COLOMBIA

CCPR A/35/40 (1980)

239. At its 221st, 222nd, 223rd and 226th meetings, on 15, 16 and 17 July 1980, the Committee considered the initial report (CCPR/C/1/Add.50) submitted by Colombia (CCPR/C/SR.221, 222, 223 and 226).

240. The report was introduced by the representative of the State party who stated that it was a source of satisfaction for him that civil and political rights as well as economic and social rights were guaranteed by Colombia's Constitution, codes and laws and that Colombia was doing its utmost to implement those rights in the context of the difficulties inherent in the conditions of a developing country. He pointed out that his country had a long legal tradition; that it recognized and defended the right to self-determination; and that equal rights for men and women in Colombia were guaranteed under the Constitution and other laws of Colombia.

241. The representative stressed that the recent enactment by his Government of a security statute (Estatuto de seguridad), following certain acts of terrorism, did not contain any "draconian measures of repression; that it had a clear legal basis, since it was the responsibility of the State to protect and preserve law and public order; and that his Government had continued to safeguard all the rights enshrined in the Covenant within the strictest framework of legality. He recognized that the state-of-siege had been in force in his country for many years but that it had been modified on several occasions and was now fully regulated by law and governed by the Constitution; and that it was directed only against those who wanted to destroy democracy in Colombia by terrorism. He stated that, unlike martial law, the state-of-siege in Colombia was applied under strict controls and that it did not affect the functioning of the Congress nor the independence of the judiciary, nor did it prevent the holding of free elections. The press remained free, with censorship operating only in cases of irresponsible writings; strikes were permitted except when they were subversive; and the rights to fair trial and to freedom from torture and arbitrary arrest were ensured despite the fact that, under the security statute, the armed forces assumed certain functions on a temporary basis and that the penalties for certain offences had been increased. He admitted that certain abuses had occurred but that they were being rectified; that there had been some justified complaints regarding delays in judicial proceedings but that every effort was being made to speed up the administration of justice. He informed the Committee that, to indicate its voluntary submission to international opinion, his Government would invite observers from the Organization of American States to attend certain trials.

242. The representative informed the Committee that the state-of-siege would be lifted soon; that a bill introducing an amnesty would be presented to Congress in the next few days; and that judicial reforms would be adopted.

243. Members of the Committee expressed appreciation for the additional information provided by the representative of the State party in his introductory statement and welcomed the news that the

Colombian Government intended to lift the state-of-siege in the near future. Members observed, however, that, as Colombia was living under a state-of-siege, this raised serious questions relevant to the implementation of the Covenant and in particular as regards the application of article 4.

244. With reference to article 1 of the Covenant and to the introductory statement by the representative of Colombia, it was pointed out that Colombia had maintained a praiseworthy tradition in its support for the struggle of peoples against colonialism and for the right of peoples to self-determination. However, it was wondered how the establishment of Colombia's embassy in Jerusalem could be reconciled with this traditional support and with decisions of the United Nations with particular reference to the right of the Palestinian people to self-determination.

245. In connection with article 2 of the Covenant, it was noted that the Covenant formed part of Colombian internal legislation and it was asked what its position was in relation to the Constitution and other law; whether the provisions of the Covenant were ever invoked before the courts and, if so, whether examples could be provided; and whether there was any authority which could apply the provisions of the Covenant if internal legislation conflicted with it. Noting that one of the measures taken pursuant to the state-of-siege was the extension of military criminal jurisdiction, of which a usual feature was the meting out of summary justice which did not accord to the individual the normal guarantees of the due process of law, members of the Committee asked why the Government of Colombia considered that the ordinary courts could not deal satisfactorily with cases which had been transferred to the military courts, what were the special features of the procedure of the military courts, and how they were justified under the Covenant. The representative of Colombia was also asked what positive measures had been taken by the Colombian Government to prevent officials from committing breaches of human rights and secondly to ensure, as required under article 2 of the Covenant, that any person whose rights or freedoms had been violated, should have an effective remedy, notwithstanding that the violations had been committed by persons acting in an official capacity. It was also asked to what extent Colombia derogated from the provisions of article 2, paragraph 3 (a), and to what extent measures had been enacted to render military tribunals amenable to civilian control.

246. As regards article 3 of the Covenant, members of the Committee realized that legislative measures had been taken to ensure equal enjoyment of rights by men and women. However, equal rights for women were not achieved solely by legislation but by changes in social conditions and in social behaviour towards women. More information was sought on the participation of women in the political and social life in the country; on the percentage of their representation in Congress, the municipal councils, public administration, universities and schools; and on whether the principle "equal pay for equal work" applied equally to men and women. It was also asked whether a woman enjoyed the right to abortion without the permission of her husband; what effects marriage had on the nationality of a woman. Noting that the safeguarding of women's rights assumed increasing importance under a state-of-siege, and that article 23 of the Covenant provided that the family was entitled to protection by society and the State, questions were asked on the measures taken by the State to ensure that this fundamental group unit of society did not suffer harm, considering that the majority of detainees under the state-of-siege would be men who were traditionally the bread-winners of the family.

247. In connection with article 4 of the Covenant, members of the Committee were not clear, from

the report and the introductory statement, whether it was the claim of Colombia that it had derogated from any of the Covenant rights, particularly as a state-of-siege appeared to have existed in Colombia for more than 30 years in various forms. They recalled, however, that any State party availing itself of the right of derogation, was required to inform the other States parties of the provisions of the Covenant from which it had derogated, the extent of the derogations and the necessity for the derogations, and requested explanations on why those requirements had not been complied with, since a number of measures, including particularly the disquieting extension of military jurisdiction, affecting a number of Covenant rights, appeared to have been taken.

248. With reference to article 6 of the Covenant, members commended Colombia for abolishing the death penalty but noted that certain legislation had been passed giving the security services immunity in respect of deaths arising from operations to suppress certain crimes. Such legislation appeared to remove the guarantee that a person should not be arbitrarily deprived of his life and it seemed difficult to reconcile this with article 6 of the Covenant and with the respect for life which Colombia appeared to be showing by the abolition of the death penalty. It was stressed that the question of infant mortality was closely connected with the right to life, as this right did not merely mean a chance not to be killed but the necessity for providing appropriate social and economic conditions for survival. Noting that infant mortality was a serious problem in most Latin American countries, it was asked what had been done to reduce it in Colombia and with what results.

249. As regards articles 7, 9 and 10 of the Covenant, information was requested on any provisions in force in Colombia which regulated medical or scientific experimentation. Noting that a person suspected of attempting to disturb the public peace in Colombia, in time of peace, could be held in preventative detention for up to ten days, members of the Committee wondered what justifications could be given for such detention and asked whether the guarantees set out in the report, including the right to habeas corpus, were still in force under the state-of-siege; how many persons had been detained during the last year under the wide powers of arrest and detention accorded to the security services and with what justification; whether there was any judicial control over the exercise of those powers; whether persons in preventive detention were allowed access to lawyers; whether their families were informed about their situation; how many people, if any, had died in such detention including how many had died from injuries which were self-inflicted or inflicted by others; and whether victims of unlawful arrest or detention had an enforceable right to compensation. It was also asked whether there were, in Colombia, safeguards against deprivation of liberty for other than criminal reasons, for instance, medical reasons. Referring to the possibility of arrested persons to be released on bail, one member wondered whether the application of the system of bail, in a country such as Colombia where there were many poor people, could give effect to the principle of equal justice for all as provided for in article 26 of the Covenant. The question was also asked under what conditions a prisoner could be kept in solitary confinement.

250. In connection with article 12 of the Covenant, one member asked whether certain regions of the country were placed under a special régime of control and, if so, what restrictions were imposed on the right to liberty of movement and residence in those regions, on what grounds and whether the restrictions and their extent were specified by law.

251. As regards article 14 of the Covenant, members of the Committee expressed concern at the effect of the state-of-siege on the application of the principles and guarantees of fair trial embodied

in that article. Noting that the military courts played a major role in the actual situation in Colombia, members asked how these courts were composed, how their independence and impartiality were guaranteed, whether their rules of procedure were the same as those applicable in ordinary courts, and whether the accused had enough time to prepare his defence and to be effectively assisted by a lawyer of his choice. It was also asked why the law stipulated that a minor was not allowed to be present at court hearings concerning his case and whether that provision was compatible with article 14 of the Covenant. Stressing the principle that everyone charged with a criminal offence had the right to be presumed innocent until proved guilty according to law, one member wondered what justification there could be for requiring from a suspected criminal, against whom no evidence was established, to deposit a financial or else face preventive detention.

252. In relation to article 17 of the Covenant, it was noted that the Colombian Constitution allowed the interception by the competent authorities of personal mail and documents in certain circumstances and that the police were empowered to enter private residence by force by virtue of a warrant issued by the competent authorities. It was asked who, under the present situation in Colombia, supervised such measures and verified their legality and whether any person who was subjected to such measures had any recourse to legal remedies in case an abuse of authority was committed. It was also asked whether telephone tapping was authorized under Colombian law and, if so, under what circumstances and subject to what conditions.

253. In connection with article 18 of the Covenant, it was noted that, under the Constitution, acts contrary to Christian morality or subversive of public order committed under the pretext of worship were punishable by law. It was pointed out that such a provision might turn out to be contrary to the Covenant inasmuch as Moslem, Jewish or other religions have rules that might be seen to be contrary to Christian morality. It was asked how activities which were "contrary to Christian morality" or subversive were defined. In this connection it was also asked whether Colombian law recognized the right to conscientious objection.

254. Commenting on article 19 of the Covenant, members of the Committee noted that, under the Constitution, freedom of the press was guaranteed except for attacks against personal honour, the social order or the public peace. They pointed out, however, that this provision could be used to restrict public discussion of social and political issues and requested information on what in practice constituted "attacks against the social order or the public peace". Members also noted that, according to Colombian law, "subversive propaganda" was an offence punishable by up to five years' imprisonment. They requested clarification on the meaning of that term and whether any criticism of the Government could be construed as such. It was also asked whether, according to the Penal Code of Colombia, any person who by negligence had published or disseminated false information could be sentenced to up to six years in prison. Clarification was also sought on the term "sedition" used in the Penal Code and on whether actual violence, as distinct from incitement, was not a necessary element of the offence.

255. With reference to article 20 of the Covenant which requires that propaganda for war should be prohibited by law, it appeared from the report that no specific legal provisions existed in Colombia in this regard. Clarification was requested on the absence of these provisions in the light of another statement in the report to the effect that the Covenant was an integral part of internal legislation.

256. As regards articles 21 and 22 of the Covenant, questions were asked as to whether the right of peaceful assembly was in fact enjoyed under the present circumstances in Colombia. It was also asked whether people professing extremist or leftist ideologies could freely enjoy the right of peaceful assembly or establish trade unions or political and other organizations.

257. In relation to articles 23 and 24 of the Covenant, information was requested on whether the courts accorded equal treatment to demands for divorce by men and women; and why an adopted son was not free to marry without the consent of the adoptive father and mother before the age of 21 whereas other children over 18 were free to do so without such consent. Information was also sought on the measures taken by the Colombian authorities to alleviate the hardships suffered by, and to protect, the many homeless children generally reported to be roaming the streets of Bogotá.

