

rule of law and, with an impunity rate of 97 per cent, there is virtually no confidence in the functioning of the justice system; increasing corruption within the public and administrative institutions, including the judiciary, is a serious cause for concern; increasing pressure on the judiciary is coming from the armed forces, security forces and the police, which on the one hand criticize the administration of justice for its ineffectiveness and, on the other hand, obstruct its work with regard to the investigation of the police and the armed forces; the acceptance of paramilitary activities by the armed forces has been a major obstacle in the administration of justice; the decline of public confidence in the judicial system also stems from the difficult access to judicial remedies and from the delays with which cases are tried; despite the extensive institutional structure for dealing with investigations of human rights violations, the activities of the competent institutions lack any effect in practice; there is also an apparent lack of coordination between various judicial bodies, investigatory institutions, the armed forces, security forces and the judiciary, which results in duplication of efforts; populations displaced as a result of the armed conflict face particular problems concerning access to justice; many writs for the protection of constitutional rights (*acción de tutela*) were routinely dismissed by competent judges and, in other cases, delays frustrate the effectiveness of the writs; and, members of the judiciary and of the legal profession lack appropriate training in international standards and law, which has serious implications for the adjudication of cases involving military officials.

With regard to the structure of the judiciary, the report notes that: the court system is comprised of two main jurisdictions, the ordinary and the military; the regional courts, previously called public order courts, and known as "faceless" courts, form part of the ordinary criminal jurisdiction; the judges of the Constitutional Court, the Supreme Court of Justice and the Council of State, are elected for a single term of eight years, the first by the Senate and the second and third by their respective members from lists of candidates submitted by the Higher Council of the Judicature (*Consejo Superior de la Judicatura*); the Office of the Procurator General directs and coordinates all criminal investigations conducted by the national police and other departments provided for by law, save those covered by the military jurisdiction; and, through the establishment of the Office of the Procurator-General the administration of justice has, to some extent, shifted from an inquisitorial to an accusatorial system. The report cites information indicating that in September 1996 approximately 1,600,000 cases were in the investigatory stage, of which 30,000 were before the "regional justice" and that there was no reliable source available to indicate the status of the cases being processed.

The SR noted that while the judiciary condemned the actions of state security forces, it failed to prosecute those responsible and the Human Rights Unit within the office of the Procurator General was faced with difficulties in identifying the increasing number of paramilitary groups

whose activities threatened the country. The Unit was also not in a position to provide precise information on the so-called "self-defence groups" which were being established by civilians throughout the country as a result of the increase in violence and the failure of the state security system to provide protection. The report also notes that prosecutors of the Human Rights Unit encountered obstacles in investigating cases in certain regions of the country.

With regard to the People's Advocate (*Defensor del Pueblo*), the report notes that the duties of the office are governed by article 282 of the Constitution and include, *inter alia*, advising and instructing inhabitants of the national territory and Colombians abroad in the exercise and defence of their rights before the competent authorities or private entities; publicizing human rights and recommending policies for promotion; and, asserting the right to the remedy of habeas corpus, as well as other constitutional guarantees.

On the subject of the regional courts, the report notes that they had been in effect since 1984 and that the crimes that fall within their jurisdiction are rebellion, conspiracy to commit crime and terrorism. On the basis that judges hearing such cases, prosecutors investigating, and witnesses testifying are all at risk, there are provisions to keep their identities secret. With regard to the use of anonymous witnesses by the regional court system, the report notes a number of points, including that: cross examination of anonymous witnesses was authorized only in 1993; such cross examination was restricted by the practical difficulties of maintaining the anonymity of the state's witnesses; usually there is no cross examination because there is an assumption that the prosecutor will not produce an unreliable witness; despite rules stating that the testimony of an anonymous witness cannot by itself sustain a conviction, it can provide sufficient basis for arresting and detaining a suspect; when the case enters the judgment phase, prosecutors reveal the name of the witness in an attempt to enhance the probative value of testimony and to ensure convictions; and, individuals are often coerced to cooperate with the military in criminal investigations.

The report notes that the government intends to discontinue the regional system by 30 June 1999. The SR then stated, *inter alia*, that: crimes falling within the jurisdiction of regional courts are defined in an ambiguous way that leads to abusive application; the involvement of the military in searches, seizures and the detention of suspects that fall within the regional jurisdiction raise concerns about the fairness and impartiality with which investigations are carried out by members of the Armed Forces, who are parties to the internal conflict; and the powers granted to the regional prosecutors to issue arrest warrants conflict with the UN Guidelines on the Role of Prosecutors that provide "the office of prosecutors shall be strictly separated from judicial functions". The report also notes that concealing the identity of the judge erodes the public accountability of judges and prosecutors of the regional jurisdiction. Under the UN Basic Principles on