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Thirteenth session

SUMMARY RECORD OF THE 32nd MEETING*

Held at the Palais des Nations, Geneva,
on Tuesday, 21 November 1995, at 10 a.m.

Chairperson: Mr. GRISSA

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS:

- (a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 4)

Third periodic report of Colombia (E/1994/104/Add.2; E/C.12/1994/WP.17; HRI/CORE/1/Add.56)

1. At the invitation of the Chairperson, Mr. Gonzalez, Ms. Martinez and Ms. Peña (Colombia) took their places at the Committee table.
2. Mr. GONZALEZ (Colombia) said that his delegation welcomed the opportunity to discuss progress in the implementation of the Covenant and the record of President Samper's Government in the realization of economic, social and cultural rights. The Colombian Government attached great importance to honouring its commitments under the Covenant, as was borne out, inter alia, by the high-level delegation before the Committee.
3. As to the present situation in Colombia, the perennial problem of violence was the result of grave social inequalities, drug trafficking and other forms of organized crime, as well as guerrilla and even paramilitary activities in some parts of the country. The scale of violence was such that the Government had thus far been obliged to concentrate the bulk of its efforts and resources on combating the problem in order to maintain public order. Consequently, national policies on social and economic matters received rather less attention, although the Government by no means neglected its duties in that respect. On the contrary, it was determined to take up the challenge notwithstanding the serious obstacle represented by violence.
4. In recent years, the initiative to curtail Colombia-based international drug trafficking had used up substantial resources. It was hoped that, in the future, some of the funds currently allocated for that task could be set aside for social and economic programmes. The initiative had proved successful inasmuch as the Medellín drug cartel had been destroyed and the Cali cartel was now considerably weaker; with most of those responsible in prison, such organizations had effectively lost their power base. All were familiar with the climate of violence that had prevailed in Colombia for many years, a situation of virtual guerrilla warfare in which major and less serious human rights breaches had been committed by all parties involved. Human rights issues were thus a fundamental concern of the present Government and the President had lived up to the commitment made during his presidential campaign to make human rights one of the foundations of his State policy. With the adoption of a new Constitution in 1991 and subsequent reforms, Colombia now had machinery to protect human rights and to prevent further abuses that could be considered one of the most comprehensive in the world.
5. In order to devise streamlined procedures and ensure that justice was done, changes had been made in the Office of the Public Prosecutor, a Constitutional Court had been established, and other reforms had been introduced at all levels. However, such reforms were not thought to be sufficient, and hence Colombia's appeal for international cooperation at the

1995 session of the Commission on Human Rights. In an unprecedented move, it had been agreed to adopt a new mechanism to monitor human rights and to provide technical assistance and policy support to Colombia. Thematic rapporteurs and the chairmen of relevant working groups had been invited to visit Colombia to formulate appropriate recommendations on human rights issues. Subsequently, a follow-up committee had been established to deal with the results of their work at the ministerial level and ensure the implementation of recommendations. Moreover, the High Commissioner for Refugees had been requested to send a team of experts to Colombia, one of whom was Mr. Texier, a member of the Committee, to identify areas in which technical assistance should be provided. In that connection, a committee comprising representatives of non-governmental organizations, the judiciary and other various ministries had drafted a new Code of Military Criminal Justice and Procedure, which was before the Colombian Government for consideration.

6. Other measures adopted were aimed at greater control over the armed forces and the establishment of special units responsible for human rights in the Offices of the Attorney-General and Public Prosecutor. The fact that such machinery had been put in place and made operational testified to the Colombian Government's commitment to improving its human rights record, as indicated during sessions of the Commission on Human Rights and its subsidiary bodies. It was hoped that a report setting forth the results of such efforts would be available by March 1996. Plainly, economic, social and cultural rights on the one hand, and political and civil rights on the other, were closely linked and his Government had set itself clear objectives regarding its responsibilities in those areas. The entire nation was committed to the process and was greatly heartened by the knowledge that it could rely on international assistance. Colombia had not undertaken its international obligations merely to enhance its reputation, but rather because it was convinced of the importance of such action.