258. As regards article 25 of the Covenant, it was noted that candidates for election particularly to the Senate, Presidency of the Republic and judges, were subject to many conditions. Information was requested on how those conditions, which might make it very difficult for ordinary people to aspire to such offices, could be reconciled with the right to equal access to public office as prescribed in the Covenant; on the legal elements of the political crimes referred to in the report in this connection; and on the number of political parties in Colombia and on the legal conditions governing their formation. One member, referring to the fact that Colombian law recognized the possibility of acquiring Colombian nationality by adoption, asked whether there was not a contravention of articles 2 and 25 of the Covenant ("national origin" and "birth"), in that the Constitution required that a person be a "Colombian by birth" in order to qualify for election as a Senator (article 94), as President (article 115), or as State Councillor (article 139) or for appointment as a judge of the Supreme Court (article 150).

259. Commenting on article 27 of the Covenant, members of the Committee enquired why the indigenous groups, or Indians, referred to in the report could not be regarded as an ethnic minority when it was generally known that American Indians constituted a linguistic, ethnic and, sometimes, even a religious minority; why they did not have juridical personality and why they were represented by Government officials and not by representatives of their own choice. Information was requested on the situation of this community, on their participation in the life of the country, on the educational and medical facilities at their disposal, on whether they enjoyed the right to elect and to be elected to public office, on whether they were consulted on the question of drafting a national Indian Statute and under what conditions the Indians could enjoy the right to self-determination or the fundamental rights of minorities in accordance with articles 1 and 27 of the Covenant.

260. Replying to questions raised by members of the Committee, the representative of the State party observed that Colombia was putting great emphasis, in its economic and social programmes, on the poorest sector of the country and the largest proportion of the national budget was earmarked for social purposes aimed at ameliorating conditions in employment, housing, education, health and social security. Colombia's policy was one of respect for the self-determination of others and solidarity with peoples in their struggle against foreign domination.

261. As regards questions raised under article 2 of the Covenant, he pointed out that the Covenant was ratified by the Congress and incorporated by law in national legislation; that, according to Colombian constitutional law, all legal provisions emanated from the Constitution; and that all

rights, obligations and guarantees provided for in the Covenant had their equivalent in the Constitution, with only some linguistic and other minor differences. Two eminent bodies, the Supreme Court of Justice and the State Council, were in charge of ensuring the conformity of all decrees with the Constitution. Certain articles of the Security Statute had been declared unconstitutional by the Supreme Court and removed from the text of that Statute now in force. Some lawyers were instrumental in achieving this result when they invoked the Covenant before the Court in this respect. Any citizen had recourse to this Court against any law and the Court had the power to declare it null and void. The rights embodied in the Covenant were guaranteed by the fact that they had been incorporated in the internal legislation of Colombia and reflected in its Constitution. As to the military penal justice, he stressed that it was sanctioned by the Constitution as a means to deal with possible threats to the security of the State; and that it was permanent, not ad hoc. All rights of the accused under the military courts were guaranteed as they were in civil courts. Non-military cases were brought before the military courts because Colombia believed that "slow justice was no justice". The public outcry at the increase in crime and the inability of the regular courts to function adequately had led the Government to delegate prosecution of certain categories of crimes to the military courts. All cases submitted to these courts were reviewable and open to appeal to the Supreme Court. The Procurator General was in charge of supervising and, if need be, punishing officials in charge of public functions and an Ombudsman would soon undertake cases involving human rights violations.

262. With regard to equality between men and women, the representative explained that there were still inequalities between the sexes, and that women still had to struggle for equality despite the fact that laws guaranteed equality. Voluntary abortion was still punishable under the existing criminal code and public opinion in Colombia on this matter was divided.

263. As regards the questions raised under article 4 of the Covenant, he pointed out that in the democracy that exists in Colombia, the Government was, in general, responsible for its acts and not for those of its predecessor. He stressed, however, that the present Government did not violate any article of the Covenant; that both the Supreme Court and the Council of State were able to operate independently under the state-of-siege; that Congress was open and functioning normally; that political parties and trade unions remained authorized and active; that the state-of-siege today was not the same as 32 years ago; and that it was now legal, transitory and limited in scope.

264. Replying to questions raised under articles 7, 9 and 10 of the Covenant, the representative stressed that arbitrary arrest and detention were made impossible by virtue of an entire system of legal guarantees which were designed to eliminate such abnormal acts and to punish the perpetrators of such violations of the law. Unlike other countries, Colombia had no preventive state-of-siege. Whenever public order was thought to be threatened it was possible to detain suspects on Government orders and without judicial authorization, but this was only possible after prior consultation with the Council of State. Such persons could be detained incommunicado for up to ten days if the maintenance of public order so required. Preventive detention could be extended for up to 120 days by law which also provided penalties against officials responsible for arbitrary arrest or detention. The independence of administrative jurisdiction guaranteed all citizens the possibility of obtaining compensation when and if they were victims of an abuse of power. Release on bail was provided for in the interest of the accused and the amount of the deposit was always negligible and always fixed with due regard to the financial situation of the persons concerned. He stressed that

he was not aware of any persons detained in psychological clinics in his country.

265. As regards article 12 of the Covenant, he indicated that no armed organizations existed in Colombia and therefore no restrictions were imposed on the right to liberty of movement or residence. However, a régime of safe-conduct existed in certain regions with the purpose of securing the protection of villagers who were sometimes subjected to reprisals from certain groups.

266. In connection with article 14 of the Covenant, the representative pointed out that like civilian judges, members of the military courts were totally impartial; that minors were not allowed to attend the court hearings at which their cases were under consideration because of their incapacity to act except through their representatives who always attended such hearings, and that this measure was intended to defend minors against publicity harmful to their case; and that the law provided for compensation for people who were unlawfully imprisoned.

267. As regards article 17, he pointed out that the law guaranteed the right to privacy which was universally respected in Colombia. Interception of mail was strictly limited and was only resorted to for obtaining judicial evidence. Telephone tapping was totally prohibited.

268. Replying to questions raised under article 18 he stressed that the Constitution guaranteed freedom of conscience for all; that Colombia was a Catholic State inspired by the principles of Catholicism but that it respected the right to atheism and was not concerned with other religious convictions. He was not aware of any case of violation of Christian morality in his country or of any case in which the provisions concerning the violation of Christian morality had been invoked.

269. In relation to article 19 of the Covenant, the representative stated that, at the beginning of the state-of-siege, no censorship was imposed on the press. However, certain restrictions on the mass media and on the right of public meetings and demonstrations during the period which preceded the last elections were imposed in view of the fact that certain meetings and demonstrations had resulted in mass violence. Similar restrictions were imposed during the period that followed the taking of hostages at the embassy of the Dominican Republic with a view to limiting the exploitation of sensational aspects of the event and to protecting the lives of the diplomats concerned. "Subversive propaganda" had not been defined in Colombian legislation. As to "sedition", he pointed out that it involved not only criticism of the authorities, but also the taking up of arms against the authorities. There were no political crimes nor crimes of opinion in Colombia. Nobody could be sued for his ideology, conviction or opposition to the régime.

270. As regards article 20 of the Covenant, he indicated that his country had never known a state of war and that war was never a national preoccupation. Propaganda in favour of war or advocacy of national, racial or religious hatred was never practised in his country, but this did not mean that the requirements of article 20 of the Covenant should be overlooked.

271. As regards articles 21 and 22 of the Covenant, the representative pointed out that the law in force prohibited violent meetings and the competent authorities had accordingly no intention of allowing any meeting which was not likely to be peaceful. The right to freedom of association was guaranteed and several trade unions were active including one of Marxist tendencies. However, trade unions were not allowed to indulge in politics which was the natural field of political parties.

No labour right was affected under the state-of-siege but subversive strikes as well as strikes in important services were forbidden as, in the view of the Government, the general public interest of the majority should prevail over that of the minority.

272. In connection with articles 23 and 24 of the Covenant, the representative indicated that there were no specific legal measures designed to protect the institution of the family. The reason why an adopted child was not free to marry until he was 21 was to protect him from any pressure that may be exerted by the adoptive family to marry sooner. The Colombian Government was taking steps to help the abandoned and helpless street children, a problem very common in the developing countries.

273. In relation to article 25 of the Covenant, the representative stressed that there was no restriction based on race, sex or religion for the enjoyment of the right of access to public office. However, it was only wise to require Colombian nationality acquired by birth as a condition for accession to the post of the President of the Republic or to the post of a judge. Naturalized Colombians were entitled to be members of Congress.

274. Replying to questions under article 27 of the Covenant, he admitted that the question of minorities was a complicated one for Colombia and that a good many of the Spanish institutions had been better and had offered the indigenous population better protection than did the independent Republic institutions. He gave a detailed historical and sociological account of the problem as it had existed since the colonial era. Out of 25 million inhabitants, 200,000 to 300,000 were indigenous population. These people were not considered to be a minority group. However, a juridical statute had been enacted with a view to strengthening the institutions in charge of preserving the cultural integrity of the indigenous population but which at the same time was designed to encourage their participation as an integral part of society. Colombia was aware of the various problems concerning the life of the indigenous population and was seeking to correct historical mistakes and to deal with land claims which date back to the conquest of the country.

CCPR A/43/40 (1988)

508. The Committee considered the second periodic report of Colombia (CCPR/C/37/Add.6/Rev.1) at its 817th to 820th and 822nd meetings held from 13 to 15 July 1988 (CCPR/C/SR.817-820 and 822).

509. The report was introduced by the representative of the State party who gave a general idea of the economic, social and political situation in Colombia, its constitutional and institutional evolution, the considerable changes that had occurred in Colombian society as a result of rapid evolution and the problems stemming therefrom, which the Government was endeavouring to cope with while respecting the democratic political tradition, the rule of law and respect for human rights.

510. The representative of the State party referred to the difficulties arising from economic restrictions, terrorism and drug trafficking encountered by the Colombian Government in implementing the provisions of the Covenant and emphasized that the current crisis in Colombia was not due to any aging of the national institutions, but rather to the structural changes which had become necessary in the light of the economic realities of the contemporary world. In that difficult situation, the Colombian Government, endeavoring to maintain the rule of law despite adversity, had launched a campaign to promote human rights, particularly in military institutions, schools and universities and legal and political circles. At the institutional level, a post of Presidential Adviser for Human Rights had recently been established while a bill had been drafted on the office of the personero (a kind of mediator appointed by a municipal council) and would be submitted to parliament at its next session. He also mentioned that the office of the Presidential Adviser for Human Rights had, in co-operation with other institutions, begun the establishment of a data bank which would make it possible to centralize all information concerning the situation of citizens in regard to human rights. In that connection, reference had been made to article 121 of the Constitution with the indication that, from 1968 onwards, all decrees issued by the President of the Republic by virtue of the powers conferred upon him by that article were subject to automatic review for constitutionality. Lastly, the representative of the State party declared that the Colombian Government was determined to resolve all the difficulties encountered in the application of the rights set forth in the Covenant in the democratic ways which it regarded as the sole means of ensuring respect for fundamental rights and freedoms.

