families) is known. Of these displacements, 35 per cent (476) took place in the first half of the year and 65 per cent (884) in the second half, which represents an increase of 89 per cent.

25. In terms of territory, in the year 2000, 322 municipalities expelled people and 322 municipalities received displaced persons. In all, 480 municipalities were affected by displacement; 158 municipalities were only places of expulsion, an additional 158 were only places of refuge, and 164 were places of both refuge and expulsion. In addition, 159 municipalities registered more than one displacement event in the course of one year.

### **Factual overview of the problem of torture in Colombia**

26. In order to demonstrate the trends in practice of torture, which violates fundamental rights and common article 3 of the Geneva Conventions of 12 August 1949, data from various sources is provided below.

27. In its publication *Noche y niebla* [Night and Fog], the non-governmental organization CINEP reports that, in 2000, there was a total of 420 victims in 100 cases. This figure represents an increase as compared to that of the previous year.

#### **Number of victims by perpetrator, 1997-2000**

Year	No. of victims	Self-defence groups	Unknown	Convivir	Police and armed forces	Public officials	Social cleansing groups	ELN	FARC	ERP <sup>b</sup>	EPL <sup>c</sup>
1997	222	177	21	1	22	0	0	0	1	0	0
1998	124	76	32	0	9	0	6	1	0	0	0
1999	166	57	47	0	14	35	1	0	11	1	0
2000 <sup>a</sup>	420	274	98	0	10	0	8	0	29	0	1
Total		584	198	1	55	35	15	1	41	1	1

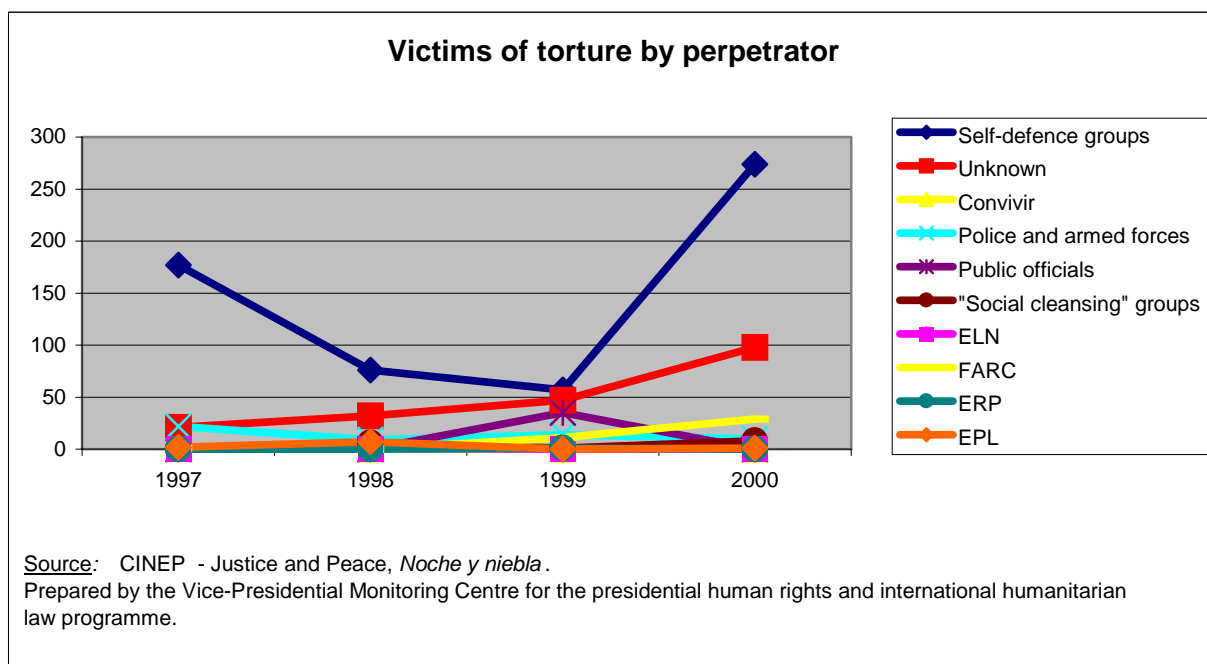
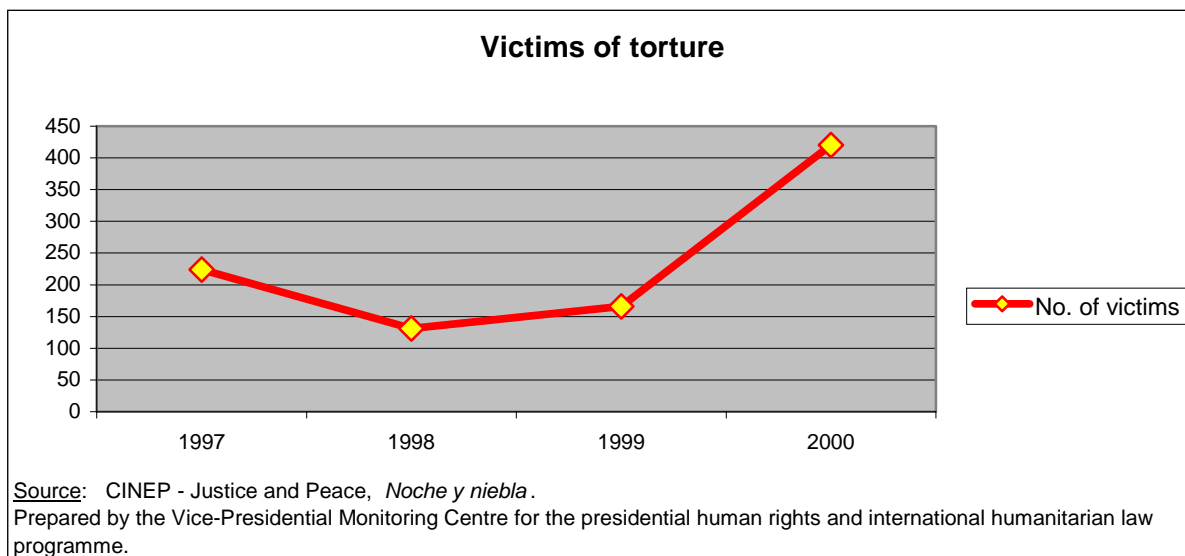
<sup>a</sup> Figures up to September 2000.

<sup>b</sup> People's Revolutionary Army.

<sup>c</sup> People's Liberation Army.

Source: CINEP - Justice and Peace *Noche y niebla*.

Prepared by the Vice-Presidential Monitoring Centre for the presidential human rights and international humanitarian law programme.



28. According to existing data, the self-defence groups are, without a doubt, principally responsible for this violation, since they account for 65.2 per cent, which reflects their increasing nominal and percental participation and provides a gloomy picture of Colombian reality in this regard. In 2000, as compared to 1999, the self-defence groups increased this practice by 231.7 per cent. On the other hand, the associations Convivir and guerrilla groups also engaged in this practice, although to much lesser extent than the self-defence groups and unknown perpetrators.

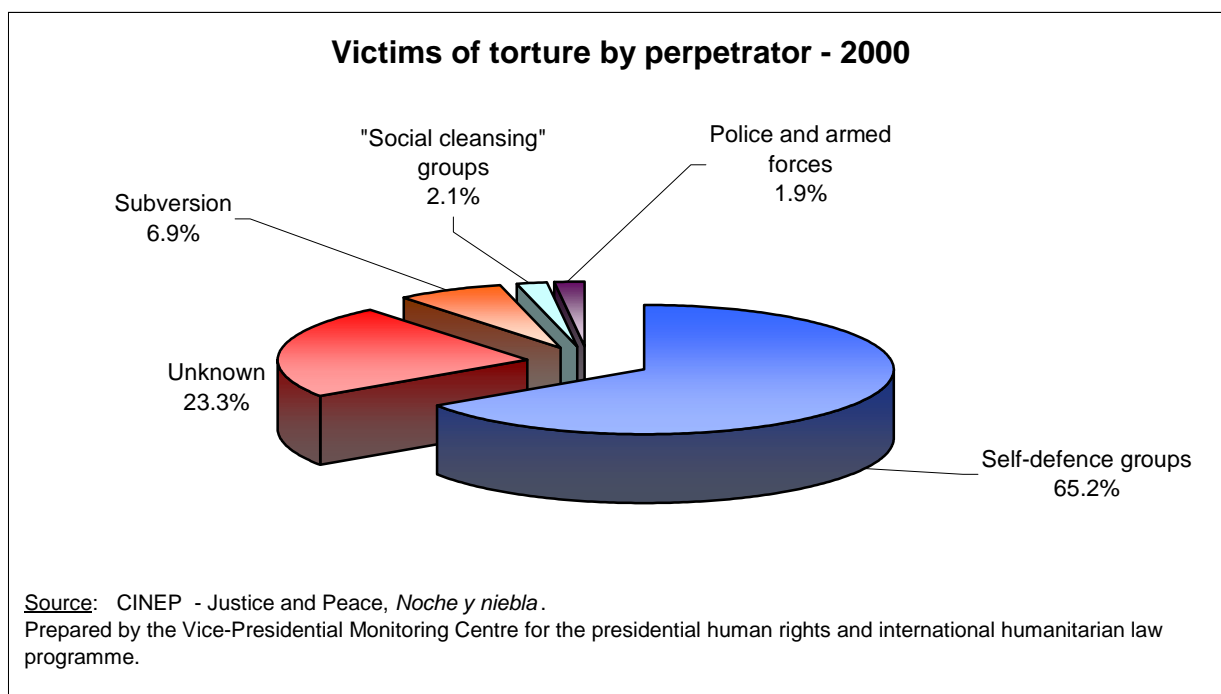
**Participation by perpetrator - 2000**

No. of victims	Self-defence groups	Unknown	Subversion	“Social cleansing” groups	Police and armed forces
420	65.2%	23.3%	6.9%	2.1%	1.9%

Figures up to September 2000.

Source: CINEP - Justice and Peace *Noche y niebla*.

Prepared by the Vice-Presidential Monitoring Centre for the presidential human rights and international humanitarian law programme.



29. The department of Valle, with 18 per cent of the national total, holds first place for the commission of torture, followed by the department of Antioquia with 13 per cent, Bolívar with 8 per cent, Cesar with 7 per cent and Norte de Santander.

30. In the case of the participation of State agents, particularly members of the police and armed forces, the Government acknowledges with concern the information provided by the Office of the Attorney-General, according to which 101 reports of serious human rights violations were received in 2000, a figure similar to the average of 112 cases a year for the years 1997 to 1999, during which a total of 338 cases were reported.

## **II. LEGISLATIVE, ADMINISTRATIVE AND OTHER MEASURES IN THE FIELD OF HUMAN RIGHTS TO ADDRESS THE PROBLEM OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (ARTICLES 1, 2, 4 AND 16 OF THE CONVENTION)**

31. The Government of Colombia is working tirelessly to promote, ensure respect for and guarantee human rights, since it is aware of the serious implications of the internal armed conflict for the exercise of such rights - a degraded armed conflict in which the civilian population is the principal target of the armed outlaws. While important and valuable achievements have been made in the field of human rights, the Government recognizes that it is necessary to improve them and to continue to concentrate its efforts on overcoming the conflict. The Government is committed to finding a negotiated solution to the conflict, while recognizing the undeniable difficulties and crises that a peace process anywhere in the world entails, as well as the specific nature of the Colombian situation and the enormous challenges that it poses.

32. In this context, the actions listed below are the results of the Government's implementation of its policy for the promotion of, respect for and safeguarding of human rights and the application of international humanitarian law in its search for peace.

33. The process with FARC clearly demonstrates such difficulties but is also an unequivocal sign of progress:

(a) A national and international consensus has been reached with respect to the need to find a political solution to the conflict, which takes precedence over concepts linked exclusively to military solutions;

(b) The international community has gained greater understanding of the complexity of the Colombian situation, with greater insight into and identification of the real interests of the participants in the conflict, which enables it to provide more effective assistance in promoting the process. This is reflected, inter alia, in the support and commitment of friendly countries, as a valuable result of peace diplomacy which, contrary to the view expressed in some quarters, is not a strategy to conceal the actual situation but an effort to "internationalize" the peace process with the aim of ending the war;

(c) Progress has been made in reaching a consensus for supporting the peace process, by inviting the various political forces and social actors to participate in that process by joining the Common Front for Peace and against Violence, as well as through the National Peace Council. The Government will continue to work towards strengthening and broadening the consensus;

(d) There is still a demilitarized zone that makes dialogue possible. In spite of the considerable criticism that the zone has received, the existence of the zone has made it possible to establish minimum conditions of confidence in order to overcome the major reservations in the area of security that more than three decades of armed confrontation have created. On the other hand, the territory in question is receiving considerable investments for social development, which include programmes in the field of agriculture, health, education, recreation

and culture, drinking water and basic sanitation, electrification, environment and road infrastructure. Such programmes are being carried out in the five municipalities that form the demilitarized zone. Approximately 87 billion pesos have been invested in these programmes.

34. Even in crisis situations, the process has resulted in the conclusion of four agreements, namely:

(a) The La Machaca Accord, signed on 6 May 2000, established the thematic agenda, which includes: a negotiated political solution; human rights protection; a comprehensive agrarian policy; use and conservation of natural resources; economic and social structure; judicial reform; measures to combat corruption and drug trafficking; political reform; State reforms; agreements on international humanitarian law; military forces; international relations; and conclusion of agreements. This agenda was later divided into three major thematic groups: social and economic structure; human rights, international humanitarian law and international relations; and democracy and State political structure;

(b) The Los Pozos Accord, signed in February 2001, in which the parties pledged to promote discussions on mechanisms to put an end to paramilitary organizations and reduce the intensity of the conflict through the establishment, by the National Dialogue Table, of a commission of national notables to make recommendations in these two areas; speed up the conclusion of a humanitarian agreement that would lead to the release of sick soldiers, policemen and guerrillas; establish, through the National Dialogue Table, a commission to study the factors that hinder the advancement of the process; and create a mechanism for the periodic evaluation of compliance with, and the purpose of, the demilitarized zone;

(c) Humanitarian agreement, signed on 2 June 2001, which made it possible to release more than 100 soldiers and policemen held by FARC, and to hand over sick FARC members, subject to a provision on security measures or punishment;

(d) The San Francisco de la Sombra Accord, signed on 5 May 2001, for the purpose of studying the document containing recommendations submitted by the Commission of Notables, relating to such topics as the truce with ceasefire and cessation of hostilities, kidnapping, measures to end the phenomenon of paramilitary groups, and the possible convening of a constituent assembly, without prejudice to the common agenda, and inviting candidates and movements and political parties, the various social sectors, and the National Peace Council to refer to the aforementioned topics. In addition, FARC has pledged to respect the political and electoral activities that candidates standing for the next elections conduct in the zone, and to instruct members of the insurgent group not to carry out so-called *pescas milagrosas* ("miraculous fishing", the kidnapping of civilians at roadblocks) on the country's roads.