7. As to economic conditions, Colombia, along with Chile, had been one of the South American countries with the most stable economy and best economic results in 1995. The economy had grown steadily over the past 30 years, with an average annual growth rate of 3.5 per cent, a rate that was expected to reach 5 per cent by 1996 and possibly 6 per cent by 1997. Such sustained economic growth was the result of a deliberate policy which allowed most Colombians to take advantage of growth in different sectors of the economy. Compared with other Latin American countries, inflation rates in Colombia had traditionally been moderate and, hopefully, would be reduced still further by the end of 1995.

8. Colombia had a reputation for honouring its debt payments and, in terms of the size of the population, the current external public debt did not represent a huge burden on the economy. The combination of good economic growth, moderate inflation and a reduction in the external debt meant that the public deficit, in Latin American terms, was relatively low. It was hoped that such good financial management would help to attract greater investment to the country, thereby enabling Colombians to enjoy the benefits of the growing global economy. Other queries would doubtless be raised about the economy, but the variables he had mentioned certainly made for one of the soundest economies in South America.

9. Colombia had opened up its economy at some sacrifice, but not at the expense of its social policy. The change had been gradual and well prepared, long before the trend towards free market economies had swept across the rest of Latin America. The Government's main concerns were peace, human rights, the economy and social progress. President Samper's Government had been elected precisely because it had placed emphasis on social progress. Since it was in office it had pursued appropriate policies and provided the nation with greater economic stability. Unfortunately, peace had not yet been achieved, as it had not been possible to bring an end to all forms of violence. In that respect, Colombia faced a tremendous challenge, one which called for greater international cooperation, and an appeal would be launched in every appropriate international forum, in addition to the Committee. The aim of the delegation's dialogue with the Committee was to ensure that recommendations aimed at improving the situation in the country would be duly followed up. Accordingly, any further advice the Committee might wish to give in that respect would be most welcome.

10. Colombia had a democratically elected Government with clear, open policies. It made no attempt to conceal its difficulties from the outside world. All State machinery had been set in motion with a view to seeking a solution to the present situation. For instance, at the behest of the President, the prosecution service and the judiciary, which were independent, were investigating and trying persons accused of human rights violations. Likewise, the relevant State bodies were carrying through the Government's social policies. Colombians had reason to believe that they were moving into a more stable and peaceful era.

11. The CHAIRPERSON invited the Colombian delegation to take up the list of issues contained in document E/C.12/1994/WP.17.

12. Ms. MARTINEZ said she welcomed the opportunity to present Colombia's third periodic report, more particularly since the adoption of the new Constitution in 1991 had made for significant progress in incorporating the economic, social and cultural rights enshrined in the Covenant in national legislation and in ensuring implementation. Colombia had submitted two reports. The first (E/1994/104/Add.2) covered the period 1990-1994 and contained general information on the country, its institutions and policies, as well as details regarding specific rights set out. The second report submitted in 1995, contained supplementary additional information requested by members of the Committee.

13. She drew attention to a number of recent legislative acts and institutional reforms such as the laws relating to the reform and organization of the social security system; the General Education Act transforming the education system; the establishment of a national housing and social welfare system; the drafting of a national statute on public services provided to Colombian homes. Other noteworthy developments included the creation of a national system for agrarian reform and rural development, the recognition of the rights of the Afro-Colombian population and a new Ministry for the Environment. Legislation introduced relating to decentralization was intended to give the territorial entities greater autonomy, particularly in the management of their own resources. Another fundamental piece of legislation was the Planning Organization Act, which provided clear guidelines on the

preparation and implementation of development plans. Other new legislation related to land issues, public services and the indigenous peoples. A number of laws had been enacted since the adoption of the Constitution in 1991 to ratify international instruments, including the Convention on the Rights of the Child. Legal provision had also been made for the protection of rights, set out in other international treaties ratified before 1991, such as the Convention on the Elimination of All Forms of Discrimination against Women.

14. The results achieved over the past four years showed that Colombia, under its Constitution and legislation, stressed the observance of economic, social and cultural rights. In fact, 85 of the 380 articles of the Constitution were exclusively devoted to them. Thus, the Committee could rest assured that Colombia was complying with the provisions of the Covenant, which, together with other international instruments, had been incorporated into domestic legislation. The State had a fundamental responsibility for ensuring respect for economic, social and cultural rights, and persons could apply to the courts for the protection of those rights, the importance of which the present Government had emphasized ever since it had taken office.

