

# ATTACKS ON JUSTICE – COLOMBIA

## *Highlights*

**The independence of the judiciary in Colombia is seriously compromised, particularly within the Attorney General’s Office, where prosecutors are being pressured to comply with the policies of the executive branch of government. In addition, lawyers - especially human rights lawyers and defenders - are subjected to harassment, threats and persecution by the government, guerrilla and paramilitary groups, preventing them from discharging their professional duties in an independent manner. The government has submitted several controversial proposals to Congress concerning reforms to the judiciary that undermine the role of the Constitutional Court (*Corte Constitucional*) and the Higher Judicial Council (*Consejo Superior de la Judicatura*) and could lead to the creation of a judiciary that is heavily accountable to the executive (*Poder Ejecutivo*). The constant efforts of the government to push through radical legal and constitutional reforms not only undermine the independence of the judiciary but also create legal chaos.**

## BACKGROUND

President Alvaro Uribe Velez assumed office on 7 August 2002. Four days later, on 11 August, he issued *Decree 1837* declaring a 90-day state of emergency. On 9 September 2002, the government issued *Decree 2002* setting up two militarized areas, called “rehabilitation and consolidation zones”. The first rehabilitation and consolidation zones were created on 21 September 2002 and comprised 27 municipalities (*municipios*) in the departments (*Departamentos*) of Arauca, Sucre and Bolivar. Although the Constitutional Court ruled in April 2003 against renewing the state of emergency and other related decrees, including parts of *Decree 2002*, the military has in practice ignored the ruling and continued to employ many of the measures rescinded by the court. And far from curbing the violence, the rehabilitation and consolidation zones have seen a considerable increase in human rights violations and overall insecurity.<sup>1</sup>

As far as the internal armed conflict is concerned, the government intensified talks with a significant section of the paramilitary groups and, following declaration of a ceasefire in December 2002, in July 2003 it signed an agreement on gradual demobilization to be concluded by the end of 2005. However, the main paramilitary groups have not respected the ceasefire and massacres, killings and displacement have continued. The legal framework in which the talks took place did not guarantee the right to justice and reparations for victims or ensure that the perpetrators of crimes

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<sup>1</sup> See Amnesty International, “Colombia, a Laboratory of War: Repression and Violence in Arauca”, 20 April 2004.

against humanity and war crimes would be punished. There has been no progress with regard to talks between guerrilla groups and the government.<sup>2</sup>

During the period under review, the government has introduced a number of bills that seek to amend the constitution, increase military powers and limit judicial guarantees. Although many of these have failed to gain the support they require to be passed, some of them pose significant challenges when it comes to strengthening civilian oversight of the security forces, the rule of law and respect for human rights and international humanitarian law.

The government also introduced the “Democratic Security and Defence Policy” (*Política de Defensa y Seguridad Democrática*), which has been criticized for being inconsistent with the rule of law and especially with human rights standards. According to the Colombian Government, this policy “is a political instrument designed to protect and guarantee the rights of Colombians and to neutralize the threat of terrorism against Colombian people”.<sup>3</sup> However, most measures adopted under this policy were designed to boost the presence of the security forces across the country. In some cases, this has been done to the detriment of civil institutions, constitutional guarantees for citizens and the powers of judicial and control bodies.

While the Colombian Government claims that the human rights situation has improved by comparison with previous years, international and regional organizations say that the human rights situation in Colombia is critical.<sup>4</sup>

## JUDICIARY

In 2003, the former Ministry of Justice was merged with the Ministry of Interior by means of *Presidential decree 200 of 2003*. The new “Ministry of Interior and Justice”<sup>5</sup> retains the same functions as its predecessors, including, *inter alia*, creating and promoting State policies relating to justice issues, proposing legislative amendments with regard to the justice system and participating in the design of policies on crime and prisons. The Ministry of Interior and Justice forms part of the executive and acts as a link between the latter and the judiciary. The Ministry supports and collaborates with the judiciary on policy matters relating to proposed new legislation, as well as in investigations and studies of issues related to formal justice. It also assists in amending codes and statutory, organic and ordinary laws.