35. The Government, on the other hand, has stated emphatically to FARC that the criticism of the demilitarized zone does not imply the abandonment of the search for a negotiated solution to the conflict. On the contrary, such criticism represents evaluations and opinions that are expressed and respected in the normal development of a democratic system. The Government has vigorously stressed that the main reason for the demilitarized zone's bad reputation is the inappropriate use that has been made of it, and that what contributes most to discrediting the process is the scant progress that has been achieved with respect to the thematic agenda.

36. The Government regrets the insurgent group's failure to fulfil some of the commitments that have been signed, since this has caused serious setbacks in the advancement of the process in recent months, with such acts as the kidnapping of three German aid workers, the detaining of Mr. Alan Jara, the former governor of Caquetá, when he was under the protection of an international agency, the assassination of Ms. Consuelo Araújo, the former Minister of Culture, and the recent destruction of an oil pipeline, which resulted in the death of four children. Nevertheless, the President of the Republic has not wavered in his commitment and, under his leadership, efforts are continuing to move the negotiations forward, and all segments of society - civil, political and religious - have been invited to support him through their contributions and opinions.

37. With regard to the rapprochement with the insurgent group ELN, it should be noted that, a few months after the current administration took office, the administration, in recognition of the contacts that the group had been making with civil society, formally began talks and recognized the group's status as a political organization. Since that time, the Government has been examining the proposals put forward by that group and has considered the possibility of holding the so-called national convention, a mechanism proposed by the parties and society to advance the peace process.

38. Nevertheless, for various reasons, the talks have been suspended from time to time. One cause for the suspension of talks has been acts of terrorism committed by the insurgent organization; these include the Machuca tragedy, the hijacking of an Avianca passenger aircraft, and the kidnapping of a large number of people from the church of La María and the church of La Ciénaga del Torno. The group itself has unilaterally suspended the talks on various occasions. On the other hand, the criminal acts committed by AUC in order to obstruct the creation of the meeting zone, have also hindered progress.

39. Because of the changes made in the original proposals of ELN, which began to demand a demilitarized zone for holding the negotiations, the Government, in its constant desire to promote peace, stated that it was willing to explore possibilities and seek viable formulas in that regard. The Government proposed a large number of options for defining a meeting zone and even reached agreements in that regard, which included regulations governing the operation of the zone and the mechanisms to verify compliance, through a commission with national and international participation.

40. In July of this year, when tangible progress had been made, ELN changed its position, backtracking on what had been discussed and imposing new conditions, which were unacceptable to the Government. In order to overcome the obstacles, the Government proposed formulas that had previously been discussed, such as holding the process abroad, the gradual establishment of the zone, the alteration of its size and the changing of its location, or beginning talks abroad while optimum conditions for the holding of talks in Colombian territory were created, but ELN rejected the proposals outright and left no other alternative than to suspend the talks.

41. Fortunately, in a gesture welcomed by Colombia and the international community, ELN decided to resume talks with the Government. As a result of the talks, the parties signed the Agreement for Colombia. Pursuant to that Agreement, in the Declaration signed in Havana,

Cuba, at a meeting held from 12 to 15 December 2001, pursuant to the first round of bilateral working sessions provided for in the Agreement, they expressed their full readiness to continue to seek a political solution to the conflict. In this regard, ELN, as a positive gesture in response to the commitments obtained in the Agreement for Colombia, announced, on 17 December 2001, its decision to declare a “unilateral and unconditional” Christmas truce, from 18 December 2001 to 6 January 2002.

42. For its part, the Government of Colombia, in its resolution No. 148 of 2001, decided to resume the process of dialogue, negotiation and signing of agreements with ELN. In the same resolution, the Government recognized the political status of the National Liberation Army.

43. On the other hand, in the firm conviction that respect for human rights and international humanitarian law is essential for achieving peace, the Government is promoting the consolidation of the results of the policy for the promotion of respect for and safeguarding of human rights and the application of international humanitarian law, 1998-2002, through decisions carried out under the leadership of the Vice-President of the Republic and the coordination of the Presidential programme on human rights and international humanitarian law. The assignment of Vice-President as Minister of Defence and the appointment of the Director of the programme as a member of the negotiating team in the peace process with FARC confirm the Government’s interest in highlighting the theme of human rights and international humanitarian law in its security and peace agendas.

44. The recognition by national and international opinion of the participation of various illegal armed groups in the deterioration of the situation in Colombia coincides with the Government’s concentration of its human rights policy on finding ways of dealing with the conditions arising from the conflict.

#### **A. Measures to combat all armed groups outside the law**

45. Measures to combat, on an equal basis, all armed groups outside the law has been a priority in the implementation of this policy, since the Government recognizes that the deterioration of the situation in Colombia is related to violations of international humanitarian law committed by such groups.

46. The operational results obtained by the police and armed forces reflect a substantial improvement in measures to combat armed groups outside the law. Positive results have been registered in efforts to repress subversive groups, and there have been unprecedented achievements in activities to combat the self-defence groups.

47. As at 30 October 2001, 894 subversives had been killed and 1,524 captured, and 103 members of self-defence groups had been killed and 917 captured. These data, compared with the same period in 2000, yield the following results: arrests of guerrillas increased by 16 per cent while, in the case of the self-defence groups, arrests increased by 241 per cent; at the same time, casualties among subversives registered a 12 per cent increase and casualties among the self-defence groups increased by 30 per cent.



48. The results of the action taken by competent State judicial bodies to punish violations of human rights and international humanitarian law by members of illegal armed groups are also impressive. The prosecution of members of illegal armed groups for violations of human rights and international humanitarian law has become common practice as a result of the continuous assignment of the most important investigations to the Human Rights Unit of the Public Prosecutor's Office and its intensive activities. Moreover, the satellite units of the Human Rights Unit, situated in Neiva, Cali, Villavicencio and Medellín are currently fully operational. At the end of this year, two additional units will begin operation in the city of Medellín and, in the first half of the coming year, the remaining units will be established in Cúcuta, Bucaramanga and Barranquilla, in that order.

49. By the end of August 2001, the Human Rights Unit of the Public Prosecutor's Office, had issued 244 warrants for the arrest of, 142 measures for the custody of and 108 decisions to indict members of subversive groups. At the same time, there were 404 valid warrants for the arrest of, 520 measures for the custody of and 372 decisions to indict members of the self-defence groups. Arrest warrants increased by 44 per cent in the case of members of the self-defence groups and by 20 per cent in the case of members of subversive groups, as compared with December 2000.

50. Judicial efficiency has increased, as is evident from the measures that have been taken against members of subversive and self-defence groups since December 1999. Measures for the custody of members of subversive groups have increased by 61 per cent, decisions to indict members of such groups increased by 108 per cent, and warrants for their arrest rose by 152 per cent. Against members of self-defence groups, custody measures rose by 21 per cent, decisions to indict by 49 per cent and arrest warrants by 67 per cent. Nevertheless, it should be noted that illegal armed groups are increasing rapidly, and that this situation continues to exceed the capacity of the apparatus for the administration of justice, in spite of its notable improvements.

51. Measures to combat the self-defence groups have been the central focus of the Government's implementation of its policy on human rights and international humanitarian law. The Government is fully aware of the seriousness of this phenomenon and of its effects on the fundamental rights of the population and the damage that it causes to the State itself. It is also aware of the obstacles that the existence of such groups poses to the peace process.

52. A technical support structure is currently being created for the National Centre for the Coordination of Measures to Combat the Self-Defence Groups. The purpose of the Centre is to coordinate the activities carried out by the military authorities, the police, members of the judiciary and civil servants against these groups, with a view to providing it with mechanisms to ensure the centralization of efforts and the necessary coordination with the Ministry of the Interior's Protection Programme Risk Evaluation Committee, the early warning system and the departmental committees for providing care for the displaced population.

53. Since January of this year, a financial strategy has been put in place for the purpose of dismantling the sources of funding and support for such groups. The strategy consists in identifying, monitoring, freezing and confiscating bank assets and other negotiable instruments belonging to the groups, for which the Unit for the Termination of the Right of Ownership and

to Combat Money Laundering of the Office of the Public Prosecutor and the Intelligence Unit and Financial Administration of the Ministry of Finance work in coordination and exchange information.

54. The determination of the police and armed forces is reflected in the results of the intensification of military actions, searches, seizures of arms and arrests of members of the self-defence groups. The police and armed forces have achieved unprecedented results in their military operations: from January to 30 October 2001, arrests of members of self-defence groups increased by 241 per cent and casualties among such groups rose by 30 per cent. Last August and September, the army captured 24 AUC members in operations that led to individual arrests, such as that of the person with the alias "Huracán", the presumed head of AUC in Magdalena Medio, as well as collective arrests, as in the case of six members of this criminal group in Orito (Putumayo), and resulted in 13 combat casualties, 5 in Valdivia (Antioquia) in addition to the death of the person with the alias "Mora", an AUC leader, in Aguachica (Cesar).

55. The results of the prosecution of members of the self-defence groups have also been positive, as the figures show: since December 1999, custody measures increased by 21 per cent, decisions to indict by 49 per cent and arrest warrants by 67 per cent. There are currently cases in the ordinary courts against leaders and members of self-defence groups, as well as against individuals, public officials, civilians and members of the armed forces who, through their acts or omissions, are providing, or have provided, such groups with any kind of assistance or cooperation.

56. With respect to disciplinary investigations into State officials' ties to illegal self-defence groups, as at 30 July of this year, the following data are available: 38 investigations for direct participation, 49 for omission, 2 for patronage and 1 for tolerance. The procedural status of such investigations is, for the same date, the following: 61 investigations are in the preliminary stage, 1 is being appealed and 8 are in the formal investigation stage.

57. On the other hand, the Government, within the framework of the peace process with FARC, has issued many summonses against that insurgent group for the study of the document prepared by the Commission of Notables, which contains recommendations on the treatment of paramilitary groups. The Government's attitude in this respect reflects its unwavering intention to continue to combat this phenomenon.

### **Measures to prevent kidnapping**

58. In order to combat the practice of attacks on personal liberty, in which the guerrillas participate very actively through the taking of hostages, Ministry of Defence has put forward its programme for the defence of personal liberty. In addition, the National Council to Combat Kidnapping and Other Attacks on Personal Liberty (CONASE) is currently in operation. The operational aspect of measures to prevent kidnapping is carried out by the Unified Action Groups for Personal Liberty (Gaula groups). There are 28 such groups, composed of members of the National Police and the military forces, which are coordinated with the Department of National Security (DAS) and the Technical Investigation Unit (CTI) of the Public Prosecutor's Office.

59. The crime of kidnapping is prevented through direct repressive and dissuasive action against the perpetrators of the crime and through counselling services for real or potential victims, with the participation of groups of citizens or the business community at both the national and regional levels. Measures are being taken to prevent kidnappings and to make citizens aware of the need to report such incidents. Victims receive assistance in the form of counselling services for the families of kidnapped persons and legal assistance for those involved. Investigations into kidnappings, which are carried out by various State bodies, particularly those carried out by the Gaula groups, are monitored and encouraged.

60. Training is based on criminal investigation and criminology, human rights and international humanitarian law, and is provided for DAS officials, the Technical Investigation Unit and members of the police and the army who assist the Gaula groups. It also includes the promotion of preventive mechanisms, the dissemination of information concerning cases of missing persons, the dissemination of laws and regulations, and the National Data Centre.

61. The National Fund for the Defence of Personal Liberty (Fondelibertad) of the Ministry of Defence is responsible for administering resources for measures to combat kidnapping and extortion. From 1996 up to 2001, the annual budget allocated to Fondelibertad has been 5 billion pesos. Ninety per cent of the resources are used for the funding and operation of the Gaula groups.

#### **Strengthening of the commitment of the military forces to combat armed groups outside the law**

62. The military forces are involved in an ambitious modernization programme for the purpose of improving their efficiency and legitimacy; the programme is characterized by strict observance of human rights and international humanitarian law. Institutional and budgetary efforts have been directed towards improving military capacity, making the military more professional and reforming the military criminal justice system. With a view to achieving these goals, Act No. 578 of March 2000 was adopted; the Act grants extraordinary powers for the labour and disciplinary reform of the military forces, and its statutory decrees, particularly decrees No. 1790 and No. 1797 concerning discretionary powers for retiring officers and non-commissioned officers, regardless of their length of service, and the inclusion in the disciplinary regime, as very serious forms of misconduct, of particularly serious human rights violations.

63. Presidential Order No. 1 of 17 August 2000 ordered the Commander-in-Chief of the Military Forces and the Director-General of the Police to ensure the full compliance with the rules and regulations of the military justice system and with the jurisprudence of the Constitutional Court concerning the competence of the ordinary courts to try cases involving human rights violations.

64. As a result of the 103,545 members of the military forces who received human rights training in 1,808 courses over the past 5 years, and the operation of the 181 human rights and international humanitarian law offices in all units of the armed forces, there has been a decline in the number of complaints and legal proceedings against members of the armed forces in cases of

violations of human rights and international humanitarian law. Colombians are increasingly viewing the armed forces in a more positive light, as demonstrated by the results of questionnaires. The complaints received by the Office of the Attorney-General concerning human rights violations by members of the armed forces fell from 3,000 in 1995 to 289 in June of this year. The effective indictment of members of the armed forces for presumed human rights violations is rare: 188 members have been indicted by the Office of the Public Prosecutor since 1995 and up to July 2001, from among a force that today numbers more than 277,000 members.