Constitutional and legal framework within which the Covenant is implemented particularly during the state of siege

511. In that connection, members of the Committee asked for information concerning the impact of the state of siege on the exercise of the rights guaranteed by the Covenant, particularly with regard to the functioning of the judicial system. They asked whether there had been judicial decisions in which the Covenant had been directly invoked before the courts and, if so, whether examples could be given. Questions were asked about the procedure employed for the exercise of the right of petition referred to in chapter II, paragraphs 12 to 14, of the report (concerning article 2 of the Covenant), and whether a petitioner who had failed to obtain satisfaction by means of that procedure could appeal to the courts. The members also asked questions concerning the respective powers of the Government, parliament and the courts when the state of siege was in force, the effects of decisions by the Supreme Court declaring certain decrees and laws to be unconstitutional, the

position of the Covenant in relation to the Constitution, laws and decrees and the effects of a declaration by the Supreme Court that a law or decree was incompatible with the Covenant. Questions were also asked regarding the current state of the bill amending article 121 of the Constitution and how the existing restrictions on civil liberties would be reduced if the state of siege currently in force were replaced by a "state of alarm"or a "state of internal strife". It was also asked what measures had been adopted to familiarize the general public with the provisions of the Covenant and the Optional Protocol.

512. Furthermore, the members of the Committee asked questions concerning the training of the members of the armed forces and police forces and their sensitization to human rights problems and the role and influence of the non-governmental organizations in Colombia with regard to the protection of human rights; it was also asked whether military courts existed in Colombia and, if so, what their powers were, particularly during the state of siege. Additional information was also requested on the actual organization of the state of siege and, in particular, concerning the many legislative texts adopted in the context of the state of siege which might entail derogations from some articles of the Covenant. It was asked whether current legislation permitted members of the armed forces to be judged by military courts for acts not connected with their military duties. It was also asked what happened if there was a contradiction between the Covenant and domestic legislation and whether a citizen could appeal to a higher court against any decision under that legislation which he considered to be in violation of the provisions of the Covenant, whether the right to petition meant the right to petition the courts and how many petitions had been submitted and what their nature and outcome had been. Members also asked whether any specific legislation had been enacted to incorporate the Covenant into the legal system of Colombia, whether the Supreme Court had jurisdiction over cases in which domestic law was at variance with the Covenant and whether it had given a ruling on any such cases, and whether the Covenant took precedence over Colombian legislation that pre-dated it, over legislation promulgated subsequently and over emergency decrees in respect of rights that could be derogated from under article 4 of the Covenant. More information was requested about the decrees that had been enacted under the state of siege, the area covered by them and how they affected the everyday life of the people, how far the military courts complied with articles 4 and 19 of the Covenant and what steps had been taken to ensure that independence and impartiality of the judges of a higher military court. In connection with article 121 of the Constitution, it was asked whether it was possible for all ministers to be held jointly responsible if the state of siege had been wrongly declared or improper measures had been taken, and whether the responsibility of the President could be challenged.

513. Replying to the questions by the members of the Committee, the representative of the State party declared that article 121 had always been applied in Colombia with full respect for the rights of the citizens. The procedure for implementing that article had been described. It had been pointed out that there were laws which would not be suspended, even during the state of siege, and relevant examples had been quoted. At the same time, once the state of siege had been proclaimed, the Government was empowered to take certain steps to restrict political guarantees. Such steps were still automatically subject to the constitutionality checks carried out by the Supreme Court. In the event that the Supreme Court declared the provisions of a decree to be unconstitutional, they were no longer applicable. Information concerning the bill to amend article 121 of the Constitution had been supplied and, in particular, the Committee had been informed that the bill provided for three separate situations, according to the degree of seriousness and the nature of the circumstances,

namely, "the state of alarm", "the state of internal strife" and "the state of siege", the last of which could be proclaimed only in the case of foreign war or aggression. As for actual practice, the representative of the State party said that recourse to article 121 of the Constitution had never been genuinely linked with the state of siege. Restrictions on freedom had been very minor and only temporary. It had been mentioned that the state of siege proclaimed under article 121 of the Constitution did not affect the operations of the judicial system. Since the provisions of the Covenant formed an integral part of the Colombian juridical structure and legislative system, they could be invoked before the courts. At least one case was known in which the provisions of the Covenant had been invoked before the competent court: the complaint had been judged admissible and the State had been sentenced to pay compensation. As for the right of petition, not only Colombian citizens but also foreigners had the right to submit petitions to the authorities. In some cases, a petitioner who had not obtained satisfaction could appeal to the courts. The effect of decisions by the Supreme Court declaring certain decrees and laws to be unconstitutional were very important, since in that way the Supreme Court exercised ongoing constitutional supervision of legislation: if the Court declared a certain instrument to be unconstitutional, it immediately became null and void. The measures adopted to familarize the general public and the members of the armed forces, in particular, with the provisions of the Covenant had been described.

514. With respect to other questions raised by the members of the Committee, the representative of the State party said that a conflict between domestic legislation and the Covenant was unlikely to arise, because constitutional and legal texts in Colombia had been drafted in line with the provisions of the Covenant, that under article 121 of the Constitution some laws could be suspended, but under no circumstances could the death penalty be imposed and that the rights under articles 6, 7, 8 and 15 of the Covenant were protected irrespective of the state of siege. A detailed description was given of the role played by the military forces in the Colombia political system and, in that connection, it was stated that in Colombia the military could not be considered to have become a "State within a State", a force above the law. Since it was essential to have a procedure for dealing with any offences committed by military personnel, two new codes, a military penal code and a military code of procedure had been drafted and were expected to be adopted by the end of 1988. Concerning the collective responsibility of ministers, be pointed out that Colombia had a presidential and not a parliamentary system of government. Thus the President did not act alone, but with the collective agreement of all the ministers. Political control over presidential action rested with the National Congress, and judicial control was exercised by the Supreme Court. As for the position of non-governmental organizations in Colombia, many of them were engaged in work on human rights, with a particular role in that field being played by the Colombian Human Rights Commission.

Self-determination

515. On that point, some members of the Committee asked what Colombia's position was with regard to the right of self-determination in general and, more specifically, with respect to the struggle of the South Africans, Namibian and Palestinian peoples for self-determination.

516. The representative of the State party, responding to that question, said that Colombia had pursued a consistent policy of support for self-determination in general. It had been a member of the United Nations Council for Namibia since its establishment, and supported the just struggle of the Namibian people for self-determination. Colombia had no relations of any kind with South

Africa. It sympathized with the Palestinian people's efforts to obtain self-determination and supported the various Security Council resolutions on the matter.

Non-discrimination and equality between the sexes

517. On that subject, some members of the Committee asked for information concerning the measures adopted to ensure equality with regard to the enjoyment of the rights set forth in the Covenant, with an indication of the results of such measures, and concerning the status of women, particularly statistical data on their participation in the political life of the country. They also asked about the effects of marriage on a woman's nationality, the status of aliens and the extent to which the rights of aliens were restricted compared with those of citizens, and the status of women belonging to the indigenous population of Colombia.

518. In his reply, the representative of the State party declared that the Colombian Government was making efforts in difficult circumstances to achieve effective enjoyment by all of the rights specified in the Covenant. In particular, the office of the Presidential Adviser for Human Rights was active in promoting human rights and was studying the possibility of establishing an ombudsman or public advocate for human rights. Women enjoyed all political rights and, since 1957, when women were granted the right to vote, they had held posts as ministers and deputy ministers. He provided the data on the percentage of women in the labour force, demonstrating that between 1964 and 1983 their participation had risen from 18 per cent to 40 per cent. However, the unemployment rate among women was higher than among men, and women also tended to be paid lower salaries than men. Married women enjoyed the same rights in regard to nationality as their husbands. Aliens in Colombia did not enjoy political rights but had equal civil rights with citizens, except in respect of certain regulations concerning entry into or departure from the country, and where criminal offences were concerned. As for the status of women belonging to the indigenous population, the representative of the State party said that their situation was less encouraging than that of women in general and that indigenous women suffered discrimination because of cultural traditions.

Right to life and prohibition of torture

519. In that connection, members of the Committee expressed the wish to have some extra information on article 6 of the Covenant, in accordance with the Committee's general comment 6 (16), particularly paragraph 4 thereof, and general comment 14 (23). They also wished to know what laws and regulations were applicable to the use of firearms by the police and security services, whether there had been any violations of those laws and regulations and, if so, what steps had been taken to prevent them recurring, whether there had been any prosecutions under article 279 of the Criminal Code or for acts of torture liable to a heavier punishment than those provided for in the said article, and, if so, what the result of such prosecutions had been, and what positive steps had been taken to reduce infant mortality.

520. It was also asked whether Decree No. 0070 of 1978 was still in force and, if so, whether the Government intended to repeal it, whether the armed forces applied the 1949 Geneva Conventions

6/ when combating insurgents, whether the Code of Conduct for Law Enforcement Officials was in force in Colombia and whether the responsible officials were aware of its provisions. Statistical data were requested concerning the number of police officers who had been punished for exceeding their powers in some other way, together with the number of offences of the kind that had been committed. With reference to terrorism and, in particular, to the activities of paramilitary organizations, it was asked whether the members of such organizations were prosecuted and sentenced and whether the Colombian Government was effectively combating the "death squads" and other private militias as well as the phenomenon known as "drug-related terrorism". Further information to supplement that contained in the second periodic report was requested with regard to the effective application in Colombia of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

521. The members of the Committee were also interested in knowing how the Colombian Government was trying to resolve the serious problem of the involuntary disappearance of persons and, more precisely, what specific steps had been taken by the Government and how many persons were currently missing. In the same context, it was asked what the specific purpose of the Colombian Government had been in inviting the Working Group on Enforced or Involuntary Disappearances to visit the country. It was also asked whether article 279 of the Criminal Code also applied to armed forces personnel, and particularly to the special police corps, or whether acts committed by those categories of persons came under the Military Criminal Code, whether any special courts had been established in the country by legislative decree to deal with political offences, whether the law provided for compensation of the victims of torture and whether confessions or statements obtained under torture could be used in a trial. In view of the climate of violence prevailing in Colombia, the members wished to know how the legitimate objective of repressing the violence could be achieved by means which were compatible with respect for human rights and what the powers of the Presidential Adviser for Human Rights were and whether he could take initiatives in specific cases. With reference to paragraph 32 of the report, it was asked whether abortion was also punishable in the event that it had been ordered or practised by a doctor to save the mother.