Although it is established in law that the judiciary should be independent and impartial, in practice this is not guaranteed and respected by the State. The government has tried on several occasions to amend the Constitution in order to make the judiciary heavily accountable to the executive.

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<sup>2</sup> Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, E/CN.4/2004/13, 17 February 2004.

<sup>3</sup> Presidency of the Republic, Ministry of Defence, “*The Effectiveness of the Colombian Democratic Security and Defense Policy August 2002 – December 2003*”, p. 2, [www.mindefensa.gov.co](http://www.mindefensa.gov.co).

<sup>4</sup> See *Annual Report of the Inter-American Commission on Human Rights 2003*, <http://www.cidh.org/annualrep/2003eng/toc.htm>; Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, UN Doc. E/CN.4/2004/13, 17 February 2004, <http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/eff9a19d63a12a70c1256e5b003f4925?Opendocument>.

<sup>5</sup> Ministry of Interior and Justice (*Ministerio del Interior y Justicia*), <http://www.mininteriorjusticia.gov.co>.

**Bill 03 of 2003** threatened the principle of separation of powers. It sought to amend the Constitution so that certain functions would be transferred from Congress to the President. Among other things, the President would have been able to impose employment measures on the civil service (*administración pública*), issue codes by decree and make changes to the structure of the state. The law was withdrawn from Congress in 2003.

**Bill 10 of 2002** (29 October 2002), which also failed to garner sufficient support, purported to abolish the Higher Judicial Council and create a new body, the “Higher Council of the Justice System” (*Consejo Superior de la Administración de Justicia*). The new body was to perform similar functions to the current Higher Judicial Council but with the direct involvement of the Ministry of Interior and Justice. This would have meant a significant increase in executive involvement in the judiciary.

*Bill 10* also sought to amend the sections of the *Constitution* relating to the Constitutional Court in order to limit its powers. It called for paragraphs 7, 9 and 10 of article 241 to be amended to prohibit the Constitutional Court from giving orders to public officials or authorities, or even to individuals, in its rulings on constitutionality. The Constitutional Court would have been limited to ruling on whether a norm was constitutional or not and prevented from issuing interpretative judgments. This would have changed the status of the Constitutional Court as the highest authority responsible for interpreting the Constitution and prevented it from explaining to Congress, through its rulings, how the Constitution was to be interpreted. The Bill also included proposals to remove the Court’s control over the declaration of states of emergency. The Court publicly stated that the draft bill “impedes the Constitutional Court from defending the supremacy of the Constitution and from protecting people against arbitrary acts and abuses of power, by drastically restricting its competences, all of which gravely affects the principle of the social and democratic rule of law. In addition, some of the reforms proposed in the bill infringe the autonomy and independence of the judiciary”.<sup>6</sup>

On 18 December 2003, by means of **Legislative Act 02 of 2003** (*Acto Legislativo 02 de 2003*), the Colombian Congress amended articles 15, 24, 28 and 250 of the Constitution in the context of combating terrorism. The revised provisions granted considerable judicial police powers to military forces in regions where there is no judicial authority or where the regular judicial police forces are unable to access (*Legislative Act 02 of 2003*, article 4). The *Legislative Act* authorized military forces - or other authorities to be established by the regulating law - to detain individuals for up to 36 hours, search homes and monitor and intercept communications without seeking prior judicial authorization. It also provided for the establishment of a register of addresses (*informe de residencia*) of the entire population. Lastly, the judicial police powers granted to the military forces included evidence gathering and the questioning of suspects.

These constitutional amendments distorted the independence and impartiality of criminal investigations and undermined the administration of justice.<sup>7</sup>

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<sup>6</sup> See Constitutional Court, Press Release, 29 April 2003.

<sup>7</sup> See *Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia*, E/CN.4/2003/13, paras. 79 and 169. On 30 August 2004, the Constitutional Court declared Legislative

**Law 112 of 2004**, which amends *Law 270* of 1996 regulating the administration of justice, also contains provisions affecting the role of the Constitutional Court. It authorizes certain divisions of the Supreme Court to exercise the functions of protecting fundamental rights and controlling the constitutionality and legality of rulings, functions that have traditionally been vested in the Constitutional Court. In addition, *Law 112* gives the Ministry of Interior and Justice, the Procurator-General (*Procurador General*) and the Ombudsman's Office the power to request the Supreme Court to review judgments in certain cases. *Law 112* interferes with the independence of the judiciary and is incompatible with the functions of the Constitutional Court.