65. The Government has accepted the offer made by the Office of the United Nations High Commissioner for Human Rights to train military personnel and military criminal justice officials in the correct interpretation of military penal regulations and their direct affect on ordinary penal reforms.

### **B. Protection of human rights defenders and threatened persons**

66. The Government has put in place three programmes for the protection of human rights defenders, trade union and community leaders and journalists - three groups whose work is fundamental to the functioning of Colombian civil society and the rule of law.

67. These programmes, which are coordinated by the Ministry of the Interior pursuant to the mandate contained in article 6 of Act No. 199 of 1995, are as follows: programme for the protection of human rights defenders, community and trade union leaders, witnesses and threatened persons (established by Decree No. 372 of 1996 and Act No. 418 of 1997); programme for the protection of leaders, members and survivors of the Unión Patriótica (Patriotic Union, UP) and the Colombian Communist Party (established by Decree No. 978 of 1 June 2000); and programme for the protection of journalists and media representatives (established by Decree No. 1592 of 18 August 2000).

68. The demand for and the scope of these programmes have increased during the past two years, with significant social, financial and political consequences for Colombia. This has prompted the Government to launch an evaluation of their operation, financing, procedures and other aspects, with a view to optimizing their management. The evaluation will be conducted in two stages: in the first stage, the current legal, political, administrative, financial and operational status of the programmes will be assessed; in the second, a proposal will be put forward on the legal and administrative framework for the protection programmes.

69. The main achievements of the protection programmes in 2001 include the following:

(a) Budgetary reinforcement: the programmes now receive funds from the national budget and the Inter-American Agency for Cooperation and Development; this is the first time that they have received resources from international cooperation. The Government has responded promptly to the need to reinforce and increase the budget in order to meet the constant demands of these programmes, thereby ensuring greater flexibility and effectiveness in the implementation of protection measures;

(b) Internal reinforcement: in response to the large number of requests for protection, the Ministry has made efforts to increase and improve its staff in order to reinforce the groups responsible for dealing with such requests and for administration and management, legal affairs, records and correspondence, and to involve professionals with various areas of expertise so as to ensure an interdisciplinary, holistic approach in its responses. An information system is also being developed, initially to provide a database on the persons covered by the programme and the protection measures adopted in each case;

(c) Inter-institutional coordination: the Ministry of the Interior is continuing to strengthen the mechanisms for inter-institutional coordination with other bodies and institutions, such as the National Police, the Department of National Security (DAS), the Office of the Public Prosecutor, the Office of the Vice-President, the Office of the Attorney-General, the Office of the Ombudsman, and also with non-governmental organizations (NGOs) and trade unions, with a view to pooling efforts to verify the information provided by applicants and to support the implementation of the measures adopted. The programmes themselves have risk control and evaluation committees (CRER) comprising representatives of government bodies and relevant organizations.

70. The programme for the protection of human rights defenders, trade union and community leaders, witnesses of human rights violations and violations of international humanitarian law, and threatened persons covers the following areas:

(a) Humanitarian assistance: in cases where a person covered by the programme wishes to leave a risk area as a result of threats, up to three months of emergency financial assistance is provided in order to alleviate the immediate effects of the move. In cases where a protected person decides to leave the country, humanitarian assistance may be provided for a further period equal to the one initially authorized in order to facilitate procedures at the embassy involved;

(b) Communication systems: as part of the protection measures covered under the programme, a pilot project has been set up to test a cellphone and radio warning system for use by protected persons and State officials. This has enabled the police and armed forces to act promptly to counteract risk situations brought about by the parties to the conflict;

(c) Moving expenses: such assistance is provided in cases where individuals decide, or find themselves forced, as a result of threats, to leave the area and resettle in another city;

(d) Tickets for domestic travel: these are provided in cases where threats are so serious that, in order to protect life and physical integrity, the person and/or his or her immediate family are obliged to travel to another part of the country where the risk is not as great. In some cases, CRER issues such tickets as a means of safeguarding, in coordination with the State security bodies, the travel of protected persons which avoids exposing them to risk and makes them less vulnerable in the course of their work in defence of human rights;

(e) Tickets for international travel: these are authorized in cases where individuals consider that it is advisable to leave the country, for a period of no less than three months, either for personal reasons or because the threats are so serious that the protection provided is felt to be inadequate;

(f) Travel expenses: this protection measure complements the “hard” security schemes. It provides the protected person with a bodyguard during travel. This assistance is also provided to CRER members who represent social organizations and labour unions;

(g) Temporary support for overland transport: this is granted to directors of organizations who are registered with the programme and whose work requires them to be constantly on the move within their city or department, but who will not accept an escort; or where an escort is not advisable owing to the nature of their work;

(h) Support for river transport: this is provided in a few cases where directors of organizations need to travel by river in the course of their human rights defence work, in order to reduce the vulnerability of such persons during their travel;

(i) Production projects: as part of the protection measures that it provides, but which go somewhat further than its security operations for protected persons, CRER has introduced a new form of action - production projects - as a means of supporting persons who cannot return to their area of origin and/or have no desire to do so;

(j) Armouring of head offices: armouring is carried out in cases where the National Police recommends this protection measure following a technical assessment of the level of risk at head offices where protected persons work. This provides wider coverage than the other measures, since it targets a whole organization and therefore benefits more people;

(k) Self-protection and security courses: DAS offers courses and workshops in self-protection and security. The costs involved in carrying out this measure are borne by DAS and charged to its protection programme budget;

(l) Hard schemes: like the self-protection courses, hard security schemes are offered by DAS and consist in the provision of a vehicle and two bodyguards from DAS who are trusted by the protected person and accompany him or her everywhere, thus reducing exposure to risk. DAS also supplements the security scheme by providing bullet-proof vests to protected persons, with their consent, and supplying bodyguards with bullet-proof vests, communications equipment and weapons appropriate for the scheme in question.

71. The following steps have been taken to strengthen and expand coverage of the protection measures provided under the programme:

(a) Security schemes: by the end of 2000, 56 hard protection schemes were in operation, involving two or three bodyguards and one vehicle, equipment, maintenance, fuel, insurance, pay and travel expenses. In 2001, 107 schemes of this kind were put in place; 65 others are awaiting implementation. The budget for these schemes accounts for 64 per cent of the budget for implementation of protection measures;

(b) Communications: in 2001, the communications network was expanded in order to improve security for the persons covered by the protection programme. Two communication networks are now in place, based on cell equipment and Avantel, which act as early warning, prevention and protection networks. The protection programme has also provided satellite phones to a number of communities in areas where there is no service provider. Nationwide, 1,175 cellphones and 465 Avantel sets have been supplied;

(c) Armouring: as the armed conflict has escalated, the vulnerability of NGO and trade union head offices has increased. This has demanded a prompt response from the programme, and 101 such offices in the national territory have been armoured, on the basis of recommendations made in security assessments carried out by the National Police. As a protective measure, armouring includes physical structures, closed-circuit television, metal detectors and intercom units.

72. Programme expenditure for 2000 was 4,203 million pesos as at 30 September 2001, 12,400 million pesos, had been allocated to the programme, which made it possible to deal with 1,358 cases.

73. Progress has been made under the special programme for the protection of leaders, members and survivors of the Unión Patriótica (Patriotic Union, UP) and the Colombian Communist Party, established in late 2000 as part of the search for an amicable settlement in the case currently before the Inter-American Commission on Human Rights: programme measures include communications, armouring and security for head offices and residences, humanitarian assistance, tickets for domestic and international travel, assistance with moving and funeral expenses, bullet-proof vests, travel expenses, production projects, accommodation and maintenance expenses, advice on implementation of production projects, and psychosocial care.

74. The programme's allocation for 2000 was 700 million pesos. As at 30 September 2001, 1,760 million pesos had been allocated, which made it possible to deal with 365 cases.

75. The programme for the protection of journalists and media representatives, which carries out activities similar to those of the other programmes described, received an allocation of 300 million pesos in 2000. As at 30 September 2001, an additional 800 million pesos had been allocated, which made it possible to deal with 67 cases.

76. The visit to Colombia, in May 2001, of members of the Inter-American Commission on Human Rights in order to monitor implementation of the safety measures prescribed by the Commission, did much to facilitate dialogue with applicant organizations and persons covered by such measures, and to identify further means of improving inter-institutional coordination as part of the protection programmes described above.

77. Following repeated requests from non-governmental human rights organizations that their members not be named in military intelligence reports, the Government is studying ways of bringing military intelligence practice and procedures in respect of private individuals into line with the Constitutional Court's rulings on the matter and with the provisions of

Presidential Order No. 7, with a view to ensuring that intelligence activities dealing with individuals, and reports arising therefrom, have no other aim or objective than to combat crime, that is, the offences defined as such in the Penal Code.

### **C. Promotion of the administration of justice and measures to combat impunity**

78. In order to strengthen the administration of justice in cases of serious violations of human rights and international humanitarian law, a series of measures, including inter-institutional measures, have been put in place to facilitate the participation of human rights organizations, trade unions and social and political movements. The need to deal with all kinds of material and geographical situations whose gravity requires institutional reinforcement in difficult circumstances caused by the escalation of the armed conflict has led to the establishment of new coordinating bodies.

79. The Special Committee to Promote the Investigation of Human Rights Violations and Breaches of International Humanitarian Law is currently preparing a new programme of work, which includes a significant number of new cases for investigation, some of which are already under consideration by international human rights bodies. In the first phase of the Committee's work, which involved 35 cases, the following results were obtained: 44 indictments, 36 security measures, 6 sentences, 18 lists of disciplinary charges and 12 punitive judgements.

80. In addition, the presidential human rights programme submitted for international cooperation a comprehensive inter-institutional anti-impunity project which will be based on a study of cases at different stages of the judicial process. The project is compatible with the work of the Special Committee and will eventually incorporate the recommendations of the Office of the United Nations High Commissioner for Human Rights.

81. At the national level, there is a working group on an amicable settlement in the case of Unión Patriótica, and inter-institutional commissions on the search for disappeared persons, on workers' human rights and on human rights of indigenous peoples.

82. With regard to the working group on an amicable settlement in the Case of Unión Patriótica, the second phase of this process in the Inter-American Commission on Human Rights is making progress in establishing measures to prevent further human rights violations; such measures include the promotion of investigations, for which an international cooperation project is being developed. The working group is also addressing the issues of truth and justice and comprehensive reparations to victims' relatives.

83. The Inter-Institutional Commission on the Promotion and Protection of Workers' Human Rights is studying a proposal to increase its effectiveness in combating impunity through the establishment of an ad hoc sub-commission to investigate serious violations of workers' human rights. In order to legitimize the work of trade unions and their leaders and members, the Commission is also reviewing a draft communications strategy, which includes an extensive media campaign.



84. The Commission on the Search for Disappeared Persons, established by Act No. 589 of 6 July 2000, which defined various offences, including the forced disappearance of persons, is responsible for supporting and promoting investigations into forced disappearances, with full respect for institutional jurisdictions and the prerogatives of the various parties to the proceedings, for devising, evaluating and supporting the implementation of plans to search for disappeared persons, as well as establishing working groups for specific cases. As part of its work of supporting and promoting mechanisms established by law, the Commission is currently considering regulations for the urgent search procedure established under article 13 of the aforementioned Act. It is also working on the Commission's approach to the confidentiality of proceedings, and on the management of resources for the establishment of an institutional support office. The Commission has assigned a working group consisting of members of the Commission to promote searches in recent cases of forced disappearances.

85. Nine inter-institutional commissions are also at work, dealing with a wide range of specific regional situations in Arauca, Costa Caribe, Macizo Colombiano, Barrancabermeja, Santander and Norte de Santander (Catatumbo), the peace communities, Valle - Alto Naya, Sumapaz and Eje Cafetero.

86. The regional commissions were established in response to specific developments and needs in the area of prevention, human rights protection and the promotion of criminal and disciplinary inquiries into human rights violations; they are also a reflection of the Colombian Government's desire to support and assist the regions by sensitizing local and regional authorities to these problems and encouraging them to participate, along with social and human rights organizations, in solving them. The existence of such forums for dialogue between the authorities and community organizations helps to dispel mistrust and encourages the development of public policies that are adapted to regional and local situations.

87. The presidential human rights and international humanitarian law programme, with international cooperation support from the Netherlands, has promoted more than 100 additional cases. By way of illustration, out of 64 inquiries, 75 per cent are in the investigation stage and the rest are in the preliminary investigation stage, and the following judicial decisions have been taken: 122 persons were placed under investigation and 42 were placed under investigation without security measures, 27 indictments and 67 orders for detention were issued, and 17 persons were declared absent.

88. In order to facilitate the administration of justice, the Office of the Public Prosecutor runs a witness and victim protection programme, which in 2000 allocated 822 million pesos to deal with 542 people who testified in 154 cases.

89. Since January 2001, the Office of the Attorney-General has been devising a human rights policy, with emphasis on prevention. In this context, it is conducting a joint project with the Office of the United Nations High Commissioner for Human Rights to determine the scope and content of the concept of prevention in supervisory bodies, such as the Attorney-General's Office. It is also providing training in human rights and international humanitarian law for its

officials at the national level, in cooperation with the Office of the United Nations High Commissioner for Human Rights and other national and international bodies. It has also used international cooperation resources for institutional reform. The most serious cases of human rights violations are dealt with directly by the Attorney-General's Office.

90. The Office of the Ombudsman is preparing the regulations for the court-appointed defence service and on ensuring defenders' professionalism and commitment.

91. The Higher Council of the Judicature has been updating and broadening its criteria for the territorial distribution of judicial offices, taking into account the most violence-prone areas of the country, in order to ensure an adequate number of judges, the effectiveness of criminal investigations, and access to justice.

92. The Prison Infrastructure Fund and the National Prison System Institute (INPEC) are taking measures to improve the prison system by increasing prison capacity and overcoming the problems of administering penal institutions. The National Criminal Policy Council will be involved in these efforts.

93. In order to reduce overcrowding in prisons, two prisons were put into operation in the past year as part of the Prison Infrastructure Expansion Plan, thereby increasing overall capacity by 3,800 places. The National Economic and Social Policy Council (CONPES) approved an allocation of 660 billion pesos for the construction of 11 more medium-security prisons. The Prison Infrastructure Fund is making specific efforts to build and adapt prisons. In addition, the Attorney-General's Office is currently finalizing a study on overcrowding in police stations.