522. The representative of the State party, replying to the questions asked by the members of the Committee, said that the Constitution of his country clearly stipulated that the State was obliged to protect the lives of the citizens and of persons present in Colombia and that the Colombian Government was doing its best to comply with that obligation in difficult circumstances, while preserving the legal system and functioning of the courts. In a situation of confrontation and violence, one of the Government's objectives was to disarm the population, since only the security services should be entitled to resort to armed force. Moreover, the security services could make use of their weapons only in accordance with administrative regulations; failure to observe those regulations gave rise to administrative and criminal sanctions. He emphasized, however, that the initiatives should not come from the Colombian Government alone, the international community was also bound to take action knowing that, for the right to life to be respected, collective solutions

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6/ United Nations, **Treaty Series**, vol. 75, Nos. 970-973

would have to be found. As for enforced or involuntary disappearances, he said that the problem should be considered not in a bilateral context, but in the context of multilateral conflicts in which groups of insurgents against the authorities, the drug-trafficking underworld and, possibly, agents of the State were implicated. The State had the situation in hand and the number of missing persons was relatively small. In that connection, he recalled that the Colombian Government had invited the Working Group on Enforced or Involuntary Disappearances to visit the country to help it to shed light on the cases of missing persons, since that would enable it to resolve them.

523. As for torture, Colombia had ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which consequently formed part of the domestic legal order and the Criminal Code, which defined torture as a punishable offence entailing, in the least serious case, one year's imprisonment. Thus, every member of the police or the armed forces who engaged in acts of torture was guilty of an offence. In addition, in accordance with the Code of Criminal Procedure, confessions or statements made under torture had no legal value, and no exception was permitted in that area. The provisions punishing acts of torture were rigorously applied. On the problem of infant mortality, he said that the reduction in infant mortality was a constant concern of the Colombian Government and he quoted examples of steps taken by the Government. Abortion was regarded by Colombian law as an offence, even where the purpose was to save the mother. That fact was due to the cultural traditions - particularly Catholic ones - which prevailed in Colombia, but the Colombian authorities were considering the possibility of modifying legislation in that area.

524. In reply to the other questions asked by the members of the Committee, the representative stated that Decree No. 0070 of 1978 was no longer in force, since it had lapsed with the lifting of the state of siege. On the subject of the observation by officials of the armed forces and security forces of the 1949 Geneva Conventions, it had been indicated that anyone who violated the law, whether a civilian or a soldier, was regarded as an offender. In addition, the Government had taken preventive action by launching an information campaign to sensitize the members of the armed forces to the question of human rights. As for the exact number of policemen and soldiers found guilty, the statistics were unfortunately rather summary. Nevertheless, two recent examples had been mentioned. With reference to the problem of combating terrorism, he emphasized that the Government was endeavouring to combat political terrorism with the greatest respect for legality and, both in the cases of acts of terrorism committed by private militias and those committed by drug traffickers, it had not remained inactive, despite the difficulties and serious dangers with which it was confronted. As for the exact nature of the powers entrusted to the Presidential Adviser for Human Rights, the representative of the State party pointed out that the type of post in question did not exist in any other Latin American country and that the Adviser was neither an ombudsman nor a public advocate but was responsible, in accordance with the mandate given him by the Government Attorney, for supervising the co-operation of the executive power with the judiciary in all matters relating to respect for human rights. He was not empowered to carry out investigations and could not influence members of the judiciary, but was responsible for ensuring that the State reacted promptly and effectively to solve all problems concerning human rights.

Freedom and security of person

525. With respect to that question, members of the Committee asked in what circumstances and for how long private individuals could be held in pre-trial detention without being charged and which

authorities were entitled to order such detention, what remedy was available to persons (and their families) who considered they had been detained illegally and how effective such remedies were, what the maximum period of pre-trial detention was, and how soon after a person had been arrested his family was informed and how soon he was able to contact his lawyer. They also asked for information concerning detention in establishments other than prisons for reasons other than breaches of the law.

526. In his reply, the representative of the State party explained that provisional detention was regulated by the Code of Criminal Procedure, that detainees could not be held incommunicado for more than three days and that every detainee could request the services of a lawyer. If, within eight days of his arrest, no charges had been laid against him, the detainee had to be released by the director of the establishment in which he was being held; as for the authorities entitled to order detention, everything depended on the type of jurisdiction covering the offence. The detainee was entitled to engage his own lawyer to ensure his defence. In the event of arbitrary detention, the detainee or his family could take action against the State and obtain compensation. If it was not a case of provisional detention, according to article 439 of the Code of Criminal Procedure, a person who had not been indicted after 120 days of deprivation of freedom was released, without prejudice, however, with the possibility of subsequent prosecution. As for detention in establishments other than prisons, it had already been stated that, in the case of Colombia, there was no detention in psychiatric establishments. However, there were in fact military prisons.

Treatment of persons deprived of their liberty

527. With reference to that issue, members of the Committee wished to know whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were complied with, what the role of the Prison Social Service was in ensuring such compliance and whether the relevant regulations and directives were known and accessible to prisoners. With reference to paragraph 51 of the report, additional information was requested concerning the role of the Prison Social Service in assisting former prisoners and concerning the problem of overcrowding in prisons.

528. The representative of the State party, responding to the questions raised, said that the Office of the Presidential Adviser for Human Rights informed prisoners and prison authorities of the relevant regulations and directives with the help of the Ministry of Justice and the Assistant Prosecutor-General for Human Rights. It was also promoting the work of the Prison Social Service by encouraging prisoners to follow courses in prison with a view to finding employment on completion of their sentence. Turning to the question of overcrowding in prisons, the representative of the State party said that he had no relevant statistics but that they would be supplied to the Committee later. The Ministry of Justice was planning the construction of additional prisons in order to provide more space for prisoners.

Right to a fair trial

529. With regard to that issue, members of the Committee wished to have necessary additional information on article 14 in accordance with the Committee's general comment 13 (21) and requested further information concerning the availability of free legal assistance to criminal defendants and the organization and functioning of bar in Colombia. They also wished to know

more about the actual implementation of the comprehensive judicial reform adopted in January 1987, and asked whether the "systematization plan" mentioned in paragraph 81 of the report had been implemented and to what extent it had helped to reduce the backlog of cases before municipal criminal courts in Bogota, and whether the Senate had completed action on the Government proposal relating to the planned reform of the civil, labour, juvenile and administrative courts.

530. Members also wished to have additional information on the role and functions of the judicial police and the changes that had taken place with respect to the roles of the judge and the jury. They also wished to know what type of punishment was prescribed for a lawyer who refused to act as defence counsel, how and by whom the evaluation of magistrates and judges was carried out, and, since the degree of probability that could be taken as proof of guilt could have far-reaching consequences for judicial action, what level of proof was required under Colombian legislation.

531. In his reply, the representative of the State party said that the substance of the provisions of article 14 of the Covenant had been incorporated in title III of the Constitution and in the revised Code of Criminal Procedure, that the defendant lacking financial resources had the right to free legal assistance from a registered lawyer through the Office of the Public Advocate, that the implementation of a comprehensive judicial reform in January 1987 and the "systematization plan" had encountered a number of difficulties, but that the backlog of cases awaiting a final decision would be processed by the end of 1988,and that a code for the protection of juveniles was being prepared. He also indicated that the Congress currently had before it bills dealing with the reform of the civil and administrative courts and explained the organization of the bar in Colombia.

532. Responding to other questions raised by members of the Committee, the representative of the State party explained that the term "judicial police" was used, since the term "criminal police" might be considered to infer that the police themselves were involved in criminal activities, that under the earlier system the judge initiating the investigation had remained in charge of the case throughout the trial, but under the new system there was one judge with technical expertise who carried out the investigation and another who conducted the trial, and that one of the shortcomings of the judicial system was that there were no modern investigation agencies. Referring to paragraph 93 (c) of the report, he said that the provision concerning presumption of innocence was categorical. It was also indicated that the gravity of the offence was not determined subjectively by the judge; article 421 of the code of Criminal Procedure contained a list of offences punishable by imprisonment. With reference to the question concerning the obligation to act as defence counsel, he said that the sanctions were of an administrative nature and were applied on the ground of a breach of professional ethics.

Right to privacy, freedom of religion and expression

533. With regard to those issues, members of the Committee wished to know what procedures existed for legal recognition and authorization of various religious denominations, whether legal recognition had ever been refused on the grounds that a religious cult was contrary to Christian morality and, if so, which authority determined what was contrary to Christian morality, and what limitations, if any, were currently placed on the freedom of the press and the mass media in view of the existing state of siege. It was also whether the Government, in its commitment to human rights, could do anything to protect journalists whose human rights were threatened or who had

received death threats or had been kidnapped because they had published unpopular views.

534. In his reply the representative of the State party said that the Constitution provided for religious tolerance and freedom for all religions that were not contrary to Christian morality and not in breach of public order. The Ministry of Justice was responsible for relations with particular denominations. A rule providing for recognition of the Catholic Church had been extended to other churches in recent years. No authorization was needed for a person to practise his religion. With respect to freedom of the press he said that various shades of political opinion were represented in the Colombian press and in that connection he referred to the Inter-American Press Association, which had recognized that freedom of the press had been given practical effect in Colombia.

Freedom of assembly and association

535. With respect to that issue, members of the Committee wished to have more information on the situation of trade unions in Colombia.

536. The representative of the State party informed the Committee of the current situation of trade unions in Colombia and stated in particular that freedom of association and the right to strike were constitutionally guaranteed in Colombia except in the case of the public services. However, the exact definition of the latter was currently being reconsidered. Trade-union activities and workers' rights were governed by the Labour Code. In numerical terms, trade-union membership was extremely low: only about 20 per cent of the overall labour force belonged to a trade union.

Protection of the family and children, including the right to marry

537. With reference to that issue, the members of the Committee wished to have additional information concerning the law and practice regarding the equality of spouses.

538. In his reply, the representative of the State party said that spouses enjoyed full equality before the law in Colombia.

Right to participate in the conduct of political affairs

539. With regard to that issue, the members of the Committee wished to have more information on the exercise of and restrictions on political rights, and on legislation and practice regarding access to public services. They also wished to know what problems were associated with the mayoral elections held in March 1988 and what lessons could be drawn from them.

540. In his reply, the representative of the State party declared that the political rights established in article 25 of the Covenant were enshrined in the Colombian Constitution. All Colombian citizens over 18, both men and women, enjoyed absolute equality. Regarding access to public service, some qualifications were required for public posts but there were no restrictions as such. The mayoral elections represented a great step forward in terms of decentralization of the election procedure and no claims had been made that the Government had brought any pressure to bear on voters.

Rights of minorities

541. With regard to that issue, the members of the Committee wished to know how large the indigenous population was compared to other ethnic groups in Colombia and how the rights provided for in article 27 of the Covenant were ensured with regard to such groups. It was also asked what the percentage of participation by Colombian citizens of African origin was in the judiciary, the administration, the National Assembly and schools. Further information was also requested on the actual organization of indigenous communities. With reference to the two "Indian leaders" who had been the victims of so-called death squads, clarification was requested of the term "Indian leader" in that context.