The independence and impartiality of judges is further compromised by the fact that they are often the targets of violence from paramilitary groups, frequently acting with the acquiescence of the government, and from guerrillas.<sup>8</sup>

### **Attacks on Judges**

- On **11 July 2002** in Medellín (Antioquia), Jorge Humberto Lara Oviedo, a military criminal judge, was assassinated by unidentified gunmen. The judge was in charge of an investigation into murders involving several military officials that allegedly occurred in August 2000 in Pueblo Rico (Antioquia). The unidentified men shot the judge and stole his briefcase which contained paperwork from the investigation (for information on attacks against people involved in the administration of justice, including judges, see Comisión Colombiana de Juristas, "Situación de Derechos Humanos en Colombia a junio de 2006" and "Situación de los derechos humanos en Colombia enero a junio de 2004").<sup>9</sup>

## **LEGAL PROFESSION**

The situation of lawyers in Colombia is extremely delicate. The State does not provide them with sufficient guarantees for exercising their profession. During the period under review, many lawyers, particularly human rights lawyers, have suffered attacks whilst performing their professional duties. Such attacks included serious threats, harassment, murder, disappearance, torture, kidnappings and arbitrary detention. It is presumed that State officials, as well as paramilitary groups and guerrilla groups, were involved in some cases.<sup>10</sup>

The vulnerability of lawyers in Colombia is aggravated by the fact that there is no professional institution able to protect them as a group. There is no bar association or similar structure to represent lawyers before the authorities, regulate and administer the legal profession, exercise discipline or defend the service they provide. Some of these functions are exercised by the Higher Judicial Council, such as the official

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Act 02 of 2003 to be unconstitutional (Ruling C-816 of 2004). (See International Commission of Jurists, [http://www.icj.org/news.php?id\\_article=3207&lang=es](http://www.icj.org/news.php?id_article=3207&lang=es))

<sup>8</sup> Comisión Colombiana de Juristas, *Colombia: ataques contra jueces, abogadas, abogados y funcionarios judiciales en el año 2003*, Bogotá, 5 March 2004.

<sup>9</sup> See <http://www.coljuristas.org>.

<sup>10</sup> See Comisión Colombiana de Juristas, *Ataques contra jueces, abogadas, abogados y funcionarios judiciales en el año 2003*, 5 March 2004

registration of lawyers and the exercise of discipline. However, the Higher Judicial Council has admitted that it does not have an up-to-date register of lawyers. It is also not within its powers to protect lawyers or safeguard their right of defence.

Lawyers are frequently prevented from fully performing their duties. Sometimes their access to preventive detention centres is denied by the police, thus preventing detainees from freely communicating with their lawyers. Corruption in prisons has also resulted in lawyers being forced to bribe inmates and prison personnel. In some detention centres, particularly in Medellín, in order to reach the visitors' area lawyers have to walk without any protection through dangerous areas. Some lawyers have reportedly felt obliged to stop visiting clients because of the risks to their own security.

The escalation in the armed conflict and subsequent polarization of Colombian society have contributed to the tendency to identify lawyers with their clients' cause. This has made it difficult for some detainees to get legal assistance in cases related to the armed conflict or when they have been victims of human rights violations, particularly if the armed forces are involved. This identification of lawyers with their clients also impacts on public defenders (*Defensores Públicos*), who do not choose their clients.

The situation has been further aggravated by statements made by government officials, including President Uribe, against human rights organizations. In a speech on 11 September 2003, President Uribe accused human rights NGOs of being "defenders of terrorism" and "traffickers of human rights", and of collaborating with the Colombian guerrillas.<sup>11</sup> The European Union, the Inter-American Commission on Human Rights and the United Nations High Commissioner for Human Rights all criticized President Uribe's comments. Such comments by the executive undermine fundamental human rights as well as the legitimacy of the role played by human rights lawyers.<sup>12</sup>

### **Attacks on lawyers**

- Lawyer Félix Eduardo Martínez was killed on **19 January 2003** in Ibagué, Tolima. The victim was the Vice-President of the *Red de Veedurías Ciudadanas*, a mechanism allowing Colombian citizens to exercise oversight of the services provided by administrative, political, judicial and legislative authorities. The victim had also denounced cases of corruption involving the municipal authorities.<sup>13</sup>

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<sup>11</sup> See <http://colombia.indymedia.org/news/2003/09/5644.php>.