94. Despite the magnitude and complexity of the current situation, INPEC and the judicial authorities are making every effort to send persons in pre-trial detention to detention centres designed for that purpose, in order to ensure the separation of convicted and accused persons. INPEC has established a human rights office and increased the frequency of its regular operations, with the support of the Public Prosecutor's Office, DAS, the Technical Investigation Unit (CTI) and the police, in order to maintain the authorities' control over the prison population using methods and practices that respect the rights and dignity of prisoners. The Ministry of Justice and INPEC have stepped up measures to exercise effective control over administrative and custodial and supervisory personnel and to investigate, and apply appropriate sanctions in, all cases of corruption. The Inspectorate-General of INPEC is being established in order to speed up disciplinary investigation against officials of INPEC. In addition, intelligence and counter-intelligence units are being established within INPEC. These bodies provide the support necessary for the Office of the Ombudsman to monitor prison conditions and the legal status of inmates very closely.

95. At the same time, consideration is being given to a draft Penitentiary and Prison Code which takes account of international standards and principles. It should be noted, however, that the problem lies with the mechanisms for implementing legislation, not with the content of the legislation itself.

#### **D. Special measures to promote international humanitarian law**

96. The humanization of the conflict is the central issue in negotiations with the armed groups, and the Government of Colombia advocates the signing of humanitarian agreements to put an end to kidnapping, extortion, attacks on local communities and the use of gas tanks, among other things. The Government has also insisted, with the support of the international community, on the need for insurgent groups to observe and apply international humanitarian law and respect the civilian population and non-combatants. It has also repeatedly called upon the insurgent groups to consider a ceasefire in order to ensure a more favourable environment for negotiations and better protection for the population groups affected by the intensity of the conflict.

97. Protection of minors from the armed conflict. No one under the age of 18 is associated in any way with the military forces in Colombia, a situation that goes further than the provisions of international law. In addition, there is an ambitious care programme for children removed from the armed conflict and provides comprehensive assistance, rehabilitation and reintegration. This policy is executed and coordinated by the National Office for Reintegration, and provides for the participation of community organizations. In 2000, three special centres were built for disengaged children who were abandoned or whose lives were at risk and work was begun on the establishment of an institutional support network for disengaged children. Twenty *casas de paz* “peace houses” were established to facilitate the integration of children in conditions of dignity, and a family support programme was launched to help children reintegrate into a nuclear family. The Colombian Family Welfare Institute (ICBF) and the Reintegration Programme provided comprehensive care for some 400 children between the ages of 11 and 18. Between January and July 2001, ICBF provided care for 275 children removed from the armed conflict, under a special care programme.

98. Elimination of anti-personnel mines. In accordance with Colombia’s obligations as a signatory to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, and even before the Convention’s formal entry into force in Colombia, the Government, through the Ministry of Defence, has taken numerous measures to locate and destroy anti-personnel mines.

99. In order to ensure effective compliance with its obligations under the Convention, the Government has launched a programme for the prevention of landmine accidents and care for the victims which is part of the presidential human rights and international humanitarian law programme. Under this programme, and in cooperation with national and international civilian organizations, the Observatory on Anti-Personnel Mines was established. The Observatory has undertaken chronological documentation of accidents and incidents caused by mines and other explosive devices from 1984 to the present; the first phase focuses on 16 municipalities in the departments of Santander, Antioquia and Bolívar. The programme also includes a project on comprehensive care for victims of anti-personnel mines, which is being carried out in the same 16 municipalities. In its second phase, the project will be expanded to include 16 additional municipalities in the departments of Cauca, Valle del Cauca and Antioquia.

100. Decree No. 2113 of 8 October 2001 established the National Inter-Agency Commission on Action against Anti-Personnel Mines and the Technical Committees on Prevention and Care of Victims, and on Signposting, Mapping and Mine Removal. Moreover, work has begun on the preparation of a mass media awareness-raising campaign, with the support of the International Organization for Migration and the Just Peace Corporation.

101. In the next few days, a Presidential Order will be issued, on support for, and dialogue and cooperation with, Colombia's non-governmental humanitarian organizations. The Order explicitly recognizes the work of the national and international NGOs that provide help, protection, assistance and support to victims of natural disasters, the internal armed conflict and other violent events. The Order also sets forth specific instructions for public officials to provide the cooperation and support needed by members of such humanitarian organizations in order to enable them to carry out their tasks.

102. The Reintegration Programme for demobilized insurgents is part of the measures to implement international humanitarian law, and of efforts to support the peace process. It includes individual financial assistance, vocational and professional training, funding for collective production projects and other associative forms of work. The Programme is currently involved in the demobilization of more than 5,200 former combatants.

#### **E. Care for the population displaced by violence**

103. Under the coordination of the Social Solidarity Network, the national system of comprehensive care for the displaced population, which brings together all the bodies that carry out plans, programmes, projects and actions in this area, is being consolidated. In 2001, the National Council on Comprehensive Care for the Displaced Population was reactivated as the national coordinating body, thereby making it possible to consider and approve the following additional legal instruments:

(a) Draft decree on housing for the displaced population, providing preferential access to the family housing subsidy programme;

(b) Draft decree on access to land for the displaced population and the freezing of abandoned assets, promulgated in September 2001 as Decree No. 2007;

(c) Study of mechanisms for exempting the male displaced population from compulsory military service, as part of which a temporary identity card for displaced men was introduced. A Ministry of Defence decision will be issued shortly in this regard;

(d) Preparation of document CONPES 3115 of May 2001, approving the sectoral budget allocations for the implementation of the Plan of Action;

(e) Adoption of the National Plan of Comprehensive Care for the Displaced Population, amending Decree No. 173 of 1998. The promulgating decree is ready for presidential approval;

(f) Draft decree on preferential access to education for the displaced population, currently in the process of being signed by the ministers concerned prior to promulgation by the President;

(g) Draft presidential order on the strengthening of comprehensive care for the displaced population, currently awaiting presidential approval.

104. The Social Solidarity Network is promoting decentralization of the system by strengthening the municipal, district and regional committees for comprehensive care for the displaced population and the standing bureaux on work with the displaced population, through a project funded by the Office of the United Nations High Commissioner for Refugees, and through the preparation of support material for decision-making within territories, such as the Guide to Comprehensive Care for the Population Displaced by Violence.

105. In order to deal with displacement of individuals and families to cities where a high percentage of the displaced population is concentrated, guidance and assistance units have been established. The units include representatives from the Government Prosecutor's Office (*Ministerio Público*), the Social Solidarity Network, the local authorities, departmental governorates and operating NGOs. Guidance and assistance units currently operate in the cities of Barranquilla, Bogotá, Cartagena, Valledupar, Soacha, Santa Marta, Villavicencio, Bucaramanga and Sincelejo.

106. The Social Solidarity Network has prepared a decentralized resource-administration strategy that makes it possible to coordinate activities with NGOs that have experience and understanding of displacement, and adopt a more holistic approach to care. This system is already in operation in the following cities and regions: Barranquilla, Bogotá, Magangué, Cartagena, Montes de María, Norte de Bolívar, Florencia, Valledupar, Quibdó, Soacha, department of Cundinamarca, the departments of the Eje Cafetero, Villavicencio, Barrancabermeja, Bucaramanga, Cali, Cúcuta, Medellín, Montería, Santa Marta, Pasto, Sincelejo and Ibagué.

107. The Network has encouraged the municipal, district and departmental committees to draw up contingency plans that take account of specific local situations. The plan will make it possible to alleviate the suffering caused by displacement and to provide the bodies dealing with the problem with an instrument for enhancing response capacity and organization.

108. Between January 2000 and June 2001, the Network consolidated the National Information Network by reinforcing two subsystems, the single register of displaced persons and the system for estimates of forced displacement by contrasting sources (SEFC), the aim being to ensure the supply of information on the extent of displacement, the characteristics of the groups concerned, the territories involved, the causes and the presumed actors, which will form the basis for the preparation, follow-up and reorientation of care plans, programmes and projects. During the first half of 2001, the Network carried out a mass distribution of information registration forms and, during the second half, launched a series of training workshops for representatives of the Government Prosecutor's Office throughout the country.

109. Humanitarian missions are being carried out as part of the efforts to prevent displacement. These are in effect observer missions to establish and verify the degree to which local residents risk becoming victims, or have been victims, of human rights violations, to support and draw attention to threatened populations, and to provide them with protection and care through an inter-institutional response.

110. Within the international cooperation framework, the Network has formed partnerships with various United Nations agencies, with a view to reinforcing the national system of care.

111. These strategies yielded the following results between January 2000 and June 2001:

(a) In the area of prevention of displacement, the Social Solidarity Network and other bodies have carried out local-impact production projects and projects to promote peaceful coexistence with a view to strengthening the economic and social situation in the most vulnerable communities. Five special psychosocial care projects are also under way in Bogotá, the municipality of Usme in Cundinamarca, and in the departments of Atlántico, Santander, Caquetá, Chocó and Bolívar; while the programme of comprehensive care for municipalities affected by the political violence in Colombia has provided support to the civilian population affected by such manifestations of armed conflict as massacres, takeover of municipalities, attacks and combat. In most cases, mass population movements have been avoided, insofar as assistance has been provided directly in the affected localities. The programme also deals with construction and reconstruction of affected localities. Actual expenditure on measures to prevent displacement during the period under consideration exceeded 36 billion pesos, of which 34,255 million pesos came from the Social Solidarity Network, benefiting 12,245 households;

(b) In the area of humanitarian assistance, Social Solidarity Network actions take a variety of forms, depending on the development and magnitude of a particular event. In cases of individual displacement, in the main host cities care is provided by NGOs, under the decentralized administration scheme. Individual displacement in other localities is dealt with directly by the Network's local units. Mass displacements are dealt with by local units in cooperation with the other bodies involved in the scheme. Between January 2000 and June 2001, some 31,209 households received assistance, with an investment amounting to nearly 30 billion pesos, of which 26.5 billion pesos were contributed by the Network;

(c) In the area of resettlement, which includes income-generation, housing and job-training projects, investment by the Social Solidarity Network and co-financing amounted to 33,190 million pesos, benefiting more than 14,500 households;

(d) In the area of institutional reinforcement, 4,839 million pesos have been invested, of which 3,489 million pesos came from the Network.

112. Between January 2000 and June 2001, the Social Solidarity Network invested 84,242 million pesos and national and international co-financing amounted to 19,633 million pesos; total investment was 103,875 million pesos.

113. In addition to the above, between July and September 2001, the Social Solidarity Network's Projects Committee allocated a total of 21,872 million pesos to support the resettlement of 15,971 households and 178,237,592 pesos for institutional reinforcement activities. An investment of 13,112 million pesos is also envisaged to provide emergency humanitarian assistance to 7,700 households.

## **F. Legislative measures**

### **Definition of the crimes of genocide, forced disappearance, forced displacement and torture - Act No. 589 of 2000**

114. On 6 July 2000, President Andrés Pastrana approved Act No. 589, categorizing genocide, forced disappearance, forced displacement and torture as offences and introducing other provisions of major importance for ensuring the realization of human rights in Colombia.

115. This Act is of profound significance, since it helps to promote a framework of rules for the effective defence and protection of human rights, combat impunity and strengthen the rule of law.

116. This measure constitutes a step forward of paramount importance for the development and application of the policy for the promotion of, respect for and safeguarding of human rights and the application of international humanitarian law. It demonstrates the Government's real, institutionally-based commitment to these issues, to which it has assigned priority since it took office, and constitutes a response to the recommendations made by the international community.

117. The Act defines the offences of forced disappearance, genocide and forced displacement, describes the offence of torture and prescribes a punishment for it. It also classifies these offences among the most serious forms of conspiracy and incitement to commit an offence, as well as of complicity. In addition, it introduces major policy measures for dealing with these offences, such as the establishment of special working groups on disappeared persons, a national register of disappeared persons, administration of their property, the continuing obligation of the State to try to find such persons, a register of persons who have been arrested or detained, an urgent search mechanism, and a ban on amnesties or pardons for persons who have committed any of the offences referred to in the Act.

118. The characterization of the offence of forced disappearance provides that the offence may be committed by public servants, individuals acting on the instructions or with the acquiescence of public servants, individuals belonging to armed groups, or any other individual. This differentiation among various perpetrators reflects the current crime situation in Colombia, and is also in keeping with international norms requiring such specific references.

119. The Inter-American Convention on Forced Disappearance of Persons of 9 June 1994 and the United Nations General Assembly's Declaration on the Protection of All Persons from Enforced Disappearance of 18 December 1992 limit this offence to acts committed by agents of the State and individuals connected with them. The Colombian Act goes further by referring to the range of perpetrators mentioned above.

120. Other aspects of international norms relating to the forced disappearance of persons have been incorporated into the ordinary Penal Code and in the Military Penal Code, which entered into force in August 2000. Rules have been adopted to exclude forced disappearance, as well as genocide and torture, from military courts.

121. The provisions of Act No. 589 have led to the expansion of the Penal Code. Where torture is concerned, the Code now reads as follows:

*“Article 279. Torture. Anyone who subjects another person to severe physical or mental pain or suffering with the aim of obtaining information or a confession from that person or a third person, punishing that person for an act he or she has or is suspected to have committed, or intimidating or coercing that person for any reason involving any type of discrimination, shall be liable to between 8 and 15 years’ imprisonment, a fine of 800 to 2,000 times the minimum monthly wage, and disqualification from the exercise of public rights and duties for the same period as the term of imprisonment.*

*“Any person who causes severe physical suffering for purposes other than those described above shall be liable to the same punishment.*

*“Pain or suffering which are caused solely by lawful punishments or which are the normal or chance result of such punishments shall not be considered to constitute torture.”*

122. Similarly, under article 14 of the Act, no amnesty or pardon may be granted to persons convicted of the offences referred to in the Act, which include torture. Such cases are heard under the ordinary system of justice, primarily by the criminal circuit courts.

### **Reforms of the military criminal justice system - Act No. 522 of 12 August 1999**

123. The new Military Penal Code refines its sphere of competence and defines service-related offences, with the aim of providing judges with guidance in determining unambiguously whether or not an offence falls under their jurisdiction. The offences of torture, genocide and forced disappearance are completely excluded from the jurisdiction of the military criminal courts, as it is considered that they are never related to service. Similarly, the investigation and prosecution of civilians by the military criminal justice system is forbidden.