15. The national economy had been substantially liberalized and integrated into international markets, leading to an improvement in business structures accompanied by institutional modernization. Nevertheless, poverty as measured in terms of family income or purchasing power had been reduced only slightly or had even worsened. In addition, some problems did exist, as stated by Mr. González, and by the representatives of NGOs at the previous meeting, including the deterioration of the farming sector, drug trafficking, and the displacement of persons by violence and unemployment.

16. To cope with social problems the Government had drawn up the National Development Plan and a supporting investment programme, known as the "Social Leap". The Plan had been widely discussed and submitted to the National Congress, which had approved it as a law of the Republic. The "Social Leap" represented a strategy for dealing with the current challenges posed by economic, social, cultural and environmental development. It was a development model in which social policy played a leading role so that economic progress could be achieved in conjunction with the attainment of a more peaceful and equitable society. In that respect, it was an alternative to the protectionist, interventionist and neoliberal models. It presupposed the need to consolidate the positive effects of economic liberalization yet ensure that the benefits reached all Colombians, creating a new relationship between the State, business and workers in a joint endeavour to build a sound internationalized economy geared to environmentally sustainable development and a decentralized administration. The "Social Leap" was also based on the principles of equity and solidarity with specific sectors and regions for the purpose of making sure that all citizens had access to the necessities of life. Economic growth was intended to generate a social capital and infrastructure in keeping with the needs of modern society, an adequate environment, and an efficient organization of the State for the purpose of securing collective well-being.

17. Other fundamental principles of the Government's social policy were the maintenance of a healthy economy that would improve production and competitiveness and recognition of ethnic and cultural diversity. In the

Plan, general social development programmes for the whole population were linked to a network of special programmes targeted for the poorest third of the population. There were strategies for education, culture and recreation; comprehensive social security, especially for children, young people, the elderly and the handicapped; housing; the participation of women; the development of ethnic minorities; a national employment project and a project for the promotion of small businesses; access to the courts and the promotion of human rights and law and order; special programmes for displaced persons; and special programmes for employment, nutrition, maternal and child health, and support for single mothers and indigent elderly persons. Arrangements for providing easy access to social services had been put into practice throughout Colombia, with a high degree of community participation. Budgets for social programmes were increasing and were due to rise further, and a great effort was being made to improve the quality and management of services.

18. The CHAIRPERSON invited members to comment on section I of the list of issues, relating to general information (E/C.12/1994/WP.17).

19. Mr. TEXIER thanked the delegation of Colombia for its report, which, together with the three reports submitted by non-governmental organizations (NGOs) and the comments of the Public Defender, provided the Committee with abundant information. In connection with the peace campaign, he noted that some very important disagreements had arisen in the reform of the Code of Military Criminal Justice with regard to the concepts of "due obedience" and "acts performed in the course of duty" and that the High Commissioner for Peace, who had resigned in the summer, had not been replaced. In any event, the peace process in Colombia had been greatly complicated by the murder of hundreds of political leaders, judges, priests, farmers, journalists and others.

20. The head of the Colombian delegation had indicated that the general economic situation in his country was good. Nevertheless, the percentage of the population living below the poverty line was high and had increased. It would be interesting to know what action had been taken to rectify that situation. Also, it was disturbing to note the Public Defender's statement that the high hopes that had been entertained when President Samper had taken office had been reduced to the expectation that drug trafficking and guerrilla warfare would be overcome. The country's overall human rights policy seemed to be in crisis. Accordingly, some information on current policy and on any change of direction would be appreciated.

21. Mrs. BONOAN-DANDAN thanked the Colombian delegation for its oral presentation, in which mention had been made of a number of laws designed to develop the provisions of the 1991 Constitution concerned with economic, social and cultural rights. In that connection, to what extent could an individual complain to the courts about a violation of those rights? For example, could a woman complain to the courts about a violation of her right to equal pay? Also, did the "Social Leap" provide for specific means for the protection of economic, social and cultural rights and were those means in keeping with the National Development Plan? It would also be helpful to learn of any misgivings the Colombian Government might have about an optional protocol to the International Covenant on Economic, Social and Cultural Rights.