<sup>12</sup> For more information concerning the situation of lawyers, see: Avocats Sans Frontières France, *Informe sobre la situación de los abogados en Colombia, Presentado a la Comisión Interamericana de Derechos Humanos*, 14 October 2003; Comisión Colombiana de Juristas, *Colombia: ataques contra jueces, abogadas, abogados y funcionarios judiciales en el año 2003*, Bogotá, 5 March 2004; Avocats sans frontières France (ASF France), International Federation for Human Rights (FIDH) and World Organization against Torture (OMCT), *Informe Misión Internacional de investigación, Colombia: Administración de la justicia... o de la impunidad?* March 2003.

<sup>13</sup> Comisión Colombiana de Juristas, *Ataques contra jueces, abogadas, abogados y funcionarios judiciales en el año 2003*, 5 March 2004.

- Soraya Gutiérrez, a human rights lawyer and member of the non-governmental organization “*Colectivo de Abogados José Alvear Restrepo*”, was the victim of attempted murder on **13 February 2003**.<sup>14</sup>

- On **27 February 2003**, during a televised debate, Senator Gómez Hurtado referred to the Colombian Commission of Jurists as the “legal arm of the FARC (*Fuerzas Armadas Revolucionarias de Colombia*, Revolutionary Armed Forces of Colombia)”. On 25 March 2003, during a plenary session in the Senate, he accused the Colombian Commission of Jurists of systematically taking anti-government positions and supporting the FARC. The Senator also criticized the Colombian Commission of Jurists for disapproving of the reservations to the Statute of the International Criminal Court filed by the government. The International Commission of Jurists strongly condemned these accusations.<sup>15</sup>

- On **30 July 2003**, Teresa de Jesús Cedeño Galindez, President of the Permanent Committee for the Defence of Human Rights in Arauca, was detained without a court order and taken to the Attorney General’s Office (*Fiscalía General*). She was accused of “procedural fraud” (*fraude procesal*) and released on 8 August. In October 2002 the Inter-American Commission on Human Rights requested provisional measures to be taken in respect of Teresa de Jesús Cedeño Galindez due to the constant harassment and threats to which she was being subjected by paramilitary groups.

- On **18 November 2003**, Daniel Ernesto Prado Albarracín, lawyer, legal adviser of ASFADDES (*Asociación de Familiares de Detenidos Desaparecidos*) and a member of ACADEUM (*Asociación Colombiana de Abogados Defensores Eduardo Umaña Mendoza*), discovered that a window in his office had been broken as a result of a gunshot. Dr. Prado is under the protection of the Ministry of Interior and Justice’s program for the protection of human rights defenders. He has been subjected to other acts of harassment and threats in the past. He has yet to receive a response from the authorities responsible for investigating such acts. This attack on Dr. Prado may have been in reaction to his promotion of a campaign for the free exercise of law and access to justice in Colombia, called “Without lawyers there is no justice”.<sup>16</sup>

- Carlos Bernal, a lawyer and member of the Permanent Committee for the Defence of Human Rights (*Comité Permanente para la Defensa de los Derechos Humanos*) and of the Social and Political Front (*Frente Social y Político*), was murdered in the city of Cúcuta on **1 April 2004**. He had been under the protection of the program for the protection of human rights defenders run by the Ministry of Interior and Justice. The International Commission of Jurists expressed its concern at his murder in a letter to the President of Colombia (see [http://www.icj.org/news.php3?id\\_article=3307&lang=es](http://www.icj.org/news.php3?id_article=3307&lang=es); and, for further information on attacks on people involved in the administration of justice, including lawyers, see Comisión Colombiana de Juristas, “Colombia: ataques contra jueces, abogadas, abogados y funcionarios judiciales en el año 2003”, Bogotá, 5 March 2004, and “Ataques contra personas relacionadas con la administración de justicia”, Colombia: 2004).