124. The new Military Penal Code defines the principle of due obedience, and provides that a person who commits a punishable act may be exempted from criminal liability if the act was carried out in compliance with a lawful order issued by a competent authority in accordance with legal formalities. This eliminates the possibility that members of the armed forces might obey manifestly unlawful orders that run counter to the constitutional and legal functions of the armed forces of the State.



125. Another area of clear progress in the modernization of the Colombian military criminal justice system is the separation of command functions from those of investigation and prosecution. This separation is established by the new Military Penal Code in order to guarantee complete independence and impartiality in military criminal courts, so that the authority hearing the case is not the same as that which performs command functions.

126. In order to enable the military criminal justice system to operate in a more prompt and transparent manner, the new Code provides that persons affected by an offence may institute criminal indemnification proceedings.

127. Similarly, keeping pace with recent progress in the ordinary justice system in Colombia, the accusatorial procedure has been introduced into the military criminal justice system through the creation of the posts of military criminal prosecutors, whose task is to identify offences and bring charges, and who are authorized to halt proceedings when circumstances so warrant. As in ordinary courts, the Government Prosecutor's Office participates in all stages of proceedings through the Attorney-General and procurators dealing with the armed forces, the National Police and the Government Prosecutor's Office; in addition, criminal procurators are assigned to the military criminal justice system.

128. An analysis of the nature of military jurisdiction follows, together with a description of the functioning of the military criminal justice system.

### **Military jurisdiction**

129. The Colombian Constitution assigns to the armed forces the task of defending Colombia's sovereignty, independence and territorial integrity and the constitutional order, and of working to maintain conditions necessary for the exercise of public rights and freedoms by citizens and to ensure that the various components of Colombia's population live together in peace.

130. Discharging this mission involves the performance of tasks that sometimes may affect individual rights. Similarly, military organization and discipline involve compliance with a number of specific regulations that apply to the armed forces but not to other State institutions. For this reason, supervision of compliance with laws and regulations, both in the performance of their constitutional mission and in the observance of their internal rules, must be carried out by the members of the armed forces themselves.

131. According to the Higher Council of the Judicature, a high-level body in the Colombian judicial system, the creation of a specific jurisdiction distinct from ordinary courts is clearly based on a concern for specialization that is undoubtedly related to the fact that those who are most familiar with certain aspects of prominent institutions in society should be the judges of the behaviour of their members.

132. The Council also considers that, in creating military jurisdiction, the authors of the Constitution in no way wished to protect a privileged form of proceedings or to conceal any form of impunity but rather to enable an organization that displays very singular characteristics and

has its own very specific procedures to examine offences committed by its members, in the light of strict operational and hierarchical considerations and the special sense of discipline and respect for one's superiors on which it is based.

133. This means, in the view of the Council, that, in place of an effort to institute favourable treatment, the normal parameters for assessing human behaviour were supplemented with a number of additional elements that transform both disciplinary and criminal proceedings against members of the armed forces into a highly specialized procedure placed in the hands of judges who, while meeting all the requirements for occupying such a responsible post, also possess knowledge of ways and means of handling all the specific features of an organization such as the military, which differs markedly from other State institutions.

134. The Constitutional Court expressed a similar view, noting that the military jurisdiction cannot be linked to the idea of privilege, prerogatives, benefits or special favours when members of the armed forces are tried for offences committed during their service, in material and juridical circumstances that are different from those faced by other persons who are subject to the punitive action of the State; this would encourage impunity, since it would imply the granting of special treatment, in violation of the principle of equality and the concept of justice.

135. In the opinion of the Constitutional Court, military justice should be viewed in terms of the existence of an independent and impartial judicial body such as military courts or tribunals, which are the natural judges that have been entrusted under the Constitution and the law with the task of trying the offences in question. While this body belongs to the system for the administration of justice from the material standpoint, it is not attached to the ordinary system of justice, although the possibility of a functional link is not ruled out. This happens, for example, as will be seen below, when the criminal court of cassation of the Supreme Court hears final appeals against court decisions.

136. Hence the military criminal justice system is a jurisdiction that dispenses justice, but it does so in an exceptional manner, not only because of the persons to whom it falls to make the judgements, but also because of the cases they hear. At all events, in performing their functions, military judges, like all judges, must be guided by such criteria as those of impartiality, objectivity, effectiveness and swiftness.

### **Functioning of the military criminal justice system**

#### ***Area of competence***

137. The military criminal justice system is a special jurisdiction of the Colombian justice system; its task is to investigate and punish members of the armed forces who commit criminal acts while on active service or in relation to active service. Civilians are excluded from this jurisdiction, since they may never be investigated or tried under the military criminal justice system in Colombia.

138. Service-related offences are those committed by members of the armed forces that arise from the performance of their intrinsic military or police function. The Supreme Court has laid down that service-related offences are those that have to do with the link between military or

police activity and the criminal act. Service-related offences take place through acts that are inherent in military activity, or which are performed in compliance with orders issued by a person exercising a command function.

139. Thus, within the concept of acts inherent in service, consideration should be given only to those related to pursuit of the purposes of the military forces, that is, defending Colombia's sovereignty, independence and territorial integrity and the constitutional order, and the essential functions of the police, that is, maintaining the conditions necessary for the exercise of public rights and freedoms and ensuring that the inhabitants of Colombia live together in peace. However, under Colombian law, the crimes of torture, genocide or forced disappearance, as defined in international conventions and agreements ratified by Colombia, may never be considered to be service-related.

140. Within the Latin American context, Colombia's Military Penal Code is unique in its explicit exclusion of these offences from its sphere of competence.

141. In 1997, the Constitutional Court ruled that crimes against humanity do not fall within military criminal jurisdiction because they are not related to service in the armed forces, and because this class of offences constitutes a serious violation of human rights and oversteps the function of the armed forces in an essential way. Consequently, the Constitutional Court concluded that these offences should be tried in ordinary criminal courts. The question of whether or not a particular case involves a service-related offence turns fundamentally on the circumstances in which the act in question was committed, a matter for the sole evaluation of the judge in the light of the evidence.

#### ***Prosecutors and judges separate from the line of command***

142. Cases involving service-related offences are heard by courts martial or military courts, which are composed of members of the armed forces who are in active service or retired. Such courts operate in accordance with the provisions of the Military Penal Code.

143. Under the new legislation, military prosecutors and judges who identify service-related offences committed by members of the armed forces, investigate them, bring charges and hear cases are separate from the line of command. This guarantees the complete independence and impartiality of the court, and ensures that the intervening authority is not the same as that which exercises command functions. In this way, commanding officers have ceased to serve as judges, and this function is performed by military criminal judges who are attached to machinery that is separate from the operational military structure.

144. The separation between military judges and commanding officers will help to strengthen confidence in the decisions taken by the judges and put an end to any belief that those in authority might enjoy any influence in military criminal proceedings.

#### ***Structure of the military criminal justice system***

145. The new Military Penal Code specifies the various institutions or authorities to be used for criminal action when offences are committed by members of the armed forces in active

service or in relation to active service. They are the Higher Military Tribunal, courts of first instance, military criminal prosecutors, military criminal examining magistrates and judges advocate and the criminal court of cassation of the Supreme Court. The general requirements for occupying these posts are the same as those for the equivalent posts in the ordinary justice system, but adapted to the specific needs and circumstances of the military criminal justice system.

146. At the same time, the structure of the military criminal justice system falling under the Ministry of Defence was expanded through the establishment of the Higher Council of the Military Criminal Justice System, which advises the Ministry in all matters relating to the military criminal justice system and recommends policies, plans, programmes and evaluation systems designed to render the administration of justice more efficient. In addition, the Executive Directorate of the Military Criminal Justice System was set up to implement the policies and programmes adopted by the Ministry in the sphere of administration of justice.

### *Supervisory bodies*

147. This jurisdiction is also subject to the supervision of the Attorney-General, who is in overall charge of the Government Prosecutor's Office and whose tasks include that of overseeing compliance with the Constitution, laws, and decisions by the courts and the administration. It has an ongoing role to play in each stage of cases within the military criminal justice system, through the Attorney-General, the procurators dealing with the armed forces and the National Police and the military criminal prosecutors attached to the courts of first and second instance in the military criminal justice system. The latter, who are appointed directly by the Attorney-General, play a role in the cases that they attend, so that they can call for evidence and challenge decisions that are taken, in the same way as any other party to the proceedings. The role of the Government Prosecutor's Office serves as a fundamental guarantee that proceedings will be conducted in a fair manner against members of the armed forces who have committed offences, and that effective punishment will be imposed.

148. Within the military criminal justice system, as a party to the proceedings, the Government Prosecutor has the following functions, without prejudice to others performed in a supervisory role:

- (a) To ensure that human rights are respected and guarantees of due process are observed at all times;
- (b) To ensure that the parties are acting freely when actions are withdrawn;
- (c) To seek a discontinuation of proceedings when it considers that such a decision is justified;
- (d) To intervene in all criminal proceedings in military courts and call for the accused to be acquitted or found guilty, as the case may be;

(e) To monitor compliance with the various obligations and conditions imposed by courts in connection with benefits, release from imprisonment, subrogation, guarantees, obligation to appear and other obligations;

(f) To ensure respect at all times for the general principle of separation between jurisdiction and command for judges;

(g) To ensure that victims are guaranteed their right to proper access to justice;

(h) To call for evidence or supply it when relevant or appropriate.

149. The functions set out in subparagraphs (c), (d) and (h) above are applicable only when it is necessary to protect the legal system, public property or fundamental rights and guarantees.

150. Colombia differs from its neighbours in that an independent civilian body - the Government Prosecutor's Office - plays a role in the military criminal justice system.

151. Military prosecutors and judges are answerable to the above-mentioned supervisory bodies for all their actions and decisions, and are subject to investigation and punishment for any actions that are proved to be counter to the legal rules governing the substantive application of the law and the appraisal of evidence.

#### ***Claims for criminal indemnification***

152. Claims for criminal indemnification may be lodged in the context of military criminal proceedings to enable persons who have suffered harm as a result of the offences to assist in the search for the truth concerning the events. In criminal cases being dealt with by the ordinary system of justice, a person who is a victim or has suffered harm, as the case may be, may exercise the right of petition in order to obtain information or make specific requests, and may supply evidence. It is also possible for such persons to institute civil proceedings to seek compensation for individual and collective damage or injury caused by a punishable act.

153. The Constitutional Court has opened the way for claimants for criminal indemnification to participate in proceedings in the military criminal justice system from the investigation stage onwards, during the hearings and once the judgement has been handed down, as a contribution to guaranteeing access to justice.

154. Accused persons are defended by qualified counsel, so as to guarantee fully their right to a defence.

#### ***Procedural aspects***

155. From the outset, military criminal proceedings comply with all constitutional and legal requirements which, in the Colombian democratic system, involve guarantees of due process for the accused and the absolute independence of judges and prosecutors vis-à-vis the legislature and the executive. The independent status of the justice system is such that even the prosecutors form part of the judiciary and are not subordinate to the executive.

156. In the event of a punishable act that has implications in penal law, a military criminal judge opens a preliminary investigation in order to determine whether the acts of the military personnel included any unlawful act that could justify an inquiry. Following this initial inquiry, the case is shelved if the judge finds no grounds to proceed; otherwise a criminal investigation is instituted. In the latter case, the military criminal judge examines the matter of jurisdiction, reviewing the evidence relating to the events in order to establish details as to the mode, time and place of the act. The judge evaluates whether the events took place as a result of actions intrinsic to the task of the armed forces or police - in other words, whether they corresponded to an act arising from service. If so, the judge takes on the investigation, as the events fall under his jurisdiction; if not, he hands the case over to the ordinary courts.

157. However, clashes of competence may arise during this process - some positive and some negative. They are positive when both ordinary justice and military justice claim to be competent, negative when both deny it. In such cases, the file is forwarded to the Higher Council of the Judicature, which is the authority competent to settle the dispute. The Council eventually passes the case to a military criminal judge or an ordinary judge, depending on its appraisal of the evidence.

158. A party seeking criminal indemnification may also claim that the judge hearing the case is not competent, and request the judge whom it considers competent to take over the case, as may the Government Prosecutor. In either situation, the Higher Council of the Judicature has the final word.

159. The preliminary investigation begins when it is necessary to determine whether the event reported to the authorities took place and whether it is identified in the law as an offence. In the light of the outcome, an investigation is opened by means of an initiating order, or a refusal order is issued. In the former case, the person who appears to be responsible on the basis of the evidence gathered in the case is called for questioning. If the person does not appear for questioning, a summons is issued and restrictions are placed on the person's movements, and, by means of an interlocutory order, the person is declared absent and assigned a counsel. The examining magistrate then arranges for a transfer to the military criminal prosecutor, who will identify the offence and either send the case for trial, if there are clear indications of the existence of at least a statement by one witness offering serious and credible grounds or serious circumstantial evidence that the accused can be sent for trial as a principal or accessory, or alternatively, if there is insufficient evidence to justify a decision to convene a court martial, halt the proceedings.

### *Second instance*

160. Once the court martial has been convened, its presiding officer initiates the requisite oral proceedings, which are recorded in writing, and issues a judgement within eight days of the end of the hearings. This judgement may be reviewed by the Higher Military Tribunal, which conducts the review either ex officio or following the lodging of an appeal.

161. Similarly, decisions handed down by the Higher Military Tribunal in its capacity as appeal court, for offences punishable by prison terms in excess of eight years, or in other exceptional cases, may be further appealed to a totally civilian court - the criminal court of cassation of the Supreme Court. The grounds which may be cited by the appellant in military criminal proceedings are broadly the same as those stipulated for ordinary criminal proceedings, that is, breach of a substantive law, a sentence inappropriate to the charges or a sentence arising from proceedings that are defective on grounds of nullity. The existence of this remedy in the military criminal justice system and the status of the civilians entrusted with the task of ruling on it guarantee the impartiality and objectivity of the judge in taking his decision - criteria which have already been mentioned as being of fundamental importance in military criminal proceedings, as in any criminal case.

162. The new legislative provisions relating to the military criminal justice system are designed to strengthen and modernize it so as to make it more effective and more credible in the eyes of the public, through adjustments and refinements in certain areas that had been the subject of public discussion in the past.