22. Mr. RATTRAY said it was clear that considerable efforts were being made to develop the Colombian economy and that sustained growth was being achieved, despite the problems encountered in the maintenance of law and order. He wished to know whether that progress was being matched in the social field and how far an element of distributive justice was incorporated in the objectives of the "Social Leap". What remedies were available against violations of the provisions for the protection of economic, social and cultural rights contained in the Constitution and in law, could class actions be brought by, for instance, ethnic minorities, and did economic, social and cultural rights enjoy the same degree of enforceability as civil and political rights?

23. Mr. THAPALIA, noting the substantial discrepancy between the Government's report and the reports submitted by NGOs, asked whether the Colombian Constitution guaranteed any fundamental economic, social and cultural rights in addition to those affirmed in the Covenant and in how many cases the Colombian judiciary had found in favour of aggrieved parties in matters relating to economic, social and cultural rights.

24. Mr. ALVAREZ VITA said that the presence of many non-governmental organizations at the previous meeting was a very positive sign of the interest shown both by the Government and by private parties in the observance of human rights. Under the terms of the San Salvador Protocol on economic, social and cultural rights, individuals and non-governmental organizations were permitted to submit complaints, and he asked whether Colombia had already ratified the Protocol, or was about to do so. What would the legal position be, once the Protocol was approved domestically? Would Colombia then apply the norms contained therein without waiting for sufficient States to become parties for it to enter into force internationally?

25. Mr. CEAUSU said that Colombia's reports, with their wealth of information, would be of great value to the Committee in its work. On the question of the incorporation of the Covenant in domestic law, he would like some clarification concerning the process of ratification of international treaties. According to the supplementary information submitted, that process comprised four stages, the last of which consisted of international ratification by the Executive. Did such international ratification entail an additional act by the Government, or was it simply a matter of preparation and deposit of the instrument of ratification?

26. Mrs. JIMENEZ BUTRAGUEÑO noted from the supplementary information that Colombia's economic situation was apparently worse than it had been in 1984. What specific measures were being taken to secure improvements in administration? Both reports revealed a discrepancy between budgetary allocations and the funds actually spent. What happened to the surplus? Was it used for social purposes? What were the criteria for coordination between the various local, departmental and national bodies in order to identify priorities? What criteria governed the allocation of social expenditures to the areas with the highest levels of violence? As to the question of agrarian reform, when persons were internally displaced, what happened to the land they had occupied?

27. Ms. MARTINEZ (Colombia) said that her delegation was in a position to respond immediately to some of the Committee's questions and would go on to

submit fuller data later. With regard to Mr. Texier's questions about practical measures to deal with poverty, the delegation was ready to provide more details of the Development Plan's targets and programmes. Ms. Peña would sum up the two major programmes - on education and employment - in which the social and economic aspects of the "Social Leap" converged, before going on to complete the overview with some remarks about social security, housing and agriculture.

28. Ms. PEÑA (Colombia) said that the Committee had identified the crucial question: how could such extreme poverty still persist in Colombia if its economy was apparently so healthy? As a general comment, it was worth noting that the traditional belief held that economic growth led to social improvement without the need for further Government intervention. That belief was now discredited in Colombia. Instead, it was now considered that social policies must be pro-active in order to ensure that economic growth would lead to practical benefits for the population at large. The present Government's new social policy placed emphasis on income redistribution and social expenditure on education and on training for employment - the two pillars that would ensure the sustainability of the Development Plan.

29. Since the 1980s the authorities had striven, in the face of many obstacles, to provide education for all. The present Government intended to make significant progress towards providing universal elementary education and realization of the right to education. Full realization of that goal would not be possible, owing to the heavy legacy of the past, yet progress could be made towards raising the average period of schooling from 5 years to 6.9 years by 1998, and many of the population would have 9 years of elementary schooling. In those efforts, the two aspects of coverage and quality were inseparable.

30. It would be seen, in regard to Mr. Texier's question, the Government's social policy was an active one, as distinct from the traditional tendency to wait for the benefits of economic growth to trickle down. As to the question by Mr. Rattray, the Development Plan did indeed contain quantitative and distributive elements. She would provide fuller details at a later stage.

