

'LEAVE US IN PEACE!'

TARGETING CIVILIANS IN COLOMBIA'S INTERNAL
ARMED CONFLICT

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Cover photo, front: Members of the Peace Community of San José de Apartadó, Municipality of Apartadó, Antioquia Department, flee their homes after eight people, including three children, were massacred by members of the Colombian army and paramilitaries in February 2005.
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LIST OF TERMS

ACN	Peasant Self-Defence Forces of Nariño (Autodefensas Campesinas de Nariño)
Belém do Pará Convention	Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women
campesinos	rural small-scale farmers
CEDAW	UN Convention on the Elimination of All Forms of Discrimination against Women
CODHES	Consultancy for Human Rights and Displacement (Consultoría para los Derechos Humanos y el Desplazamiento)
CPDH	Permanent Committee for the Defence of Human Rights (Comité Permanente por la Defensa de los Derechos Humanos)
ELN	National Liberation Army (Ejército de Liberación Nacional)
FARC	Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia)
ICC	International Criminal Court
ICRC	International Committee of the Red Cross
IHL	International humanitarian law
ILO	International Labour Organization
Justice and Peace	Inter-Church Justice and Peace Commission (Comisión Intereclesial de Justicia y Paz)
MAPP-OEA	Organization of American States’ Mission to Support the Peace Process in Colombia (Misión de la OEA de Apoyo al Proceso de Paz en Colombia)
NGO	non-governmental organization
OPF	Popular Women’s Organization (Organización Femenina Popular)
SINDESENA	Public Sector Employees of the National Apprenticeship Service (Sindicato de Empleados Públicos del Servicio Nacional de Aprendizaje)
SINTRACARBON	National Union of Coal Industry Workers (Sindicato Nacional de Trabajadores de la Industria del Carbón)
UNHCR	United Nations High Commissioner for Refugees
UP	Patriotic Union (Unión Patriótica)

METHODOLOGY

This report is the culmination of in situ research in Colombia between 2006 and 2008. Amnesty International delegates visited a number of regions, including the departments of Chocó, Arauca, Antioquia, Guaviare, Meta, Cesar and Putumayo. They met with people from a cross-section of Colombian society, including human rights defenders, trade unionists, and social and community activists; victims and witnesses of human rights abuses; members of the security forces; and representatives from the Catholic Church, from Indigenous, Afro-descendant and women’s organizations, the international community, and international bodies, such as the Office in Colombia of the UN High Commissioner for Human Rights. Amnesty International researchers also held meetings with regional and national government and state officials, including the Vice-President of the Republic, the Human Rights Ombudsman, the Attorney General, and the Coordinator of the Human Rights Observatory of the Presidential Programme for Human Rights and International Humanitarian Law.

This report includes statistics from a variety of sources about various types of human rights abuses and violations of international humanitarian law (IHL). However, because of serious under-reporting –partly because of victims’ fear of reprisal, but also because of the endemic problem of impunity – such data must be treated with caution since they are unlikely to accurately reflect the real scale of the human rights problem in Colombia.

Amnesty International would like to thank all the witnesses and victims who gave their time to share their experiences, some of which appear in this report. Many of those interviewed had recently experienced the tragic loss of a loved one and the enormous emotional cost involved in retelling their stories bears witness to the strength of their desire for justice. Many spoke to Amnesty International at great personal risk; the names of some of them have been withheld in order to protect their privacy and ensure that their security is not compromised.



1/INTRODUCTION

Parmenio Manuel Hernández Anaya was detained by soldiers on 28 December 2007. Army troops from the Calibío Battalion of the XIV Brigade reportedly raided his home in the hamlet of La Poza in the municipality of Cantagallo, Bolívar Department, and threatened to kill him and his family. After a few hours, the soldiers released his wife and sons and left, taking Parmenio Hernández to an unknown destination. On 3 January 2008, Parmenio Hernández' body appeared in the morgue in Barrancabermeja, Santander Department, dressed in military fatigues. He had been shot in the back. The army claimed he was a guerrilla killed in combat.

16-year-old Ingrid Yahaira Sinisterra was abducted and killed by paramilitaries on 24 August 2007, in Buenaventura, Valle del Cauca Department. Her family went to see the paramilitaries to ask for her body. They told Ingrid's family that they had killed her as a warning to others not to have relationships with guerrillas. They said her body had been tied to an electricity post all night and the family should return the next day to reclaim the body. When her family went back the following day, they were told Ingrid's body had been thrown into the sea after her belly had been cut open and her internal organs removed. The family recovered Ingrid's body – which had multiple stab wounds – from the sea that same day and buried her on 27 August.