#### *Acts arising from service*

163. These include a precise definition of what may be considered to be service-related offences and what does not merit this description. The aim is to provide judges with guidance to enable them to define the competence of the military criminal courts unambiguously. However, when doubt exists concerning the jurisdiction for hearing a particular offence, the Higher Council of the Judicature, another body which forms part of the judiciary, and is hence independent of the executive, settles the dispute as to competence.

#### *Due obedience*

164. The principle of due obedience is similarly regulated, thus eliminating the possibility that members of the armed forces may obey manifestly unlawful orders that run counter to the constitutional and legal functions of the armed forces of the State.

#### *Accusatorial procedure*

165. The accusatorial procedure has also been incorporated into the military criminal justice system through the creation of the posts of military criminal prosecutors whose task is to identify offences and bring charges and who are authorized to halt proceedings when the circumstances so warrant. Lastly, the trial procedures have been modified, leaving only those of courts martial without examining officers and the special procedure. In either case, the decision is based on the written law.

#### **Exclusion of minors from military service - Act No. 548 of December 1999**

166. In 1999, in pursuit of its policy of upholding human rights and promoting international humanitarian law, the Government ordered the release from the armed forces of all persons under 18 years of age who had enlisted voluntarily. As a result of this measure, over 1,000 minors left the armed forces. Under Act No. 548 of 1999, and in pursuance of

international agreements signed by Colombia, no person under 18 years of age may be enlisted in future - a step which goes beyond the recent provision of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

**Accession to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction - Act No. 254 of January 2000**

167. After signing the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, the Government worked for its incorporation into domestic law. The requisite act, duly approved, was endorsed by the President on 14 January 2000. In August 2000 it was declared enforceable by the Constitutional Court and, on 6 September, the President of Colombia deposited the instrument of ratification with the United Nations Secretary-General, on the occasion of the Millennium Summit in New York.

168. The government agencies concerned are working on the preparation of guidelines that will lay down an institutional framework for the application of the provisions and commitments set out in the Convention.

**New Penal Code - Act No. 599 of July 2000 (entered into force on 24 July 2001)**

169. The new Penal Code is designed to dovetail with the rules and principles set out in the 1991 Constitution and to promote respect for and the protection of human rights and international humanitarian law.

170. The Penal Code is founded on the need to respect human dignity, not only that of the offender but also that of the victim. For this purpose, it lays down clear rules that are compatible with the desire to humanize penal law in the area of exemption from responsibility, and criminalizes the most serious violations of human rights, establishing new offences such as violations of international humanitarian law and serious violations of human rights, including genocide, forced disappearance, forced displacement and torture.

171. The creation of these new offences constitutes a genuine step forward towards making conflict more humane and protecting the fundamental rights of Colombians. This is a key landmark in protecting human life and dignity.

172. The influence of marginalization and poverty is acknowledged by providing for milder punishments in order to distinguish between professional criminals and those whose extreme need drives them to commit offences.

173. Crime develops hand in hand with the achievements of science and technology, and so the Code recognizes new offences arising therefrom, such as genetic manipulation, cloning, fertilization and trafficking in human embryos, damaging of foetuses, spreading AIDS and hepatitis B, sex tourism, transnational bribery, trafficking in chemical, biological and nuclear weapons, speculation, fraud in the supply of goods and services, and so on.



174. Alternatives to the use of formal prison are introduced: there is a wide range of minor offences punishable by fines. House arrest has been introduced in order to lessen the severity of prison sentences in the case of offences regarded as intermediate offences. Persons suffering from a serious illness that makes it impossible for them to remain incarcerated are permitted to deduct from their sentence any time spent in hospital or in a residence, as a means of lessening the harshness of the prison system.

175. There has been a change of direction as far as the length of sentences is concerned, since a ceiling of 40 years has been placed on prison terms. This change goes hand in hand with a more consistent approach at both judicial and enforcement levels, lessening the excessive degree of discretion prevailing hitherto, and thus avoiding the mistake of setting very severe punishments whose application is rendered absurd by remission on a progressive and accumulating scale.

**New Code of Penal Procedure - Act No. 600 of July 2000 (entered into force on 24 July 2001)**

176. It is very important to note that the new Code of Penal Procedure takes up issues in this area that have arisen in case law and literature. On the basis of respect for the rights and guarantees enjoyed by the parties in proceedings, the Code institutes a more rapid procedure, which will facilitate the efforts of judicial officials in investigating and hearing cases, enabling the State to respond better and faster in the interests of efficient justice.

177. The aim is, without uncritically importing alien systems, to develop the accusatorial principle set out in the Constitution, which provides for separation of the functions of accusation and prosecution, through the maintenance of the Office of the Public Prosecutor, governed by judicial principles and criteria that prevent a proliferation of institutions within an ad hoc approach that runs counter to the principle of legality, and always seeking to bring the administration of justice closer to citizens.

178. The sole security measure is pre-trial detention, which is applicable only to offences considered to be very serious. Freedom during proceedings is guaranteed to the greatest extent possible, as the realization of the fundamental right to a presumption of innocence. At the same time requirements as to evidence are being tightened so that accused persons are deprived of their liberty only when there is a solid body of evidence against them.

179. Given the need to maximize checks on the decisions taken by the Office of the Public Prosecutor, and in order to ensure that they are applied in a context of full respect for fundamental guarantees and rights, steps have been taken to institute not only formal but practical and material checks on security measures by the judges concerned. As a result, any citizen who is the subject of pre-trial detention will automatically be entitled to the assistance of an impartial judge to determine whether or not there were substantive irregularities in the appraisal of the evidence on which the decision was based.

180. In order to overcome one shortcoming in the current rules governing criminal procedure, a mechanism has been introduced to modify the categorization of the offence set out in the charge, with a clear indication of the reasons for the change and the further steps to be taken, while maintaining respect for the right of the accused to defend himself or herself against the charge in its new form.

181. The machinery for international legal cooperation as regards the exchange of evidence is being strengthened, as are such features as the monitoring of criminal behaviour and the exchange of prohibited objects, substances and services in relation to international offences.

### **Statute of the International Criminal Court**

182. Following the adoption of the Rome Statute of the International Criminal Court and its signature by Colombia in December 1998, the Ministry of Foreign Affairs initiated coordination measures in advance of preparatory meetings for the establishment of the Court, which will be held in New York.

183. At the domestic level, it should be remembered that this issue occupies a special place in the political debate on peace and human rights. On 15 March 2001, at the initiative of a number of Colombian Senators, bill No. 14/01 was submitted to the Office of the Secretary-General of the Senate, with a view to amending article 93 of the Constitution by incorporating the Statute of the International Criminal Court.

184. In cooperation with the Government, technical modifications were made to the bill, after it was recognized that only the Government can introduce legislation relating to treaties, and that there was a need to bring the Constitution into line with a few aspects that are at variance with the Rome Statute. It was then agreed to steer the bill towards recognition of the jurisdiction of the International Criminal Court in respect of Colombia, and subsequently to table a bill incorporating the Statute into domestic law. The bill was passed by Congress in December 2001. The Rome Statute will be submitted for ratification when the next session of Parliament opens, in March 2002.

### **Bill on the adoption of the Inter-American Convention on Forced Disappearance of Persons**

185. On 20 March 2000, bill No. 159/01 on the adoption of the Inter-American Convention on Forced Disappearance of Persons was sent to the Office of the Secretary-General of the Senate by the Ministry of Foreign Affairs and the Ministry of Justice.

186. The provisions of the Convention are fully compatible with Colombia's domestic legal system, bolster the criminalization of this abhorrent practice within the country and invite cooperation throughout the Americas in combating it.

187. The Government considers it important that Colombia ratify this international instrument so as to pursue its efforts to discharge its commitment to the observance and promotion of human rights.

### **Draft single disciplinary code**

188. The Congress has continued its consideration of a draft single disciplinary code tabled at the initiative of the Attorney-General's Office.

189. The Government considers the reform of the single disciplinary code to be vital, since the list of offences categorized as very serious in the current code is incomplete, with the result that persons violating human rights and international humanitarian law receive light sentences.

190. The draft contains precise and severe provisions on violations of human rights and international humanitarian law, raising to 10 years the prescribed disciplinary punishment in such cases and extending the statute of limitations for bringing such cases.

191. Under the proposals, failure to comply with presidential orders on human rights and humanitarian issues is to be classified as a very serious offence.

### **G. Other human rights policy mechanisms**

192. Follow-up to international recommendations. The Inter-Sectoral Standing Commission on Human Rights and International Humanitarian Law and its Technical Unit are currently working on a study of and follow-up to the recommendations contained in the half-yearly report of the office in Colombia of the United Nations High Commissioner for Human Rights, grouped according to the categories suggested by the office. To date, as part of that work, implementation and compliance have been reviewed in the light of the recommendations on ways of dealing with the self-defence groups, protection of human rights defenders, administration of justice and efforts to combat impunity, the situation of indigenous peoples and Afro-Colombians, and forced displacement.

193. Consolidation of the budget of State and government bodies with competence in the area of human rights and international humanitarian law. In order to ensure the full implementation of human rights and international humanitarian law policy, the Inter-Sectoral Standing Commission on Human Rights and International Humanitarian Law has made an assessment of the resource needs of government and State bodies with responsibilities in this area and submitted the requirements to the Ministry of Finance and the National Planning Department, under the direction of the President. The Human Rights Unit of the Public Prosecutor's Office currently has sufficient operating resources and receives funds from international cooperation, through the presidential human rights programme. However, the Office of the Ombudsman has special resource needs, as do the ministries of the Interior, Labour, and Justice and Law, the Social Solidarity Network, the presidential programme and the Attorney-General's Office. In one particular case, for the independent budget of the witness protection programme of the Public Prosecutor's Office, the Government is making special arrangements for Colombia to receive international cooperation resources.

194. Education and dissemination strategy under the presidential programme. In order to ensure continuation of the policy in the long-term, the presidential human rights and international humanitarian law programme is carrying out an educational and media campaign to

raise citizens' awareness and acceptance of human rights and international humanitarian law and to promote respect and peaceful coexistence. There is also a centre to monitor the presidential programme; this body is responsible for identifying progress in, and impediments to, implementation of government policy, and for disseminating studies on specific issues and problems.

**III. LEGISLATIVE AND OTHER MEASURES TO PROHIBIT THE EXPULSION, RETURN OR EXTRADITION OF PERSONS AT RISK OF BEING SUBJECTED TO TORTURE; JURISDICTION; INTERNATIONAL TREATIES AND RECIPROCAL LEGAL ASSISTANCE (ARTICLES 3, 5, 6, 7, 8 AND 9 OF THE CONVENTION)**

**Extradition**

195. In Colombia, under article 1 of Act No. 1/97, extradition may be requested, granted or offered in accordance with public treaties or, in their absence, the law.

196. Two branches of Government are involved in the extradition process, the executive and the judiciary, which means that the granting or refusal of extradition is a complex procedure.

197. One set of administrative measures is taken through the ministries of Justice and Law and Foreign Affairs. Once they ensure that admissibility conditions have been met, these bodies initiate the extradition procedure. Other measures are taken by the judiciary, the Supreme Court and the Public Prosecutor's Office.

198. Under Act No. 1 of 1997, amending article 35 of the Constitution, extradition may apply to Colombians by birth (prior to the adoption of the amendment, extradition of such persons was prohibited), naturalized Colombians and foreigners, except in cases provided for in the Constitution; namely extradition shall not be admissible in respect of political offences or offences committed before the promulgation of the Act.

199. Extradition is also inadmissible when the person requested by the authorities of another State is being tried or serving a sentence for the same offences as those referred to in the request.

200. Similarly, in line with the standards and principles of international humanitarian law, article 12 of the Colombian Constitution currently in force provides that "No one shall be subjected to forced disappearance, to torture or to cruel, inhuman or degrading treatment or punishment". This provision is an obligation under international law, since the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has been signed by the Government of Colombia and ratified by its Congress in Act No. 78 of 1986.

201. Thus, if extradition is granted, it is on the understanding not only that the death penalty - if it exists in the requesting State - will be commuted, but also that the extradited person will not be subjected to torture, cruel treatment or punishment, forced disappearance or degrading or inhuman treatment.

202. For the same reasons, and as stipulated in article 34 of the Colombian Constitution, the extradited person shall not be subjected by the State in which he or she is tried to “deportation, life imprisonment or confiscation of property”.

203. Conditions for granting or offering extradition. In order for extradition to be offered or granted, the following conditions must be met:

(a) The act giving rise to the request must also be defined as an offence in Colombia and be punishable by a prison term of not less than four years;

(b) At the minimum, an indictment or its equivalent must have been issued by the other State.

### **Procedural aspects**

204. The extradition procedure forms part of Colombia’s Code of Penal Procedure. The procedure according to the new Code, which will enter into force on 24 July 2001, is described below.

205. Conditions for offering or granting extradition. The Government may place any conditions that it deems appropriate on the offering or granting of extradition. In any case, it must require that the person whose extradition has been requested will not be tried for an offence other than the one giving rise to extradition or be subjected to any punishment other than that which a conviction would have imposed.

206. If, under the law of the requesting State, the offence giving rise to extradition is subject to the death penalty, extradition shall be granted only on condition that the death penalty is commuted.

207. Documents required for the request or offer. A request for extradition in respect of a person against whom an indictment or its equivalent has been issued in another country, or who has been convicted in another country, shall be made through the diplomatic channel or, in exceptional cases, by consulates, or between Governments. Such requests shall be accompanied by the following documents:

(a) An authentic copy or transcription of the sentence, or the indictment or its equivalent;

(b) A precise description of the acts that gave rise to the request for extradition and the place and date of their commission;

(c) All available information that may help to establish the full identity of the requested person;

(d) An authentic copy of the provisions of criminal law applicable to the case.