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<sup>14</sup> Comisión Colombiana de Juristas, *Ataques contra jueces, abogadas, abogados y funcionarios judiciales en el año 2003*, 5 March 2004.

<sup>15</sup> See [http://www.icj.org/news.php3?id\\_article=2827&lang=en](http://www.icj.org/news.php3?id_article=2827&lang=en)

<sup>16</sup> See FIDH urgent action: [http://www.fidh.org/article\\_print.php3?id\\_article=155](http://www.fidh.org/article_print.php3?id_article=155)

## PROSECUTORS

On 9 September 2002, the government issued *Decree 2002*, article 1 of which made it a duty of the Attorney-General's Office (*Fiscalía General*) and the Procurator-General's Office (*Procuraduría General*) to accompany the security forces on operations. However, the Constitutional Court (ruling C-1024) declared parts of *Decree 2002*, including article 1, to be unconstitutional for contravening democratic principles, including the independence of the different branches of government. The Constitutional Court said that the bodies in question were not answerable to the executive and that attending such operations would violate the principle of judicial independence.

Congress passed *Law No. 906 of 2004* adopting the new *Code of Criminal Procedure*, which began to be gradually enforced in January 2005. The law supplements *Legislative Act 03* of 2002 on reform of the criminal justice system, transforming it from a purely civil law system into a mixed system that includes features of an adversarial structure. The new code was challenged before the Constitutional Court for violating the rights to equality and due process as well as judicial guarantees.<sup>17</sup> In addition, the "principle of opportunity" (*principio de oportunidad*), introduced by *Legislative Act 03* and developed in *Law 906*, gives the Attorney General (*Fiscal General*) the authority to refrain from investigating serious cases of human rights violations without having to justify the decision to other authorities.

Lack of independence on the part of the Attorney General's Office (*Fiscalía General*) continues to be a matter of concern. Members of the Attorney General's Office (*Fiscalía General*) have continued to support the practice of mass arrests. They have also allowed individual arrests and searches to go ahead in cases where evidence is either not solid or based on military intelligence reports, anonymous accusations or testimony of doubtful credibility. The Attorney General's Office has also allegedly tolerated, or been directly involved in, the issuing of blank arrest warrants and allowed warrants to be issued after the fact.<sup>18</sup>

The independence of the Attorney General's Office (*Fiscalía General*) has also been undermined as a result of various practices and working procedures used by "delegate prosecutors" (*Fiscales delegados*). Within the Attorney General's Office (*Fiscalía General*), senior officials intervene in decisions taken by their subordinates who, in some cases, require approval from their superiors before decisions can be made. This practice was revealed in internal memos circulated by the Attorney General in which the official position regarding interpretation and application of the law was set out. This was a clear violation of the independence of prosecutors insofar as they were specific instructions on specific cases and not general orders of an abstract nature.<sup>19</sup>

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<sup>17</sup> See *Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia*, UN Doc. E/CN.4/2005/10, para. 51.

<sup>18</sup> *Ibidem*, para. 93.

<sup>19</sup> See Silva García, G., *La Independencia interna de la justicia: La democracia y la eficiencia como problemas políticos de la justicia*, Primer Congreso Latinoamericano Justicia y Sociedad Panel: Administración de Justicia y Judicatura democrática.

The constant pressures exerted by the Attorney General (*Fiscal General*) on prosecutors - and in particular on the National Human Rights Unit - seriously compromise the performance of the Attorney General's Office (*Fiscalía General*). In some instances, the Attorney General (*Fiscal General*) has dismissed prosecutors or reassigned investigations to other prosecutors because of decisions they took or the course their investigations were taking.<sup>20</sup>

In other cases, when decisions have gone against government economic, political or security policies, prosecutors have been harassed or persecuted by the executive or the Attorney General and forced to comply with such policies. In 2003, a significant number of criminal or disciplinary proceedings were instituted against prosecutors who had taken decisions that clearly went against the security policy of the government.<sup>21</sup> In addition, prosecutors have been harassed and subjected to violence by paramilitary groups and guerrillas in the context of the armed conflict.