542. Replying to the questions raised by the members of the Committee, the representative of the State party said that, technically speaking, the indigenous population in Colombia amounted to about 400,000 or 450,000 out of a total population of more than 20 million. They had been able to maintain their identity to some extent, although intermingling with the remainder of the population over five centuries had in some cases resulted in a loss of cultural identity. Reservations had been established for the indigenous population and were administered by an indigenous governor and indigenous mayors, functioning within the structure of the Colombian State. Recently, the President of the Republic had announced the granting of 5 million hectares of land to the indigenous population with full rights over the soil and subsoil, which brought the total area of land allocated to the indigenous population to 10 million hectares.

543. Turning to the question of the situation of Colombian citizens of African origin, the representative of the State party said that the area occupied by that group was traditionally underdeveloped and that there was a lack of State presence in the form of education, health services, and so on. One of the aims of the National Rehabilitation Plan was to remedy that situation and to develop the poorest areas - the so-called "forgotten zones". Such areas produced many teachers and their political representation was in all respects equivalent to other areas. The Indian problem varied from region to region; it was certainly true that the Indians in the Pacific coast area who were sandwiched between guerrilla fighters on the one hand and traditionally hostile landowners on the other, were very vulnerable to hostile action. The solution which the Government was attempting to pursue, as in the case of other indigenous populations, was to make grants of land to Indian groups and at the same time to ensure that the land that they already owned was not taken away from them.

General observations

544. Members of the Committee expressed appreciation to the representative of the State party for the spirit of co-operation and openness he had shown in informing the Committee of the very complex situation in Colombia and the difficulties the Government was facing in the field of human rights. They also noted that the exchange of views had been frank and that an impressive and genuine dialogue had taken place. While the Colombian Government's efforts to maintain democracy and enforce the rule of law, especially those relating to the National Rehabilitation Programme, judicial reform and the appointment of the Presidential Adviser for Human Rights were to be welcomed, it was clear that the Government had not yet made sufficient progress in all those respects. The violent confrontation of different elements in Colombia, political and drug-related terrorism, the excessive role played by the military and the almost permanent state of emergency seriously affected human rights and were of the greatest concern. Some members also pointed out

that for those reasons some articles of the Covenant could not yet be implemented in Colombia.

545. The representative of the State party suggested that it would be useful if some machinery could be devised to enable the Committee to receive information between periodic reports so as to remain in touch with developments in Colombia. He shared the concern expressed by some members at the continuing state of siege, but stressed that the Government of Colombia was determined to implement its plans for social change within the rule of law.

546. In concluding consideration of the second periodic report of Colombia, the Chairman once again expressed the Committee's thanks to the Colombian delegation for a sincere and co-operative discussion. He said that the democratic traditions of Colombia had been threatened by violence, but that the dialogue with the Committee had demonstrated that the Government of Colombia was determined to remain within the rule of law in its struggle to counter those threats.

CCPR A/47/40 (1992)

350. The Committee considered the third periodic report of Colombia (CCPR/C/64/Add.3) at its 1136th to 1139th meetings, on 2 and 3 April 1992 (CCPR/C/SR.1136-1139). (For the composition of the delegation, see annex VIII.)

351. The report was introduced by the representative of the State party, who explained that, although Colombia had enjoyed one of the highest levels of economic development in Latin America during the past 20 years, the country had been plagued by a guerrilla movement that had used social and economic disparities as justification for its actions. Terrorist groups associated with drug traffickers had threatened the country and brought the judicial system to the brink of collapse. Since such groups seemed to enjoy impunity, citizens had started losing faith in the State's capacity to defend them from guerrilla attacks. Accordingly, some individuals, occasionally with the complicity of government officials, had formed paramilitary groups that had launched extermination campaigns against persons suspected of belonging to the guerrilla movement.

352. In order to overcome those difficulties, the Colombian Government had proposed a negotiated settlement of the conflict with the guerrilla movement and a truce had been signed, leading to the convening of a National Constituent Assembly in 1991. Members of the Assembly had been elected on the basis of a single national election district, which had given indigenous groups and other minorities an opportunity for representation. The result had been a pluralistic Constituent Assembly representing all sectors and political forces. The new Constitution, promulgated by the Constituent Assembly in July 1991, enshrined all the rights provided for in the Covenant and had increased the State's capacity to deal with drug traffickers.

353. Various other efforts had been made, including the development of an integrated policy on human rights, the adoption of a bill of rights and the constitutional recognition of the country's multicultural character. The state of emergency, which had been in effect for seven years, had been lifted in July 1991. Other positive developments included the introduction of a new legal remedy, tutela; the appointment of a parliamentary ombudsman; the strengthening of the protection of judges and witnesses; the institution of procedures for the immediate follow-up of reports of disappearances and the establishment of a new Constitutional Court to strengthen the protection of human rights. Additionally, fundamental changes had been introduced in the electoral system, with the Senate now also including representatives from indigenous communities; efforts had been made to encourage direct participation by citizens through the use of referendums and the introduction of democratic procedures in all aspects of public life; and various educational programmes on human rights had been developed, including compulsory human rights training for all levels of the armed forces. As a result of all those measures, complaints of torture and disappearances had dramatically decreased, as had assassinations of political figures, although a certain level of violence had persisted.

Constitutional and legal framework within which the Covenant is implemented and the state of emergency

354. With regard to those issues, members of the Committee wished to receive information on the impact of the adoption of a new Constitution on the status of the Covenant within the legal system;

on the practical consequences of the lifting on 26 July 1991 of the state of siege; on the rights that had been derogated from during successive states of siege which had ended on 7 July 1991; on the basis under the new Constitution for ensuring conformity with article 4, paragraph 2, of the Covenant; on measures taken to combat "death squads", paramilitary groups and private militia and on how the significant reduction of sentences mentioned in the report could be reconciled with the purpose of those measures; and on follow-up action taken as a result of the views adopted by the Committee under the Optional Protocol with regard to Colombia.

355. In addition, it was asked how contradictions between domestic legislation and the Covenant, if any, were resolved; whether a provision of the Covenant could be directly invoked before the courts; why the new Constitution did not prohibit discrimination on the grounds of colour, religion or property; why only 61 of the 622 members of the armed forces accused of involvement in paramilitary activities had thus far been punished; and whether Colombia was considering acceding to the Protocols I and II Additional to the Geneva Conventions of 1949. Further information was also sought on the remedy of tutela; on the status, organization and activities of the judicial police; on measures taken against the de facto and de jure impunity of the armed forces and the police; and on article 91 of the Constitution, according to which obedience to an order given by a superior could constitute a defence if the order had been given and carried out in the line of duty.

356. With regard to article 4 of the Covenant, further information was sought on the new constitutional arrangements relating to the introduction of a state of emergency, and it was asked whether the circumstances in which a state of emergency might be declared could be challenged before the Supreme Court.

357. In his reply, the representative of the State party said that the new Constitution incorporated all the rights laid down in the Covenant and had established new mechanisms to ensure rapid and effective compliance with human rights provisions. The Covenant enjoyed a supralegal status, intermediate between the law and the Constitution, and judges were bound to take account of its provisions when interpreting domestic norms relating to human rights. The Covenant had been invoked by the Council of States even before 1991 in numerous cases of torture or mistreatment by the public authorities against persons deprived of their liberty. In keeping with the provisions of the Covenant, the new Constitution prohibited discrimination based on race, religion, colour, family or national origin or sex and constitutional rights were extended to all, irrespective of their social and economic status.

358. The newly established remedy of tutela enabled any citizen to seek before the courts the protection of his fundamental rights. The tutela system tended to favour the complainant, who was under no obligation to appear with an attorney, to cite norms of the Constitution or to give any juridical foundation to his case. Unless the accused party refuted the allegations within three days, the substance of the tutela report was deemed to be true and measures necessary to end the violation were ordered.

359. New provisions had also been introduced to deal with states of emergency. The state of siege had previously been used to induce members of armed groups to return to civil society as well as to provide protection from intimidation and threats for judges and witnesses involved in drug-trafficking trials. In 1990, the Supreme Court had found some of the decrees promulgated during

the state of siege, in particular those relating to restrictions of trade-union freedoms, to be unconstitutional and a bill had been introduced providing that human rights norms could be limited under exceptional circumstances but never suspended. The new Constitution stipulated that statutory laws could specify what limitations might be placed on rights in a time of upheaval, but those limitations did not apply to the non-derogable rights referred to in article 4, paragraph 2, of the Covenant.

360. Referring to the impact of guerrilla warfare and drug trafficking on the Government's efforts to comply with the provisions of the Covenant, the representative said that guerrilla activities directed against the civilian population posed very complex human rights and public order problems, particularly as they were mainly confined to rural areas in which the State could maintain only a limited presence. Guerrilla warfare had frequently led to retaliation by civilians, who had formerly been entitled by law to form armed groups under military protection for the purpose of self-defence. Beginning in 1989, negotiations with the guerrillas had helped to reduce the direct participation of landowners in drug trafficking and had curbed retaliatory action against those suspected of ties with guerrilla groups. It has also been decided to abolish penalties for those accused of membership in armed self-defence groups declared illegal by the Government, provided that they had not committed other crimes.

361. With respect to politically motivated murders, he noted that the elections to the Constituent Assembly held in 1991 had not been accompanied by general acts of violence or intimidation. Among the guerrilla groups that had participated for the first time in national elections, only the former People's Liberation Army had been affected by violence committed by groups trying to sabotage or obstruct the peace process. Furthermore, cases where members of the armed forces had been involved in paramilitary activities had sharply declined and seemed to involve only low-ranking members of the armed forces corrupted by drug traffickers in the local areas where they were serving. A number of police officers were currently under investigation for alleged participation in so-called "social clean-up vigilante groups". Only two rural massacres had been reported in 1991, compared to dozens in 1988 and 1989, and they were still under investigation. In 1991, a number of paramilitary groups had been disarmed in areas where their activities had been very widespread and efforts had also been made to increase the presence and visibility of the army in areas where there was evidence of large-scale paramilitary activities.

362. With regard to measures taken to protect those whose human rights were threatened, the representative said that significant steps had been taken to protect judges and witnesses, who had previously been faced with the choice of submitting to threats or risking their lives. Among measures taken to that effect were the creation of a 3,600 strong-protection team and the holding of training seminars for judges in defence techniques. Judges were currently concentrated in five cities. The most effective way of protecting them was the system of anonymity, whereby their identity was not known by the parties or the defence lawyer. That system had, however, one major drawback in that it impinged on the guarantee of a fair trial. Colombia was facing the difficult problem of striking a balance between the need to combat organized crime, on the one hand, and the need to ensure the enjoyment of fundamental rights, on the other. The current relatively low incidence of abuses and the decline in the number of reports of torture or disappearances demonstrated that the measures adopted were yielding positive results.

363. Responding to specific questions relating to the armed forces, the representative explained that the new Constitution had changed the status of the military. The position of Minister of Defence was now being held by a civilian, who was accountable to the Congress and who had a constitutional obligation to train members of the armed forces in human rights matters. The armed forces had currently no legal authority over civilians and the internal investigation services of the armed forces were prohibited from having any jurisdiction over civilians, even during states of emergency.