208. The aforementioned documents shall be dispatched in the manner prescribed by the law of the requesting State and, where necessary, translated into Spanish.
209. Opinion of the Ministry of Foreign Affairs. Upon receipt of the documents, the Ministry of Foreign Affairs shall transmit the file to the Ministry of Justice, together with an opinion as to whether the case is admissible in accordance with international conventions or usages, or whether action should be taken in accordance with the provisions of the Code.
210. Consideration of the documentation. The Ministry of Justice shall examine the documentation and, if it discovers that substantive elements of the file are missing, shall return it to the Ministry of Foreign Affairs, with a precise description of the additional information required.
211. Completion of documentation. It is the responsibility of the Ministry of Foreign Affairs to make the necessary representations to the foreign Government in order to ensure that the documentation meets the specified standards.
212. Transmission of the file to the Supreme Court. When the file is complete, the Ministry of Justice shall transmit it to the criminal court of cassation of the Supreme Court for a decision.
213. Procedure. Once the file has been received by the Court, a copy is transmitted to the person whose extradition is requested, or to his or her counsel, who are allowed 10 days in which to request any evidence deemed necessary.
214. Once that period has expired, 10 days, to which should be added any time required for travel, shall be devoted to the consideration of the evidence requested, as well as of any other evidence that the Supreme Court deems necessary for its decision. Once the evidence has been assembled, the case shall remain in the hands of the office of the court for five days for pleadings.
215. Opinion of the Supreme Court. When the aforesaid period has ended, the Supreme Court shall issue its opinion.
216. A negative opinion of the Supreme Court of Justice shall be binding on the Government; if, however, that decision is in favour of extradition, it shall leave the Government free to act in accordance with the national interest.
217. Legal grounds in accordance with the Code. The Supreme Court shall base its decision on the formal validity of the documentation submitted; on full proof of the identity of the wanted person; on the rule of double jeopardy; on the equivalence of the ruling issued abroad; and, where appropriate, on compliance with the provisions of international treaties.
218. Decision to refuse or grant extradition. Once the file containing the Supreme Court's ruling has been received, the decision to grant or to deny the extradition request shall be issued within 15 days.

219. Deferred extradition. If the requested person has committed an offence in Colombia prior to receipt of the request, the executive decision to grant extradition may defer extradition until the person in question has been tried and the sentence served, or until the proceedings are terminated either as a result of dismissal of the case, estoppel or acquittal.
220. In such situations, the judicial official hearing the case, or the director of the establishment where the accused is being held, shall place the requested person at the Government's disposal as soon as there is no longer any justification for detaining the person in Colombia.
221. Order of priority in granting extradition. If two or more States request the extradition of the same person, preference shall be given, where only one offence is involved, to the State in whose territory the offence was committed; where several offences are involved, preference shall be given to the request referring to the most serious of the offences. Where the offences are equally serious, preference shall be given to the State submitting the first extradition request.
222. When several extradition requests are received, the Government shall be responsible for establishing the order of precedence.
223. Surrender of the requested person. If extradition is granted, the Public Prosecutor shall order the arrest of the accused if such person has not already been detained, and shall surrender that person to officials of the requesting country.
224. If the request is refused, the Public Prosecutor shall order the detainee's release.
225. Surrender of property. At the same time that the requested person is surrendered, or at a later time, all objects found in his or her possession or deposited or secreted in the country, and connected with the perpetration of the offence, shall also be surrendered, together with any objects that might serve as evidence.
226. Expenses. The expenses of extradition shall be borne by each State within its territorial boundaries.
227. Cases where extradition is inadmissible. Extradition shall not be admissible where the requested person has been or is being tried in Colombia for the same offence.
228. Arrest. The Public Prosecutor shall order the arrest of the requested person upon receipt of the formal extradition request, or prior to receipt of the request, if the requesting State so requires.
229. Grounds for release. The requested person shall be unconditionally released by the Public Prosecutor if the formal extradition request is not received within 60 days of the arrest, or if, upon expiry of 30 days following the placement of the person sought at the disposal of the requesting State, that State has not arranged for the transfer of the person in question.

230. In such cases, the person may be re-arrested on the same grounds if the requesting State submits a formal extradition request or authorizes the transfer.

231. Execution in Colombia of sentences imposed abroad. Criminal sentences handed down by authorities of other countries in respect of foreigners or Colombian nationals may be executed in Colombia if the relevant foreign authorities make a formal request through the diplomatic channel.

232. Conditions. The conditions for enforcement of a sentence imposed abroad, as described in the preceding paragraph, or against Colombians arrested, deprived of their liberty or sentenced abroad, are as follows:

(a) The sentence shall not impose penalties different from, or heavier than, those provided for in book I, title IV, chapter I of the Penal Code;

(b) The sentence shall not violate the Constitution or legislation of Colombia;

(c) The sentence shall be in accordance with the law of the original State and shall be submitted in accordance with international conventions and treaties;

(d) There shall be no criminal proceedings under way in Colombia in respect of the same offences and no existing enforceable sentence handed down by domestic courts, except as provided for in article 16, paragraph 1, of the Penal Code;

(e) In the absence of any public treaties, the requesting State shall offer reciprocity in analogous cases.

233. Enforcement. The request for enforcement shall be referred by the Ministry of Foreign Affairs to the criminal court of cassation of the Supreme Court, which shall decide whether or not the sentence is enforceable under international treaties or the law.

234. Reference to other provisions. The relevant international treaties shall be applied in enforcing foreign sentences. No new trial shall be held in Colombia, except as provided for in article 16 of the Penal Code.

### **Relations with foreign authorities**

235. Applicable legislation. International law takes precedence over domestic law. Both international and domestic law shall be interpreted in accordance with international doctrine and custom and priority shall be given to substantive law.

236. International cooperation. The Public Prosecutor may enter into agreements with his counterparts in other countries in respect of exchanges of technology and experience, coordination of controlled or supervised deliveries or undercover agents, coordination of judicial cooperation, training, or any other similar activity.



237. Bases for negotiation. The provisions under this heading shall constitute the framework for discussion of such international instruments as may be adopted by Colombia in bilateral or multilateral negotiations in the areas of judicial cooperation, extradition and related matters.

238. Requests for judicial assistance. Requests originating in Colombia. Judges, prosecutors and magistrates or heads of judicial police units may approach or communicate with foreign authorities, either directly or through the channels established by law, in order to determine the admissibility of criminal proceedings, gather evidence or information, or obtain any other kind of judicial assistance.

239. If the legislation of the requested State so permits, they may commission a competent official of the requested State in accordance with the established terms and conditions.

240. Content of requests. The request for judicial assistance shall provide the requested Government with the necessary information, including the requesting office, the events that gave rise to the proceedings, the object and nature of the evidence, the legal provisions that have allegedly been violated, the identity and location of persons or property, where necessary, and the instructions to be carried out by the foreign authority. The documents and evidence obtained from the foreign authority are presumed to be legally valid and authentic.

241. Transfer of judicial officials. If the Public Prosecutor deems it necessary for a prosecutor to travel to foreign territory for the purpose of an investigation, he shall request authorization from the competent authorities. Colombian ambassadors and consuls may also be assigned this task.

### **Requests for judicial assistance from abroad**

242. Judicial assistance to foreign Governments. The Colombian authorities, through the Public Prosecutor's Office, shall provide judicial assistance at the request of foreign authorities, which may commission Colombian judicial officials to undertake preliminary inquiries. Special foreign judicial assistance units may be established under the coordination and supervision of the Public Prosecutor or his representative.

243. The Public Prosecutor may authorize foreign judicial officials to carry out preliminary inquiries in Colombia with the assistance of a Colombian judicial official and a representative of the Government Prosecutor's Office.

244. In no case shall a request for judicial assistance be refused on the grounds that the actions being investigated are not defined as an offence in Colombian law, except where this is clearly contrary to the Colombian Constitution.

245. Measures in respect of property requested by foreign Governments. Termination of ownership or any other measure involving the loss or suspension of the power to dispose of property may be enforced in Colombia at the request of a competent foreign authority.

246. The decision to order termination of ownership, confiscation or any other definitive measure, shall be communicated to the Public Prosecutor's Office, which shall issue an interim ruling as to whether the requested measure is admissible and, if such is the case, shall refer it to the competent court for a final decision.

247. The Public Prosecutor may establish an international judicial assistance fund for the deposit of such resources. In no case shall the rights that Colombian law accords persons affected by a decision to terminate ownership be impaired.

#### **IV. EDUCATION AND INFORMATION CONCERNING THE PROHIBITION OF TORTURE; TRAINING OF CIVILIAN AND MILITARY LAW ENFORCEMENT PERSONNEL (ARTICLE 10 OF THE CONVENTION)**

248. In-service training in human rights and international humanitarian law for members of the police and armed forces has been a decisive factor in improving their performance and fulfilment of their mission under the Constitution.

249. Colombia's police and armed forces are at the forefront of human rights and international humanitarian law training in Latin America, since their members receive regular training in these areas throughout their careers. More than 97,000 members of the police and armed forces have received training over the past five years, many of them in combat zones. This achievement is believed to be unequalled by any country considering the number of personnel involved. Colombia has also been a pioneer in the field of distance-learning courses for personnel involved in military and police operations.

250. During officer training (four years), non-commissioned officer training (two years) or executive personnel training (one year) every member of the Colombian police and armed forces receives an average of 90 hours a year of human rights and international humanitarian law training. In addition, personnel involved in promotion-oriented courses, basic and advanced training, general staff training and advanced military studies courses receive a minimum of 20 hours' additional training in the subject. Troops and marines receive regular human rights and international humanitarian law training during their instruction period.

251. The training of members of the police and armed forces has four specific objectives:

- (a) To integrate human rights activities into the process of institutional reform;
- (b) To adapt the methods and content of instruction in human rights and international humanitarian law to the new educational philosophy in training colleges;
- (c) To promote the principle of pluridisciplinarity in the teaching of human rights and international humanitarian law;
- (d) To set in motion processes to integrate the police and armed forces and the community in human rights terms.

252. The Ministry of Defence is working to attain these objectives through the 181 human rights offices in the various jurisdictions and units of the police and armed forces throughout the national territory; the 700 expert officers and non-commissioned officers working in these offices have a vital role to play in training programmes in the following areas:

- (a) Consolidation of a human rights culture within the police and armed forces;
- (b) Coordination, with national and international institutions, of programmes to strengthen the culture of human rights and international humanitarian law;
- (c) Restructuring of academic curricula in training colleges;
- (d) Restructuring of educational and training programmes for troops and marines;
- (e) Training of military and police instructors in human rights and international humanitarian law.

253. Training activities have been vital to obtaining international cooperation in the form of direct assistance and academic programmes for officers and outreach workers. Some of the activities undertaken in this area include:

- (a) With the support of the United States Southern Command, a handbook and code of conduct for troops and marines has been prepared. In the two seminars held to launch the handbook and code, 160 military instructors were trained;
- (b) An academic cooperation agreement was signed in 1998 with the Defence Institute of International Legal Studies in the United States, which resulted in the holding of three seminars on military criminal justice and human rights, with the aim of comparing the United States and Colombian military criminal justice systems and their relationship to human rights and international humanitarian law;
- (c) Six officers have received human rights training at the Raoul Wallenberg Institute at Lund University in Sweden;
- (d) A cooperation agreement with the Canadian embassy enabled 450 second lieutenants in their final year at the Military Cadet School to enrol in the basic distance learning course on human rights run by the Autonomous University of Bucaramanga.
- (e) Fifteen officers have received training in international law applicable to armed conflicts, at the International Institute of Humanitarian Law in San Remo, Italy;
- (f) The International Committee of the Red Cross (ICRC) supports training programmes for instructors in the police and armed forces by the holding of international seminars, conducting courses in Colombia and providing assistance in implementing the law applicable to armed conflicts in the operational plans and academic programmes of military and police training colleges.

254. The Government is also implementing a human rights dissemination and education strategy in order to raise people's awareness and understanding of the importance of human rights and international humanitarian law; establish patterns of behaviour within civil society with regard to individual and collective rights and duties and encourage the population to apply them actively in different social situations and forums; and ensure that the strategy reaches those segments of civil society that are the source of movements and activities to encourage respect and coexistence.

**V. INTERROGATION RULES, INSTRUCTIONS, METHODS AND PRACTICES;  
ARRANGEMENTS FOR THE CUSTODY OF PERSONS SUBJECTED TO  
ARREST, DETENTION OR IMPRISONMENT; INADMISSIBILITY OF  
EVIDENCE OBTAINED UNDER TORTURE (ARTICLES 11 AND 15  
OF THE CONVENTION)**

255. The new Code of Criminal Procedure, adopted by Act No. 600, of July 2000, covers the State's obligations under article 11 of the Convention, concerning the systematic review of interrogation methods and arrangements for the custody and treatment of persons subjected to arrest.