31. Mr. AHMED said that, if he took the floor so late in the proceedings, it was so as to introduce a better balance into the discussion. In the light of the contents of the reports submitted, and so skilfully presented, by Colombia, there could be no doubt of the Government's good will. The new Constitution and recent legislation clearly demonstrated its readiness to realize the economic, social and cultural rights of the people. He was also grateful to the authorities for allowing non-governmental organizations to present their views. There appeared, however, to be some discrepancy between the position of the NGOs and that of the authorities. Those discrepancies were sufficient to raise doubts about the practical steps being taken to ensure those rights. Good intentions abounded, but a gap - to some extent justified by the real difficulties the Government faced - seemed to exist between those intentions and the actual situation. He thus appealed to the Colombian delegation to dispel the doubts raised by the NGOs and concentrate on the practical steps being taken to remedy those deficiencies, rather than simply provide details of constitutional and legislative provisions.

32. The CHAIRPERSON said that non-governmental organizations submitted information which the Committee could use in formulating its own questions, along with information from other sources. It was not the Committee's job to bring Governments and non-governmental organizations face to face. Having devoted two whole hours to generalities, it should now turn to the crux of the matter, namely, consideration of the provisions of the Covenant on an article-by-article basis.

33. Mrs. JIMENEZ BUTRAGUEÑO said Ms. Martínez had spoken of the interdependence between social expenditure and national security expenditure. Had penalties for acts of violence been increased - particularly in the case of crimes by the military? Impunity appeared to be a factor involved. It was not sufficient to invest large sums of money in national security: the guilty must also be punished.

34. THE CHAIRPERSON, supported by Mrs. BONOAN-DANDAN, appealed to members to follow the Committee's customary procedures. It should conclude its discussion of the section on "General information", before turning to article 2 of the Covenant.

35. Ms. MARTINEZ (Colombia), responding to the question about the means available for protecting economic, social and cultural rights, said that two monitoring bodies, the Office of the Attorney-General and the Office of the Public Defender, were responsible for protection, defence and realization of those rights. Furthermore, there was one instrument par excellence for protecting of those rights, namely the tutela mechanism whereby any person could petition the courts directly if he or she felt that his or her rights had been infringed. There had been much recourse to that mechanism - she would provide specific data at a later stage. The important point was that mechanisms existed allowing not only for protection and defence of those rights, but also for case-law through tutela decisions.

36. Mr. GONZALEZ (Colombia) said that recourse to the tutela mechanism by individuals was provided for in the Constitution. In the past two years, there had been 35,000 such actions. Cases had come to public attention of children who had filed tutela proceedings if their teachers criticized their academic performance. There was now such a backlog of such actions for protection that judges were having difficulty in dealing with other cases.

37. Mr. Thapalia had asked in how many cases the Colombian judiciary had ruled in favour of the aggrieved parties in cases relating to economic, social and cultural rights. He had no exact figures at his disposal, but could assure the Committee that the courts had found in favour of the complainant in a large number of cases. In his view, tutela was the most effective mechanism for protection of rights to be found in the new Constitution.

38. In reply to a question by Mr. Ceausu about the process of ratification of international instruments, he said that the new Constitution provided that, after being passed by the two Chambers, an instrument was referred to the Constitutional Court and no longer to the Supreme Court of Justice as in the past, and finally entered into force once the instrument of ratification had been deposited. The procedure was somewhat more lengthy, but guaranteed conformity with the Constitution.