On 27 June 2008, three Indigenous children from the Las Planadas Telembi reservation in the municipality of Samaniego, Nariño Department, were walking along the banks of the River Telembi when they stepped on landmines placed by a guerrilla group. Fifteen-year-old Dumar Alexander Paí Nastacuas, 12-year-old Leibar Paí Nastacuas, and eight-year-old José Edilmer Paí Nastacuas were killed instantly. Guerrilla groups continue to use anti-personnel mines, many of whose victims are civilians. Colombia reportedly has the highest number of landmine victims in the world.

Colombia's internal armed conflict has pitted the security forces and paramilitaries against guerrilla groups for more than 40 years. It has been marked by extraordinary levels of human rights abuses and violations of international humanitarian law (IHL), with civilians by far the principal victims.

Tens of thousands of civilians have been killed. Thousands more have been subjected to enforced disappearance by the security forces or paramilitaries, or abducted by guerrilla groups. Hostage-taking, above all by guerrilla groups, and torture by the

security forces, paramilitaries and guerrilla forces, are among the tactics of terror used in the conflict. The conflict has also been marked by the use of child soldiers and by widespread sexual violence against girls and women. The effect of such abuses has been to create one of the world's greatest crises of displaced people; between 3 and 4 million Colombians are thought to have fled their homes to escape the violence. These crimes bear witness to the disregard shown by all parties to the conflict for international human rights and humanitarian law.

There is little agreement on the underlying causes of the armed conflict. Indeed, the lack of common understanding extends to the question of whether Colombia is in fact experiencing an armed conflict at all or rather a "war on terror". The response of the Colombian state to the crisis affecting so many of its citizens remains contradictory. Successive governments have adopted comprehensive training programmes for the security forces on international human rights and humanitarian law. At the same time the government of President Álvaro Uribe has denied that there is an armed conflict in the country and by doing so has undermined some of the protections that international law could and should provide. Official protection programmes for human rights defenders, trade unionists and journalists have undoubtedly saved a number of lives. However, the work of human rights defenders and social activists has been undermined and they themselves have been put at increased risk of attack by repeated accusations and verbal attacks by the most senior government and state officials, as well as senior military officers.

The government claims that Colombia is experiencing an irreversible renaissance of relative peace, rapidly falling levels of violence, the successful demobilization of tens of thousands of paramilitary combatants, and effective justice for victims of human rights abuses. It is certainly true that in recent years the incidence of some abuses has declined. Others, however, have increased, particularly extrajudicial executions carried out directly by the security forces and forced displacement. Moreover, the recent upsurge of violence against human rights defenders and trade unionists is a cause of serious concern. There is also strong evidence to show that paramilitary groups remain active – and continue to commit human rights violations – despite government claims to the contrary.

Ultimately the Colombian conflict is a vivid and tragic story of countless individuals whose lives and communities have been devastated by systematic abuses for which those responsible have never been held to account. No part of the country has escaped the consequences of the conflict, although the scale of devastation in remote rural areas, rich in natural resources, is perhaps the most profound and the least well documented. It is a story of invisibility, of horrendous crimes rarely reported and tragedies never told. At the heart of this report are the stories of Indigenous communities decimated by the conflict, of Afro-descendant families expelled from their homes, of women raped, and children blown apart by landmines, and of the determination and resilience of communities that have taken an active stand to



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defend their right not to be drawn into the conflict. Many of the survivors who spoke to Amnesty International had a clear message to the human rights abusers, whoever they are: “leave us in peace!”

A police officer walks by the names of victims of the conflict, Bolívar Square, Bogotá, April 2008.

This report ends with detailed recommendations to all parties to the conflict and to the international community calling for the guarantees set out in international human rights and humanitarian law to be made a reality for the people of Colombia. Amnesty International’s recommendations echo and support the demands and aspirations of the many human rights defenders, community activists and trade unionists who continue to strive for justice often at great personal cost.

2/SEPARATING MYTH FROM REALITY

Colombia’s armed conflict and its grave humanitarian and human rights consequences have long given rise to divergent and seemingly incompatible analyses among observers of the Colombian conflict. This lack of a common understanding of the causes has particularly marked relations between the administration of President Uribe and the human rights community, other governments and the human rights bodies of the UN. Disagreements have raged over a variety of issues, even over whether the country is experiencing an armed conflict or whether the authorities are engaged in a “war on terror”. Similarly, there is little consensus over questions such as the role of human rights groups or the severity of the human rights situation.

ARMED CONFLICT OR ‘WAR ON TERROR’?