256. With regard to interrogation, chapter I of title VI, dealing with evidence, provides the following guidelines for obtaining evidence:

(a) Need for evidence. All court decisions shall be based on legally valid evidence, which shall be submitted to the proceedings in due and timely fashion. No conviction may be handed down unless evidence is produced during the proceedings that leads to certainty concerning the punishable offence and the responsibility of the accused;

(b) Evidence. The following constitute evidence: inspections, expert opinions, documents, testimony, confession and circumstantial evidence. Officials shall submit evidence other than that specified in this Code in accordance with the provisions governing similar evidence, or on the basis of their own good judgement, always respecting fundamental rights;

(c) Impartiality of officials obtaining evidence. Judicial officials shall seek to ascertain the truth. To that end, they must verify, with equal thoroughness, the circumstances that demonstrate the existence of a criminal offence, as well as any aggravating or extenuating circumstances, or circumstances that exonerate the accused or tend to demonstrate his or her innocence. During the proceedings, the burden of proof concerning criminal offences and responsibility of the accused lies with the Public Prosecutor's Office. The court may itself order evidence to be submitted;

(d) Rejection of evidence. Evidence that does not help to establish the facts of a case or which has been obtained illegally shall not be admissible. Judicial officials shall issue an interlocutory order dismissing evidence that is legally prohibited by law or useless, or which deals with manifestly irrelevant facts or is itself clearly superfluous;

- (e) **Publicity.** During the trial, there shall be no requirement of confidentiality and evidence may be made public. During the investigation stage, evidence shall be made known only to those involved in the proceedings;
- (f) **Evidentiary discretion.** Unless the law requires special evidence, any form of evidence may be used to demonstrate the existence of a criminal offence and the responsibility of the accused, grounds for the aggravation or extenuation of punishment or for exoneration from responsibility, or the nature and extent of the damage, provided that fundamental rights are respected;
- (g) **Consideration of evidence.** Evidence shall be considered as a whole, in accordance with the rules of sound judgement. Judicial officials shall always give reasoned arguments concerning the merit of each piece of evidence;
- (h) **Transfer of evidence.** Authentic copies of evidence validly submitted in judicial or administrative proceedings within or outside the country may be transferred to other proceedings and considered in accordance with the rules provided in this Code. If the evidence was originally in another language, the copies shall be translated into Spanish by an official translator;
- (i) **Convictions.** If a Colombian by birth has been convicted abroad and the sentence is duly enforced, a judicial official authorized by Colombian law to try criminal offences may submit the sentence as evidence in proceedings being held or which may be held in Colombia, without the need for an enforcement order;
- (j) **Securing evidence.** Judicial officials shall take all necessary steps to ensure that material evidence is not altered, concealed or destroyed. To that end, they may order, inter alia, the special surveillance of persons or movable or immovable property, the sealing of such property, the impoundment of vehicles, and seizure of papers, books and other documents;
- (k) **Specialist consultants.** Judicial officials may request government or private bodies to appoint experts in a particular science, art or technique when the nature of the offences under investigation requires the services of such experts. The consultants appointed shall, in their capacity as experts, be entitled to hold and have access to the case file to the extent required in order to carry out their task, and shall be bound by the rules of confidentiality. The director of the government or private body or department shall comply immediately with the judicial official's request;
- (l) **Special measures for obtaining evidence.** The Public Prosecutor or other designated prosecutor shall order judicial officials or investigating officers to intervene in or monitor suspicious activities carried out for the purpose of preparing, committing, completing, or attaining the objective of, criminal offences, with a view to identifying or arresting perpetrators or accomplices, dismantling criminal enterprises, preventing the commission or completion of criminal offences, determining whether or not there are grounds for criminal proceedings, gathering evidence, responding to requests for judicial assistance, determining the provenance of property or locating victims. The evidence gathered shall be fully valid in accordance with this

title and the applicable regulations. In all cases, the representative of the Government Prosecutor's Office shall be requested to attend; however, his or her absence shall not be an impediment to the execution of the Public Prosecutor's order.

257. The practice of interrogation is described in article 276 of chapter V of the Code which deals with testimony. Under this provision, the taking of witnesses' statements is subject to the following rules:

(a) When the witness is present and has been identified, the official swears him or her in and informs him or her of the exceptions to the duty to testify;

(b) The official then gives the witness a brief description of the events about which the witness is to testify and instructs him or her to give an account of what he or she knows about them. When the statement has been taken, the official may interrogate the witness if the official considers it necessary. Other parties involved in the case may then interrogate the witness.

258. A witness who is particularly qualified in technical, scientific or artistic aspects of the case may be asked for his or her opinion.

259. The official may interrogate the witness whenever he or she deems necessary. The replies shall be recorded verbatim. The official shall require witnesses to limit their replies to the matter under investigation.

260. Complementary provisions are to be found in article 277 of the Code of Penal Procedure, which deals with criteria for evaluating testimony. Article 277 states that, in evaluating testimony, officials shall observe the principles of sound judgement and, in particular, the nature of the object perceived, the state of health of the sense or senses used to perceive it, the circumstances of place, time and manner in which the object was perceived, the personality of the witness, the way in which the statement was made and any peculiarities to be found in the testimony.

261. Arrangements for the custody and treatment of persons subjected to arrest, detention or imprisonment. This is one of the major concerns of the Colombian Government and the State as a whole.

## **VI. EXAMINATION AND PROCESSING OF COMPLAINTS AND REPORTS OF TORTURE, MATERIAL RESPONSIBILITY OF THE STATE (ARTICLES 12, 13 AND 14 OF THE CONVENTION)**

### **A. Authorities competent to examine and process complaints of torture**

262. The examination and processing of complaints of torture are the responsibility of the ordinary courts and the Government Prosecutor's Office. The body primarily responsible for receiving such complaints is the Public Prosecutor's Office. Within the Government Prosecutor's Office, the Office of the Attorney-General is responsible for investigating cases involving acts or omissions of public officials.

### **Office of the Public Prosecutor**

263. This consists of the Public Prosecutor, designated prosecutors and other officials as determined by the law. The Public Prosecutor is elected for a period of four years by the Supreme Court of Justice from a list of three names submitted by the President of the Republic. The Office of the Public Prosecutor is part of the judicial branch and its function is to investigate, prepare cases for trial and bring charges against presumed offenders in the competent courts.

264. In its decision No. 2725 of December 1994, the Office established the Human Rights Unit, which specializes in the most serious violations of human rights and international humanitarian law.

265. The Public Prosecutor or the Director-General of the Public Prosecutor's Office shall select the cases, taking into account a number of criteria, including: whether or not the presumed offender is an agent of the State, a private individual whose activities are tolerated by State agents, a member of a subversive group or a self-defence group, or a private individual of high social standing.

266. As regards the type of offences, the three most serious human rights violations are deemed to be those closely connected with the absolute power of the State, that is, forced disappearances, extrajudicial executions and torture. Also included are massacres that target various population groups, whether involving insurgent groups, self-defence groups or criminal associations in general, all of which seek to spread fear and terror.

267. The Human Rights Unit currently has 30 specialized prosecutors, 25 investigators attached to the Technical Investigation Unit, 5 DAS investigators and 3 investigators from the Judicial Intelligence Department.

### **The Office of the Government Procurator**

268. The Office of the Government Procurator comprises the Attorney-General, the Ombudsman, delegated procurators, agents of the Government Procurator's Office, municipal representatives and other officials as determined by the law. The function of the Government Procurator's Office is to protect and promote human rights, safeguard the public interest and monitor the official conduct of those holding public office.

269. The Office of the Government Procurator, with the Attorney-General acting on its behalf, is competent to oversee matters relating to human rights. The Attorney-General, either in person or through his or her representatives and agents, has the following functions: oversee compliance with the Constitution, laws, judicial decisions and administrative decrees; protect and give effect to human rights, with the assistance of the Ombudsman; defend the interests of society; defend collective interests; ensure the diligent and efficient discharge of administrative functions; oversee the official conduct of those who hold public office, including those elected

by the people; intervene in legal proceedings and before the judicial or administrative authorities, where necessary, in order to defend the public order, the public domain or fundamental rights and guarantees; and perform other functions as determined by the law.

270. As part of its tasks, the Office of the Attorney-General deals with complaints of torture and applies the appropriate disciplinary sanctions. Major efforts are currently underway to establish a database that will provide up-to-date information on the cases that fall within the Office's jurisdiction. The Office of the Ombudsman is responsible for receiving complaints and forwarding them to the relevant departments.

### **B. Material responsibility of the State for human rights violations**

271. The State's material responsibility is established in article 90 of the Constitution, according to which the State is liable to pay compensation for any wrongful injury attributable to it when caused by acts or omissions by the public authorities.

272. In the event that the State is ordered to pay damages for any such injury sustained as a consequence of wilful or gross misconduct by one of its agents, the former shall be liable to proceed against the latter to recover those damages.

273. Similarly, under Act No. 270 of 1996, the State is liable to pay compensation for any wrongful injury attributable to it when caused by acts or omissions by judicial officials, including defects in the operation of the judicial system, errors of jurisdiction and unwarranted deprivation of liberty.

### **Direct reparation and restitution of rights**

274. In order to institute administrative litigation proceedings, it is first necessary to exhaust governmental measures. This procedural requirement stipulates that an action shall first be discussed with the administration through the lodging of viable appeals against the administrative actions constituting the contested decision. Such exhaustion must also comply with the formal requirements in each case in order to give rise to judicial proceedings. This is the only way in which the administration can respond to an individual's objections to its actions.

275. The remedies of direct reparation and restitution of rights are actions that necessarily result in compensation for damages or restitution of rights in the event that the claim against the administration is proved. It is important to point out that, as in the case of appeals, such actions can be brought only if certain formal and substantive requirements are met. The institution of such proceedings must also take account of the relevant time limits which, for the remedy of restitution of rights, is four months from the day following publication, notification, communication or execution of the decision, whichever applies, and, for the remedy of direct reparation, two years from the day following the occurrence of the administrative act, omission or operation. However, the time limit for the remedy of direct reparation for the offence of forced disappearance is calculated from the date on which the victim appears or, failing that, from the effective date of the final judgement adopted in criminal proceedings, without prejudice to the possibility of taking action at the time the events in question occur.



276. Lastly, with regard to the submission of the claim, defence submissions and other procedures during administrative proceedings, account must be taken of the provisions of articles 135 et seq. of the Administrative Code.

### **Compensation of victims of human rights violations**

277. A significant step forward in this area was the adoption of Act No. 288 of 1996. Subject to completion of the procedures set forth in the Act, the Government is obliged under article 1 to pay compensation for damage resulting from violations of the human rights that have been established, or which may be established, in explicit decisions of the international human rights bodies referred to below.

278. Act No. 288 provides for conciliation and compensation for damages only when the human rights violations in question meet the following requirements:

(a) There is an explicit written decision by the Human Rights Committee of the International Covenant on Civil and Political Rights or by the Inter-American Commission on Human Rights regarding a specific case, concluding that Colombia has committed a human rights violation and ordering compensation for the damages incurred;

(b) There is an opinion recommending implementation of such a decision by an international human rights body, issued by a committee comprising:

- (i) The Minister of the Interior;
- (ii) The Minister for Foreign Affairs;
- (iii) The Minister of Justice and Law;
- (iv) The Minister of National Defence.

279. The committee shall issue such an opinion recommending implementation of the decision of the international human rights body in all cases meeting the criteria of fact and law established in the Constitution and applicable international treaties. The Committee's opinion shall take into account, among other things, the evidence submitted and the decisions handed down in domestic judicial, administrative or disciplinary proceedings and in the proceedings before the international body in question.

280. If the committee considers that the conditions referred to in the preceding paragraph have not been met, it shall so inform the Government in order to enable it to submit the claim or lodge the appropriate appeals against the decision in question with a competent international body, if such exists. In any case, if the applicable international treaty makes no provision for an appeal, or if the time limit for challenging the decision has expired, the committee shall issue an opinion recommending implementation of the international body's decision.

281. The committee shall have 45 days, beginning from the official notification of the international body's decision, to issue the relevant recommendation. In the case of decisions of international human rights bodies issued before the date on which the Act entered into force, the aforementioned time limit shall be calculated from that date.

282. Proceedings under the Act may be instituted even where domestic remedies for compensation for damages caused by human rights violations are time-barred, provided that the requirements established by the Act are met.

283. Criminal indemnification proceedings. Individual or collective criminal indemnification proceedings for compensation for damage or injury caused by punishable acts may be brought before the civil courts or as part of criminal proceedings, at the discretion of the injured parties, whether natural persons or legal entities, or by their heirs or successors, or by the Government Procurator's Office or the group representative when collective interests are affected. In the last case, action may be brought only by a citizen, and the first to file suit shall be recognized. The group representative shall be eligible for legal aid for the poor under the Code of Civil Procedure.

284. If persons bringing criminal indemnification proceedings are unable to dispose of their own property freely and choose to bring such action as part of criminal proceedings, they shall do so by means of a claim submitted by their legal representative.

285. Persons who are found criminally responsible and are obliged to compensate for damages shall be jointly obliged to make reparation for the damage and injury caused by the criminal offence.

286. Individual or collective criminal indemnification proceedings may be instituted at any time after the decision is taken to begin preliminary investigations and up to the time a sentence is passed in a court of first instance or a court of appeal. Anyone wishing to bring criminal indemnification proceedings as part of criminal proceedings, and who is not a qualified lawyer, shall authorize a lawyer to do so.

287. An application for criminal indemnification proceedings must include:

(a) The name and address of the injured party, and the description of the criminal offence;

(b) The name and address of the presumed perpetrator, if known;

(c) The names and addresses of the representatives or attorneys of the persons involved in the proceedings, if such persons are unable to appear in court or do not appear on their own behalf;

(d) A sworn undertaking, understood to be constituted by the claim as submitted, that no civil proceedings have been initiated for the purpose of obtaining reparation for the damage and injury caused by the criminal offence;

(e) An account of the events alleged to have caused the damage and injury for which compensation is being sought;

(f) A description of the material and moral damage and injury alleged to have been caused, the estimated amount of compensation and the measures to be taken to restore the victim's rights, where possible;

(g) The legal grounds for the claim;

(h) Supporting evidence concerning the extent of the damage, the amount of compensation and the relationship with the alleged victims, where possible;

(i) Documentary accreditation of legal counsel, where appropriate.

288. The claim shall also be accompanied by proof of representation of legal entities, where necessary. Anyone bringing a criminal indemnification action as an heir of the victim shall submit proof of such status with the claim.

289. If there is more than one victim, they may bring separate or joint criminal indemnification actions.

290. Where a legal power of attorney exists, the lawyer may consult the file provided that he or she supplies a brief attestation of the client's status as complainant and agrees to be bound by the rules of confidentiality.

291. Where the defendant is distinct from the accused, the claim shall indicate an address where the notice can be served personally on the defendant or his or her representative. If that is not possible, a sworn undertaking, understood to be constituted by the claim as submitted, shall be made to the effect that the defendant's domicile is unknown.

292. The decision to admit the claim shall be communicated to the defendant or his or her legal representative in person, together with a copy of the claim and its annexes. If personal service is not possible, a writ shall be issued in accordance with the provisions of the Code of Civil Procedure.

293. Compensation for damages. In any criminal proceedings in which it is demonstrated that damages have been caused by the offence under investigation, the court shall authorize compensation in accordance with the terms of the claim and shall pass sentence on the perpetrator of the damages caused by the criminal offence. It shall also rule on expenses and court and legal costs, where appropriate.

294. Where a group action is successful, the sentence of the court shall indicate the amount of collective damages arising from the criminal offence.

295. Where the sentence orders the payment of collective compensation, a fund to receive the payment shall be established and shall be administered by the Ombudsman for the purpose of making reparation for the damages caused by the offence.

296. In cases where no financial value can be set on the damage, the amount of compensation shall be established in the manner provided for in the Penal Code.

297. Where there is evidence that the victim has brought a separate civil action, the court shall refrain from ordering payment for damages. If such an order is issued the sentence shall have no legal effect.

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