Another matter of concern is the impunity surrounding the investigation and prosecution of human rights violations. In some cases, prosecutors have been put under pressure to pursue criminal proceedings, even when charges were unfounded. In others, prosecutors have been harassed or threatened while investigating the armed forces.

### **Attacks on Prosecutors**

- The Attorney General (*Fiscal General*) has subjected prosecutors from the National Human Rights Unit (*Unidad de Derechos Humanos*) to harassment and pressures. Dr. Pedro Díaz, director of the Unit until **July 2002**, was forced to resign from his position and leave the country. Deputy Attorney-General Dr. Pablo Elías González Mongui was also forced to resign. In July and August 2002, there were four different directors of the unit and all of them were forced to resign after they got involved in investigations and proceedings against the military. Several other members and prosecutors from the Unit were also forced to resign or were transferred to other regions, including Carlos de la Torre, transferred to Cali; Marcela Roldan, transferred to the unit against kidnapping; Maribel Pardo, transferred to Ibagué; Amelia Perez, transferred to the unit against terrorism; and Monica Gaitán, Cesar Rincoin and Luis Augusto Sepúlveda, who were all forced to resign.<sup>22</sup>

- On **29 August 2003**, in the city of Sincelejo, prosecutor Yolanda Paternina Negrete was murdered. She was the second delegate prosecutor at the specialist criminal circuit court in Sincelejo. All investigations into her murder have pointed to the involvement of the military.

- Prosecutor Orlando Pacheco Carrascal was dismissed by the Attorney General without undergoing any sort of investigation. He had ordered the release of a

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<sup>20</sup> See *Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia*, E/CN.4/2004/13, 17 February 2004, para. 78.

<sup>21</sup> See ILSA, *Independencia Judicial en Colombia: un obstáculo para la seguridad democrática*.

<sup>22</sup> See Avocats sans frontières France, International Federation for Human Rights and World Organization against Torture, *Informe Misión Internacional de investigación, Colombia: Administración de la justicia... o de la impunidad?* March 2003



significant number of detainees who were allegedly members of guerrilla groups on grounds of lack of evidence. The International Commission of Jurists, in a letter sent to the President of Colombia, expressed its disagreement with the Attorney General's decision.<sup>23</sup> Orlando Pacheco Carrascal has also been forced to move to Bogotá after receiving death threats in Sincelejo (for information on attacks against people involved in the administration of justice, including prosecutors, see Comisión Colombiana de Juristas, "Colombia: ataques contra jueces, abogadas, abogados y funcionarios judiciales en el año 2003", Bogotá, 5 March 2004, and "Ataques contra personas relacionadas con la administración de justicia, Colombia: 2004").

## ACCESS TO JUSTICE

The main measures employed to curb rights and liberties were laid down in *Decree 2002* (9 September 2002). They included the authorization of arrests without a court order throughout the country using legal concepts that do not exist in Colombian legislation, such as "transitory detention" or "preventive arrest". Such arrests are not conducted within the framework of criminal proceedings but because there are indications of participation, or the intention to participate, in the commission of an offence or because it is a matter of urgency that cannot wait or there is a need to protect a fundamental right that is in serious or imminent danger.

*Decree 2002* also authorized the military to exercise judicial police powers and to maintain a register of the civilian population. However, on 25 November 2002, the Constitutional Court declared that parts of *Decree 2002* were unconstitutional, in particular the parts relating to the granting of judicial police powers to the military.<sup>24</sup> Notwithstanding the Court's ruling, the population registers are still being compiled and the information is sometimes obtained by resorting to violent and degrading methods, such as roping-off certain parts of the town, carrying out mass arbitrary arrests of people in those areas and sometimes marking them with indelible ink.<sup>25</sup>

*Bill 10 of 2002* (29 October 2002) sought to amend the "tutela," or action in search of relief from the violation of a constitutional right, so that it would not be applicable to the protection of economic, social and cultural rights, including the rights of children and young people, the right to healthcare, the rights of the aged or the right to a review of arbitrary judicial decisions that have been handed down without recognizing fundamental rights.<sup>26</sup>

On 22 January 2003, *Decree 128* was adopted, establishing a series of legal benefits, including the granting of pardons and administrative and welfare benefits, for members of armed groups responsible for political or related crimes who decide to voluntarily demobilize. This decree fails to comply with international standards and

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<sup>23</sup> See [http://www.icj.org/news.php3?id\\_article=3289&lang=es](http://www.icj.org/news.php3?id_article=3289&lang=es)

<sup>24</sup> See Amnesty International, Report 2003.