39. As to Mr. Alvarez Vita's question about the implementation of the San Salvador Protocol pending its final ratification, he would convey the Committee's concerns to the Government and seek information on the applicable procedure. It was his understanding, however, that given the importance attached to the Protocol by the Government, steps were already being taken to implement its provisions.
40. He went on to a question by Mr. Texier about figures from NGO sources to the effect that the percentage of poor people was on the increase.
41. Mr. TEXIER specified that he had been referring to figures provided by the Colombian Government in its supplementary information.
42. The CHAIRPERSON said he wished to make it clear that Committee members were impartial experts who obeyed their conscience alone and did not represent countries.
43. Ms. MARTINEZ (Colombia) said that Colombia's stated policy was to reduce the poverty rate. Its reports specified, moreover, that the number of poor people, as measured in terms of family expenditure, had fallen over the past four years. Admittedly, 30 per cent of the population did live in poverty, a problem the Government needed to tackle with the requisite programmes and resources. The basic means of addressing the issue was the network of social solidarity that had been established, with its attendant programmes and projects for the poor, placing emphasis on housing, health and nutrition and targeting of specific vulnerable sectors such as the elderly and single-parent families, so as to provide them with the necessary minimum resources for survival. To ensure the participation of the population as a whole, a number of services focusing on employment, social security and other programmes had been established to raise social welfare standards for the benefit of all needy Colombians.
44. Mr. GONZALEZ (Colombia) said, in response to Mr. Texier's concern about the shifting of public resources from the social sector to the maintenance of law and order, that, with the situation of violence prevailing in Colombia, it was the Government's responsibility to allocate substantial resources to public order services, a factor compounded by the cost of internal displacement and the difficult terrain. The security and safety of the civilian population was at stake. It did not, on any account, mean that investment in the social sector was being neglected. Indeed, surveys conducted in 1985 and 1993 showed that Colombia's social welfare effort had resulted in a significant decline in poverty. Reference had been made to discrepancies between the NGO and Government reports. He fully agreed that good intentions were not enough, and pointed to the practical steps taken to guarantee the rights of indigenous people, such as the particularly progressive legislation concerning indigenous people and the provisions for their participation in public life and representation in both the Senate and the Chamber of Representatives.
45. In reply to a question by Mr. Ahmed, he referred to the Government's policy for the 600,000 internally displaced persons in Colombia. He could provide the Committee with a report on the national programme catering comprehensively for the needs of internally displaced persons, which gave

figures on the target groups and described in detail strategies, institutional responses, structures and competent authorities, resources and so on. Colombia maintained close working relations with national and international NGOs, provided for channels of communication and took their views and findings into account, even if at times there might be inevitable differences of opinion. For example, the Colombian authorities cooperated, both in Geneva and at home, with such organizations as Amnesty International, Pax Christi, Terre des Hommes and the Andean Commission of Jurists. The President of the Republic had invited Amnesty International to establish an office in Colombia. Representatives of that organization had met the President, but had declined his offer on the grounds that it was not deemed necessary to set up an office in the country.

46. Ms. MARTINEZ (Colombia), responding to concerns expressed by Mr. Rattray and others about the practical implementation of social development plans and projects, said that a major problem, affecting most countries, was that of inadequate resources to provide a rapid and timely response to needs. It called for efficient, coordinated functioning of the bodies managing social projects and optimum use of resources. The Social Development Plan was, accordingly, an integral plan based on new approaches to social welfare, including manpower training, in order to provide for medium- and long-term projects as well as immediate responses.

47. The CHAIRPERSON requested the Colombian delegation, in view of time constraints, to concentrate on the specific issues at hand rather than on general methods of planning.

48. Mr. GONZALEZ (Colombia) explained that the delegation was referring to questions of methodology in response to a specific question and did not wish the Committee to feel that it had failed to address any of its concerns.

49. Mr. RATTRAY expressed gratitude to the representatives of Colombia for providing specific details of the context in which the law provided for remedies. His question had been asked in an attempt to understand what he termed "distributive justice", and he was satisfied with the replies given.

50. Mr. GONZALEZ (Colombia) assured Mrs. Bonoan-Dandan that individuals could take complaints of alleged violations directly to the courts and other bodies. That included recourse in cases of infringements of their rights under social and economic programmes, and complaints against public officials for non-compliance with such programmes. If found guilty, an official could be removed from office; some of the cases that had been brought had been successful and others not. He would convey the question concerning possible support for an optional protocol to the Covenant to the authorities in Bogotá.

51. In reply to a question by Mrs. Jiménez Butragueño, he said that penalties for all those found guilty of perpetrating acts of violence, including agents of the State, had been increased, and he referred in that connection to a reform of the military code of procedure that was currently under way.

52. As to the question of agrarian reform, the concept of the right to land ownership had been set out in the Constitution since 1936 and the process of land reform and redistribution, though not complete, was being pursued

vigorously. Although the pattern of land ownership was now changing, especially in the indigenous lands, serious problems had been encountered in areas owned and controlled by drug traffickers, who obviously opposed the process of agrarian reform. He himself had been responsible for introducing the agrarian reform bill whereby the Government had confiscated land belonging to those involved in drug trafficking for redistribution.

The meeting rose at 1 p.m.