364. Concerning the views adopted by the Committee under the Optional Protocol with regard to Colombia, the representative explained that they related mostly to situations that had now been overtaken by the new constitutional changes. Under the new Constitution, administrative detention was no longer allowed and all detainees had to be brought before a judge within 36 hours.

Right to life, treatment of prisoners and other detainees, liberty and security of the person and right to fair trial

365. In connection with those issues, members of the Committee wished to receive further information on measures taken to investigate cases of disappearances, extrajudicial executions or torture, to punish those found guilty and to prevent the recurrence of such acts. They also wished to know whether there had been any changes to the rules and regulations governing the use of firearms by the police and security forces; whether there had been any violations of these rules and regulations and, if so, what measures had been taken to prevent their recurrence; what the current rate of infant mortality was; how the infant mortality rate among the ethnic groups was as compared with that of the general population; what concrete measures had been taken by the authorities to ensure the strictest compliance with article 7 of the Covenant; whether confessions or testimony obtained under torture could be used in court proceedings; what arrangements had been made for the supervision of places of detention and for receiving and investigating complaints; what guarantees there were for the independence and impartiality of the judiciary; what measures had been adopted to prevent intimidation of members of the judiciary; what legal and administrative provisions governed tenure, dismissal and disciplining of members of the judiciary; and whether there were any judges who performed their functions anonymously.

366. In addition, it was inquired what the impact had been on the level of violence in the country of the establishment of the Office of the Presidential Adviser for the Defence, Protection and Promotion of Human Rights and the Office of the Presidential Adviser for Rehabilitation, Normalization and Reconciliation; what measures had been taken to provide assistance to persons displaced by the violence; what specific measures had been taken to prevent mass murders by paramilitary groups; what was the average period as well as the maximum length of pretrial detention and remand in custody under the 1990 Anti-terrorist Act and during a state of emergency; and whether persons deprived of their liberty could be held incommunicado. Further information was also sought on article 233 of the Penal Code.

367. In his reply, the representative of the State party emphasized that, in response to the firm stand taken by the President, preventive measures had been adopted to avoid the recurrence of acts of torture, disappearances and extrajudicial executions. Senior military officers had condemned such illegal actions, generally committed by low-ranking officials, and there had been official requests to external bodies to investigate allegations of violations perpetrated by the military. Investigations

of members of the police or armed forces accused of extrajudicial executions, homicide, torture or mass murder were carried out by examining magistrates from civilian or military courts. To address the problem of disappearances, which remained of serious concern, a new national investigation body, the Fiscalía, had been established to coordinate investigations and assist with the identification of victims who had been killed.

368. The new Code of Penal Procedure had established measures intended to reduce the possibility of torture while in detention. In 1991, the length of time an individual could be detained before being charged had been reduced to 5 days in civil cases and 24 hours in cases of detention under military jurisdiction. In addition, the Red Cross had been given access to all places of detention. Public attorneys, lawyers from the Office of the Attorney-General and municipal officials routinely visited prisoners and the police and military were required to notify municipal officials within 24 hours of any arrest. Another protection was the requirement for immediate access to a lawyer upon arrest and the prohibition of incommunicado detention. Furthermore, under article 29 of the Constitution, confession or testimony not given freely could not be used in court proceedings and detained persons could remain silent and could not be forced to testify against themselves of their families. As a consequence of those measures, complaints of torture had dropped drastically although some complaints of torture during the time of transfer to a place of detention after arrest were still being received. Specific cases of torture that had occurred under the old system were still being investigated and over 200 military or police personnel accused of violence against persons, such as murder, mass murder or torture, had been suspended

369. The Office of the Presidential Adviser for the Defence, Protection and Promotion of Human Rights received complaints and reports of human rights violations and carried out follow-up work on investigations conducted by other institutions. The Office of the Presidential Adviser for Reconciliation, Normalization and Rehabilitation formulated policies aiming at a negotiated peace with guerrilla groups and followed cases of abduction, summary execution and other acts carried out by guerrillas. The Office of Public Defender (Defensor del Pueblo) had been established under the new Constitution to institute proceedings of habeas corpus, receive reports of human rights violations and ensure the defence of individuals who could not afford counsel. The Higher Adjudication Council had been established under the new Constitution to safeguard the independence of the judicial branch by overseeing all financial and budgetary matters and all disciplinary matters. It was composed of impartial, independent magistrates who monitored and evaluated the performance of judges. The system of appointment of anonymous judges had been established so that they could not be interfered with by the Executive Branch or by organized crime.

370. With regard to questions raised relating to internally displaced persons, the representative emphasized that, over the past 40 years, Colombia had been caught up in a process of rapid urbanization. At the same time, economic activities in rural areas had declined sharply and landowners were being abducted by the guerrillas or forced to make routine payments to them. The ensuing emigration of peasants from rural areas to the cities had given rise to a very serious social and economic situation. The Office of the Presidential Adviser for Social Policy provided assistance to family members of victims of violence and gave support through temporary assistance programmes. The Government's National Rehabilitation Plan carried out social investment projects in rural areas affected by violence.

371. Replying to questions raised in connection with child mortality, the representative of the State party said that, as a result of government efforts, the infant mortality rate had dropped to 37 per 1,000 in 1992. That rate had unfortunately declined much less rapidly in the indigenous or minorities communities because those groups lived in inaccessible areas.

Freedom of movement and expulsion of aliens, right to privacy, freedom of religion, expression, assembly and association and right to participate in the conduct of public affairs

372. Referring to those issues, members of the Committee wished to receive information on the circumstances under which restricted residence could be ordered under the new Constitution; on the law and practice relating to permissible interference with the right to privacy and the collection and use of personal data; on the privileged treatment, if any, of the Roman Catholic Church as compared with other churches or religious groups; and on whether any popular referendum, as envisaged in article 6 of Legislative Act No. 1 of 1986, had ever been organized.

373. In addition, it was asked whether the right to privacy was guaranteed in practice to the same extent in remote areas as in urban centres and under what conditions a public official could grant an order for wire-tapping or the interception of correspondence. Further information was also requested on the implementation of article 176 of the Constitution; on the impact of the activities of guerrilla groups and drug traffickers on the exercise of the freedom of expression and assembly; on the requirements for authorization of a film by the Film Classification Committee; on the law and practice relating to the exercise of trade-union rights; and on measures taken to protect trade-union activists whose human rights were threatened. Clarification was also sought of certain provisions of the state of emergency bill introduced in January 1992, in particular those relating to the issuance of obligatory safe-conduct passes in some areas of the country.

374. In his reply, the representative of the State party explained that a draft law on states of emergency was pending before Congress and would probably be adopted before July 1992. Under the bill, freedom of movement could be restricted only in very specific circumstances and more extreme restrictions, such as the issuance of safe-conduct passes, could be imposed only during wartime.

375. The new Constitution not only guaranteed the right to privacy, but also sought to adapt that concept to modern technological developments. Article 15 of the Constitution gave individuals the right to have access to computerized data and to request the removal of inaccurate date. Furthermore, only a judge could order wire-tapping or the opening of private correspondence. When it was necessary to collect judicial evidence in rural areas where there might not be a sufficient number of judges, arrangements were made to facilitate travel by judges to those areas. Under the new system in which indictments were drawn up by new office known as the Fiscalía, all searches had to be authorized by the judicial office coordinating the investigation.

376. In Colombia, there was extensive freedom of expression of all political opinions and, since the television networks were State-owned, an adjudication process established a fair distribution of programming time. A proposal had been introduced to establish an independent national board representing all groups in society to regulate television operations. The Constitution expressly prohibited censorship and the only function of the Film Classification Committee was to issue

ratings for suggested audiences. With regard to freedom of assembly and association, the representative underlined that the new Constitution recognized the legality and independence of trade unions, eliminated barriers to their establishment and abrogated a general legislative prohibition on strikes in the public sector. Trade-union leaders whose lives had been threatened had been provided with armed escorts or authorized to carry weapons for self-defence. A programme had also been developed under which, in the past two years, more than 200 teachers facing similar threats had been transferred to new jobs in other areas. Since the promulgation of the new Constitution and the arrest of several drug traffickers with ties to right-wing terrorist groups, violence against journalists had ceased.

377. Another major change brought about by the new Constitution was the granting of full religious freedom. All churches and sects were now equal before the law, and religious minorities enjoyed special protection. The concordat between the Government of Colombia and the Holy See granting the Roman Catholic Church special status was consequently being modified to bring it into line with the new Constitution. The Roman Catholic Church, however, retained significant influence in matters concerning the family and education, although religious education in public schools had now become optional. Although there was no tradition in Colombia of direct participation in decision-making, two direct national referendums had been held, the first to decide whether a constituent assembly should be held and the second to decide on the membership, powers and procedures of the Constituent Assembly.

Non-discrimination, equality of the sexes, protection of family and children and rights of persons belonging to minorities

378. With reference to that issue, members of the Committee wished to receive information on the effectiveness to date of the various programmes and policies designed to achieve equality between men and women; on the activities and accomplishments to date of the Presidential Adviser for Young People, Women and the Family; on the impact of the entry into force of the Minors' Code on the enjoyment by children of their rights under article 24 of the Covenant; on measures taken to address the needs of minors of minors in "anomalous" situations; on the law and practice relating to the employment of minors; on any factors or difficulties hampering the implementation and enjoyment of the rights under article 27 of the Covenant; on measures taken by the Indigenous Affairs Division, the National Committee for Aboriginal Languages or any other governmental bodies to assist in maintaining native cultural traditions or languages in various regions of the country; on any measures envisaged for the protection of minorities, such as the establishment of a Presidential Adviser on Minority Affairs; on measures envisaged by the Special commission on Amazon Indian Affairs to overcome the ecological deterioration of the area in the Amazon region; and on representation of minority groups in the Constituent Assembly.

379. In addition, they wished to know whether provision had been made for sanctioning parents who mistreated their children; whether Colombia had been confronted with the problem of fraudulent adoption of minors by foreign couples; whether there had been any instances of children being abducted with a view to selling their organs; what measures had been taken to deal with the problem of street children; and whether Colombia had encountered any problems in reconciling development of its oil reserves with a maintenance of a balanced ecosystem. Information was also sought about tensions that seemed to exist in certain areas between the indigenous population and

the Black community and about the special jurisdictions where ethnic minorities were authorized to apply their own norms.

380. In his reply, the representative of the State party said that the various programmes and policies designed to enhance the role of women had been very successful. Equal access to education had now been achieved in elementary and secondary schools, as well as in the universities, and women were increasingly represented in senior posts in both the public and private sectors and in political life. Although substantial progress had been achieved and discrimination outlawed in nearly all sectors, much remained to be done, particularly with regard to equal pay, better child-care arrangements and improved training for women. The Office of the Presidential Adviser for Young People, Women and the Family had been established in 1991 to organize group activities for young people, including anti-drug education, as well as cultural and recreational programmes. It had also helped to set up children's homes which catered to more than 1 million children in need. During the 1960s, a time of heavy migration, street children had been a serious problem, but better living conditions and lower birth rates had helped to alleviate the situation. In recent years, such children were mostly those who had run away because of ill-treatment or conflict at home.