<sup>25</sup> *Alternate Report to the Third Periodic Report of the Colombian State submitted to the Committee against Torture*, Report prepared by the Colombian Commission of Jurists, the World Organization against Torture and other organizations, Bogotá, October 2003, p. 43

<sup>26</sup> *Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia*, E/CN.4/2004/13, 17 February 2004, para. 16. The proposed bill was later shelved (see under Judiciary).

principles as it perpetuates impunity and denies victims the right to truth, justice and reparation.<sup>27</sup>

On 22 June 2005, the Colombian Congress approved a new demobilization law, the *Justice and Peace Law*, constituting, together with *Decree 128*, the legal framework for the demobilization of paramilitary groups. The new law does not provide mechanisms for dismantling paramilitary structures and fails to guarantee the right of victims to truth, justice and reparations.

Commenting on these developments, the Office of the High Commissioner on Human Rights said, in its report on the human rights situation in Colombia in 2003, “issues of access to justice were observed not only due to the absence of prosecutors and judges in several municipalities of the country, but also as a result of the impact of the armed conflict”.<sup>28</sup>

Impunity is one of the hallmarks of the dire human rights crisis affecting Colombia. The vast majority of violations of human rights and breaches of humanitarian law are not investigated or prosecuted and, even when investigations have been opened, they do not result in identification of the perpetrators.<sup>29</sup>

#### LIST OF LEGAL REFORMS DURING THE PERIOD

- 29 October 2002:** *Bill 10/2002* with which the Government tried to amend relevant sections of the Constitution relating to the Constitutional Court (subsequently shelved);
- 9 September 2002:** *Decree 2002* granted judicial police powers to the military and authorized them to maintain a register of the civilian population (declared unconstitutional);
- 2003:** *Presidential Decree 200/2003*, merging the former Ministry of Justice with the Ministry of the Interior;
- 2003:** *Bill 03/2003* sought to amend the Constitution in order to transfer certain functions from Congress to the President (withdrawn from Congress in 2003).
- 18 December 2003:** *Legislative Act 02/2003* amending the 1991 Constitution in the context of the fight against terrorism (declared unconstitutional);

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<sup>27</sup> *Ibid.*, paras. 29 and 30.

<sup>28</sup> *Ibid.*, para. 77.

<sup>29</sup> See, for example: *Alternate Report to the Third Periodic Report of the Colombian State submitted to the Committee against Torture*, Report prepared by the Colombian Commission of Jurists in coordination with the World Organization against Torture and other organizations, October 2003; United Nations Human Rights Commission, *Report of the Office of the United Nations High Commissioner for Human Rights in Colombia*, E/CN.4/2002/17, March 13, 2002; United Nations Human Rights Commission, Promotion and Protection of Human Rights Defenders, *Report Presented by Ms. Hina Jilani, Special Representative of the Secretary General on Human Rights Defenders by virtue of Human Rights Commission Resolution 2000/61*, E/CN.4/2002/106/Add.2, April 17, 2002. This point was also made in the High Commissioner’s report on the human rights situation in Colombia of 2003, E/CN.4/2004/13, 17 February 2004, paras. 27 and 28.

- 22 January 2003:** *Decree 128* established a series of legal benefits for demobilized members of paramilitary groups;
- 2004:** *Law 112/2004*, which reforms *Law 270* of 1996 regulating the administration of justice;
- 2004:** *Law 906/2004* adopting the new Code of Criminal Procedure which will gradually enter into effect in January 2005:
- 22 June 2005:** the *Justice and Peace Law*, together with *Decree 128*, constitutes the legal framework for the demobilization of paramilitary groups.