381. The Minors' Code had been drawn up in 1990 and attempted to embody the provisions of the United Nations Convention on the Rights of the Child. The Code contained a set of wide-ranging and practical requirements for the protection of children. One of its aims was to ensure that all young people who had committed offences but were too young to face charges were housed in institutions, separate from adults. Since child labour was still a very serious problem in Colombia, the Code also sought to introduce stricter provisions and adapt State institutions so as to ensure effective monitoring of the child labour situation. Procedures were laid down for dealing with cases of minors ill-treated by their parents or guardians and adoption was carefully regulated in the light of many years' experience of fraudulent adoption by foreigners. Although rigorous investigations had been conducted into reports of trafficking in children's organs, not a single victim or confirmed case had been found.

382. Responding to questions raised in connection with article 27 of the Covenant, the representative of the State party noted that article 7 of the Constitution guaranteed the ethnic and cultural diversity of the nation and that article 70 stressed that all cultures had equal status and dignity before the law. Languages other than Spanish were considered official in the areas where they were spoken. The Constitution recognized the inalienable right of indigenous peoples to certain lands, which had been accorded the status of self-governing territorial entities. The State was required to invest a certain amount in those entities with a view to improving the living conditions of their people, who had full control of such funds. Any natural resources in the entities could be developed only with the consent and participation of the community. Encouragement was given to forms of education which sought to respect and develop the cultural identity of ethnic groups and efforts were being made to safeguard the electoral rights of minorities and improve their representation in Congress. Minorities would also be entitled under article 246 of the new Constitution to establish special jurisdictions within their territories and provision had been made for the protection of bio-diversity and of flora and fauna in the Amazon and other regions. During the five preceding years, the State had recognized the collective ownership by indigenous communities of approximately 15 million hectares of land in the Amazon region and, consequently, the influx of business and individuals seeking to acquire property in the region for development had

been curbed.

383. While Colombia's Black community was not protected to the same extent as the indigenous population, the provision under article 63 of the Constitution regarding the inalienability of the communal lands of ethnic groups afforded protection for members of the Black community living in areas of communal land ownership.

Concluding observations by individual members

384. Members of the Committee expressed their thanks to the representatives of the State party for their cooperation in presenting the third periodic report of Colombia and for having engaged in a very fruitful and constructive dialogue with the Committee. The report had been prepared in conformity with the Committee's guidelines, providing information about factors and difficulties affecting the implementation of the Covenant. It was clear that progress had been made in the area of safeguarding human rights since the submission of the second periodic report. The constitutional reform as well as the establishment of several bodies, such as the Office of the Presidential Adviser for the Defence, Protection and Promotion of Human Rights and the Office of the Presidential Adviser for Reconciliation, Normalization and Rehabilitation, had had positive effects on enforcing the rights enshrined in the Covenant. The institutionalization of the peace process and the firm stand taken by the Government to combat all forms of violence by the police, the army and paramilitary groups had been important factors for the improvement of the human rights situation in Colombia.

385. At the same time, it was noted that some of the concerns expressed by members of the Committee had not been fully allayed. Concern was, in particular, expressed about the ongoing violence causing a high rate of homicide, disappearances and torture; the murders of sectors of the population in so-called social-cleansing operations; the impunity of the police, security and military personnel; the persistence of the activities of paramilitary groups; the legal provisions regarding states of emergency; the extent of the jurisdiction of military courts; the remaining areas of discrimination against women and members of minority groups; and problems relating to child labour and the full implementation of article 24 of the Covenant.

386. The representative of the State party thanked the members of the Committee for the dialogue they had carried on with the delegation. He agreed that the remaining central issue faced by his Government was the impunity of criminals. He also explained that, thus far, the Government had been unable to impose stricter controls over the remnants of the military justice system. Further efforts were being undertaken towards greater political openness and the emergence of a culture of tolerance conducive to the peaceful resolution of internal conflicts.

387. In concluding the consideration of the third periodic report of Colombia, the Chairman expressed satisfaction at the outcome of the dialogue with the State party's delegation.

Comments of the Committee

388. As indicated in paragraph 45 above, the Committee, at its 1123rd meeting, held on 24 March 1992, decided that henceforth, at the conclusion of the consideration of a State party's report, it would adopt comments reflecting the views of the Committee as a whole.

389. In accordance with that decision, at its 1147th meeting, held on 9 April 1992, the Committee adopted the following comments.

Introduction

390. The Committee expresses its appreciation for the State party's well-documented report, which was prepared in conformity with the Committee's guidelines, highlighting factors and difficulties that impede the implementation of the Covenant and providing information not only about laws and regulations but also about actual practice. The fact that the new Constitution had not yet been adopted at the time of the report's submission made it somewhat difficult for the committee to acquaint itself with the current situation, but the additional information supplied orally compensated for this to a large extent. The delegation endeavoured to answer all questions from the Committee and its members in an open and direct way, admitting the existence of problems and negative facts or factors. The report and the additional information provided have enabled the Committee to obtain a comprehensive view of the human rights situation in Colombia.

1. Positive aspects

391. The Committee notes with satisfaction the positive effects of the constitutional reform on the enforcement of rights enshrined in the Covenant. That reform had been preceded by other reforms of great importance for the strengthening of human rights in Colombia, particularly the establishment in 1987 of the Office of the Presidential Adviser for the Defence, Protection and Promotion of Human Rights and the establishment of a National Human Rights Unit in the Directorate General of Criminal Investigation. In the same connection, the Committee notes the reorganization and strengthening of the special judicial function of the Office of the Attorney General, which have had beneficial consequences for the protection and preservation of the judiciary, as well as the creation of the Office of the Government Attorney for Human Rights (Ombudsman). Another positive aspect, which is attributable mainly to the establishment of the Office of the Presidential Adviser for Reconciliation, Normalization and Rehabilitation and the institutionalization of the peace process, has been the success achieved to date in the ongoing reconciliation and normalization process encompassing insurgent guerrilla groups. However, the most important factors for the improvement of the human rights situation in Colombia seem to have been introduction and establishment of participation democracy, as well as a firm will to combat all forms of abuse of power, particularly violence by the police, the army and paramilitary units. Finally, the Committee expresses satisfaction that the approach taken by Colombia to the right to self-determination of peoples has been in line with the development of participatory democracy and that Colombia is making real efforts to achieve full equality for minority groups.

2. Factors and difficulties impeding the application of the Covenant

392. The Committee notes that the state of siege, which had been in force throughout the national territory since 1 and 2 May 1984 and which had impeded to a large extent the full application of the Covenant, was lifted as from 7 July 1991. However, all obstacles have not yet been removed. Peace has still not been achieved with all insurgent groups and organized drug trafficking continues, with a considerably negative impact on the implementation of internationally recognized human rights. Also, paramilitary activities have not ceased entirely. These factors continue seriously to restrain

citizens' enjoyment of their human rights.

3. Principal subjects of concern

393. The Committee expresses concern about the ongoing violence, causing a rate of homicide, disappearances and torture which, although decreasing, is unacceptable. Of special concern to the Committee have been the murders of sectors of the population in so-called social cleansing operation ("limpieza social"). Moreover, the Committee is concerned about the phenomenon of impunity for police, security and military personnel. In that connection, the measures that have been taken do not seem to be sufficient to guarantee that all members of the armed forces who abuse their power and violate citizens' rights will be brought to trial and punished. Military courts do not seem to be the most appropriate ones for the protection of citizens' rights in a context where the military itself has violated such rights. The persistence of paramilitary groups also causes concern. Furthermore, the Committee is of the opinion that full guarantees do not exist for adequate implementation of the provisions of article 4 of the Covenant regarding states of emergency. The Committee also notes with concern that the principle of equal pay for men and women has not yet been fully applied in Colombia. The child labour issue is also a matter that violates the Covenant.

4. Suggestions and recommendations

394. The Committee recommends that the State party should intensify its action against all violence resulting in human rights violations. It should eliminate impunity; strengthen safeguards for individuals vis-à-vis the armed forces; limit the competence of the military courts to internal issues of discipline and similar matters so that violations of citizens' rights will fall under the competence of ordinary courts of law; and disband all paramilitary groups. The Committee also urges the State party to deal more effectively with problems relating to child labour. Finally, the Committee calls for bringing emergency legislation into conformity with article 4 of the Covenant.

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264. The Committee considered the fourth periodic report of Colombia (CCPR/C/103/Add.3) at its 1568th to 1571st meetings (fifty-ninth session), held on 31 March and 1 April 1997, and at its 1583rd meeting on 9 April 1997, adopted the following concluding observations.

1. Introduction

265. The Committee welcomes the fourth periodic report submitted by the State party and the opportunity to resume its dialogue with Colombia, through a delegation composed of officials from various sectors of the administration. Although the Committee notes with regret that the report submitted by the State party lacks sufficient information on the practical situation with respect to the enjoyment of human rights by the population and on the implementation of the provisions of the Covenant and the relevant national legislation, it expresses its appreciation to the delegation for the frank answers it provided to its questions, which enabled it to have a clearer view of the overall human rights situation in the country. The fact that the delegation acknowledged to a certain extent the difficulties encountered in the implementation of the Covenant in the country is appreciated by the Committee.

266. The information submitted by a wide range of non-governmental organizations also assisted the Committee in its understanding of the human rights situation in the State party.

2. Factors and difficulties impeding the implementation of the Covenant

267. The Committee notes that Colombia continues to suffer from widespread armed conflict, in the context of which gross and massive human rights violations have occurred and continue to be perpetrated. The Committee also notes that recent efforts to restart peace negotiations have yet to bear fruit.

3. Positive aspects

268. The Committee welcomes the recent establishment in Colombia of an office of the United Nations High Commissioner for Human Rights Centre for Human Rights, as well as the ratification by Colombia of the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II).

269. The Committee further welcomes the creation of a number of institutions and offices to protect and promote human rights, such as the Office of the Ombudsman, the Department for Human Rights within the Office of the Public Prosecutor and the Division for Human Rights within the Office of the Attorney-General, and the establishment by the Office of the Public Prosecutor of permanent offices on human rights in the main cities of the country, as well as the setting up of programmes concerning women and gender equality, formulated by the National Economic and Social Policy Council, and the creation of institutional structures aiming at the promotion of women's rights, such as the Committee for Coordination and Monitoring of Policies to Combat Discrimination and the Office of the Presidential Adviser for Youth, Women and the Family.

270. The Committee expresses its appreciation for the recent jurisprudence of the Constitutional Court regarding the status of international human rights instruments, which gives the latter a status equal to that of the Constitution.

271. The Committee welcomes the adoption of a new Police Code, which includes guidelines and binding principles concerning the use of force and weapons by the police. The restructuring of the police with a view to increasing the professionalism of police officials and improving relationships between the police and the population is also welcomed, as is the adoption, in the framework of this restructuring, of decrees with respect to disciplinary measures in cases of unlawful behaviour of police officials.

272. The Committee expresses its appreciation for the establishment of a Commission of Inquiry to deal with complaints concerning forced disappearances, which provides for protective measures for complainants and witnesses. The establishment of a national registry listing disappeared persons, together with the creation of a commission for the follow-up of cases of forced disappearances composed, among others, of the Public Prosecutor, the Ombudsman and the representatives of non-governmental organizations, is viewed as positive steps in the struggle against forced disappearances.

273. The Committee notes with appreciation the creation of remedies for the violation of basic rights of individuals, such as acción de tutela (the remedy of protection of fundamental rights), established by article 86 of the Constitution and the relevant decrees, and the remedies of habeas corpus and habeas data.

274. The Committee also welcomes the adoption of legislation which establishes a mechanism for the compensation of victims of human rights violations in accordance with decisions adopted by the Committee under the Optional Protocol to the Covenant and by the Inter-American Commission on Human Rights.

275. The Committee notes with satisfaction that victims of human rights abuses committed by members of the armed forces may now be represented as civil parties during proceedings before military courts.

276. With respect to the prevailing domestic violence, the Committee welcomes the adoption of legislation which provides for accelerated judicial proceedings and immediate protective measures for victims of such violence.

4. Principal subjects of concern

277. The Committee notes with concern that the suggestions and recommendations it addressed to the Government at the end of the consideration of the previous report (see CCPR/C/64/Add.3 and paras. 390-394 of the Committee's 1992 report 4/) have not been implemented.

4/ Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40 (A/47/40)

278. The Committee deplores the fact that gross and massive human rights violations continue to occur in Colombia and that the level of political and criminal violence is still very high. In particular, the Committee deplores extrajudicial executions, murders, torture and other degrading treatment, forced disappearances and arbitrary arrest carried out by members of the armed forces, the police and paramilitary and guerrilla groups. Journalists, human rights activists, trade union and political leaders, teachers, members of indigenous populations and judges appear to be specifically targeted.

279. The Committee also deplores the fact that so-called "social cleansing" operations, targeting street children, homosexuals, prostitutes and petty delinquents, continue to be carried out and that appropriate and effective action has not yet been taken to ensure the full protection of the rights of those groups, especially of their right to life.

280. The Committee is deeply concerned at the evidence that paramilitary groups receive support from members of the military. The recently adopted decree which would have the effect of legalizing the constitution of armed civilian groups (the so-called Rural Security Cooperatives) would seem to aggravate that situation.

281. The Committee notes with great concern that impunity continues to be a widespread phenomenon and that the concept of service-related acts has been broadened by the Higher Adjudication Council to enable the transfer from civilian jurisdiction to military tribunals of many cases involving human rights violations by military and security forces. This reinforces the institutionalization of impunity in Colombia since the independence and impartiality of those tribunals are doubtful. The Committee wishes to point out that the military penal system lacks many of the requirements for a fair trial spelled out in article 14 of the Covenant, for example, the amendments to article 221 of the Constitution allowing active duty officers to sit on military tribunals and the fact that members of the military have the right to invoke as defence the orders of a superior.

282. The Committee is concerned that the military and members of security or other forces allegedly continue to exercise special powers over civilians and civilian authorities, including judicial authorities, granted to them through the establishment of Special Public Order Zones by decrees no longer in force. The Committee is particularly concerned that the military exercise the functions of investigation, arrest, detention and interrogation.

283. The Committee notes with concern that threats against members of the judiciary compromise the independence and impartiality of the judiciary, which are essential to comply with the rights provided for in article 14 of the Covenant. Moreover, the Committee notes that the length of judicial proceedings creates an unacceptable back log of cases, including cases of human rights abuses.

284. Although the Committee notes the forthcoming dismantlement of the regional judicial system, it nevertheless emphasizes that that system, which provides for faceless judges and anonymous witnesses, does not comply with article 14 of the Covenant, particularly paragraph 3 (b) and (e), and the Committee's General Comment 13 (21).

285. The Committee notes with concern that there is a significant gap between the legal framework

and reality in the field of human rights. It notes in particular that although a large number of laws and regulations have recently been adopted to protect human rights and provide remedies in cases of abuse, there has been little noticeable improvement in the situation of human rights in practice.

286. The Committee expresses its deep concern at the recent proposals for constitutional reform aimed at suppressing time limits on states of emergency, eliminating the powers of the Constitutional Court to review the declaration of a state of emergency, conceding functions of the judicial police to military authorities, adding new circumstances under which a state of emergency may be declared, and reducing the powers of the Attorney-General's Office and the Public Prosecutor's Office to investigate human rights abuses and the conduct of members of the military, respectively. If those texts were to be adopted, they would raise serious difficulties with regard to article 4 of the Covenant.

287. The Committee expresses its concern over the situation of women who, despite some improvements, continue to be subject of de jure and de facto discrimination in all spheres of economic, social and public life. It notes in this regard that violence against women remains a major threat to their right to life and needs to be more effectively addressed. It is also concerned at the high mortality rate of women resulting from clandestine abortions.

288. The Committee also expresses its concern that the resort to declarations of states of emergency is still frequent and seldom in conformity with article 4, paragraph 1, of the Covenant, which provides that such declaration may be made only when the life and existence of the nation is threatened. The Committee is also concerned that despite constitutional and legal guarantees, enjoyment of the rights provided for in article 4, paragraph 2, of the Covenant is not fully protected in such circumstances and that under article 213 of the Constitution the Government may issue decrees suspending any laws considered to be incompatible with the state of disturbance.

289. The Committee expresses its concern at appalling prison conditions, the most serious of which is the problem of overcrowding, as well as at the lack of measures taken to date to address the problem.

290. The Committee expresses its deep concern at the situation of children in Colombia and the lack of adequate measures to protect their rights under the Covenant. It notes that much remains to be done to protect children from violence within the family and society at large, from forced recruitment by guerrilla and paramilitary groups and from employment below the legal minimum age, and specifically to protect street children from being killed or otherwise abused by vigilante groups and security forces.

291. The Committee notes that although positive measures have been taken by the Government, members of indigenous communities and of the black minority continue to suffer discrimination and do not fully enjoy their rights provided for in article 27 of the Covenant.

292. Lastly, the Committee expresses concern that the decisions on the admissibility and the merits of certain cases submitted to the Committee under the Optional Protocol to the Covenant have again been questioned by the Government when it was presented with the views adopted by the Committee under that Protocol.

5. Suggestions and recommendations

293. The Committee urges the Government to redouble its efforts for the setting up of a process of national reconciliation, with a view to bringing lasting peace to the country.

294. The Committee urges that appropriate and effective measures be taken to ensure that human rights are respected by members of the army, the security forces and the police. The Committee strongly recommends that support given by military personnel or security forces to paramilitary groups and operations be investigated and punished, that immediate steps be taken to disband paramilitary groups and that consideration be given to repealing the presidential decree legalizing the constitution of Rural Security Cooperatives.

295. The Committee recommends that in order to combat impunity, stringent measures be adopted to ensure that all allegations of human rights violations are promptly and impartially investigated, that the perpetrators are prosecuted, that appropriate punishment is imposed on those convicted and that the victims are adequately compensated. The permanent removal of officials convicted of serious offences and the suspension of those against whom allegations of such offences are being investigated should be ensured.

296. The Committee recommends that special measures be adopted, including protective measures, to ensure that members of various social sectors, particularly journalists, human rights activists, trade union and political leaders, teachers, members of indigenous populations and judges, are able to exercise their rights and freedoms, including freedom of expression, assembly and association, without intimidation of any sort. The Committee also urges the authorities to take stringent measures to ensure full protection of the rights of victims of "social cleansing", in particular their rights under articles 6 and 7 of the Covenant.

297. The Committee urges that all necessary steps be taken to ensure that members of the armed forces and the police accused of human rights abuses are tried by independent civilian courts and suspended from active duty during the period of investigation. To that end, the Committee recommends that the jurisdiction of the military courts with respect to human rights violations be transferred to civilian courts and that investigations of such cases be carried out by the Office of the Attorney-General and the Public Prosecutor. More generally, the Committee recommends that the new draft Military Penal Code, if it is to be adopted, comply in all respects with the requirements of the Covenant. The public forces should not be entitled to rely on the defence of "orders of a superior" in cases of violation of human rights.

298. The Committee recommends that all necessary measures be taken by the authorities to ensure that the gap between laws protecting fundamental rights and the situation of human rights in practice is reduced. To that effect, the Committee recommends that educational and training programmes be devised so that all segments of the population, in particular members of the army, the security forces, the police, judges, lawyers and teachers, can develop a culture of respect for human rights and human dignity.

299. The Committee recommends that the recently proposed constitutional reforms, referred to in paragraph 286, be withdrawn.

300. The Committee recommends that the State party review its laws and take measures to ensure full legal and de facto equality for women in all aspects of social, economic and public life, including with respect to their status within the family. In this regard, priority should be given to protecting women's right to life by taking effective measures against violence and by ensuring access to safe contraception. Measures should be taken to prevent and eliminate persisting discriminatory attitudes and prejudices against women, notably through education and information campaigns.

301. The Committee reiterates its views that a state of emergency should not be declared unless the conditions set out in article 4 of the Covenant apply and the declaration required under the said article is made. Constitutional and legal provisions should ensure that compliance with article 4 of the Covenant can be monitored by the courts. The application of decrees adopted under article 213 of the Constitution and their non-application at the end of the emergency period should be closely monitored.

302. The Committee stresses the obligation of the State party under article 10 of the Covenant to ensure that all persons deprived of their liberty are treated humanely and with respect for the inherent dignity of the human person. With particular regard to the problem of overcrowding of prisons, the Committee suggests that the adoption of alternative sentencing measures which would allow some convicted persons to serve their sentences in the community be considered and that greater resources be committed to enlarging the capacity and improving the conditions of the penitentiary system.

303. The Committee urges that the regional judicial system be abolished and that the Government ensure that all trials are conducted with full respect for the safeguards for a fair trial provided for in article 14 of the Covenant.

304. The Committee recommends that the Government put an end to the de facto exercise by the military of powers in the Special Public Order Zones established by decrees which are no longer in force.

305. The Committee urges the Government to adopt effective measures to ensure the full implementation of article 24 of the Covenant, including preventive and punitive measures in respect of all acts of child murder and assault, and protective, preventive and punitive measures in respect of children caught up in the activities of guerrilla and paramilitary groups. The Committee also specifically recommends that effective measures be taken to eliminate employment of children and that inspection mechanisms be established to that effect.

306. The Committee stresses the duty of the State party to ensure that every child born in Colombia enjoys the right, under article 24, paragraph 3, of the Covenant, to acquire a nationality. It therefore recommends that the State party consider conferring Colombian nationality on stateless children born in Colombia.

307. The Committee recommends that further measures be adopted to ensure that the rights of members of indigenous populations and the black minorities under the Covenant, in particular articles 2, paragraph 1, 26 and 27 are protected. The Committee particularly stresses the importance of education and urges the Government to take appropriate measures to reduce the illiteracy rate

among those groups.

308. The Committee recommends that the report of the State party, together with these concluding observations, be widely disseminated.