The government of President Uribe – who came to office in 2002, only one year after the September 2001 attacks in the USA – has repeatedly sought to deny that an armed conflict exists in Colombia, opting to define hostilities instead as part of the international “war on terror”. For example, in January 2008 President Uribe publicly criticized Amnesty International for referring to the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia, FARC) guerrilla group as an “armed opposition group” rather than as a “terrorist” organization. These comments were made just prior to a visit by the President to Europe to lobby the European Union to keep the FARC on its list of terrorist organizations.

In contrast, numerous international bodies, including the International Committee of the Red Cross (ICRC) and the Office of the UN High Commissioner for Human Rights, have consistently defined the situation in Colombia as one of internal armed conflict. This is not to deny that individuals in Colombia may be responsible for acts of terrorism. Indeed, some have been charged with such offences. But these are covered by criminal law and many, in fact, occur outside the context of the armed conflict.

Many of President Uribe’s predecessors sought to present the actions of the security forces as legitimate attempts to rein in the activities of drugs traffickers, “narco-guerrillas” and criminal gangs, thereby misrepresenting the Colombian conflict as a “war on drugs”. However, they never denied the existence of an armed conflict per se, unlike the present incumbent. Moreover, the government of President Uribe is the

According to IHL, an armed conflict is defined as hostilities involving a country's armed forces or armed group. Non-international armed conflicts are defined as armed hostilities occurring within the territory of a single state and in which the armed forces of other states are not engaged against the government.

An example of a non-international armed conflict is one in which the armed forces of a state are in conflict with those they define as rebel, dissident or insurgent groups (such as guerrilla groups).

The violence must also be protracted and the non-state group must be organized in terms of its command structure and have control of territory. However, IHL does not apply to internal disturbances, such as riots, or other situations of internal violence, although international human rights law and criminal law do.

The four Geneva Conventions of 1949 and their two Additional Protocols of 1977 are among the principal IHL instruments. Colombia is a state party to these treaties.

first to embrace the concept of a “war on terror”. This same characterization – and that of the “war on drugs” – has been used by some in the international community as a way of circumventing international human rights concerns. In this way, they have been able to continue providing military assistance to Colombian military units involved in counter-insurgency operations – under the guise of counter-narcotics aid. These units have often been active in parts of Colombia of interest to companies and other economic actors based in the countries giving military assistance.

Guerrilla and paramilitary groups

For more than 40 years Colombia's armed conflict has pitted the security forces and paramilitaries against a range of left-wing organized guerrilla groups.

The first of these guerrilla groups emerged in the 1950s during La Violencia, a bloody conflict which was in many respects a virtual civil war. During this period, armed groups linked to the Liberal and Communist Parties were driven into remote parts of the country. These armed groups were the nucleus of what became, and still is, the largest guerrilla group of the past 50 years and which was consolidated in the mid-1960s into the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia, FARC). The other main guerrilla group still in existence is the much smaller National Liberation Army (Ejército de Liberación Nacional, ELN).

Over the decades, the guerrillas created extensive strongholds, principally in rural areas where they effectively determined local government policies and exercised

significant control over the local population. Military losses, especially since President Uribe came to office in 2002, have reduced their territorial sphere of influence.

Paramilitaries have their origin in legally constituted civilian “self-defence” groups. These were created by the Colombian army to act as auxiliaries during counter-insurgency operations.

In 1965, the government promulgated Decree 3398 – which became permanent with Law 48 in 1968. This allowed the Colombian military to create groups of armed civilians to carry out joint counter-insurgency operations. These groups were often promoted as “self-defence” groups designed to protect local communities from the guerrillas. However, their activities were broader – they joined counter-insurgency “search and destroy” operations in areas where the population was considered to be sympathetic towards the guerrillas.

In 1989, in response to an increase in killings attributed to such self-defence groups, fears about the growing dangers of “narco-terrorism”, and the assassination in August of that year of presidential candidate Luis Carlos Galán by paramilitaries linked to drugs traffickers, President Virgilio Barco suspended Decree 3398 and outlawed the use of armed civilians in army operations. President Barco also promulgated Decree 1194, which criminalized the promotion, financing and membership of paramilitary groups. However, after a period of relative decline paramilitarism, backed by the security forces and financed by drugs traffickers and economic interests, continued to grow.

The historic and continued links between paramilitary groups and the security forces have been well documented.² Criminal and disciplinary investigations continue to implicate high-ranking security force officers and other public officials, as well as many politicians, in human rights violations committed by paramilitaries. Recent rulings of the Inter-American Court of Human Rights have confirmed the strong links between paramilitary groups and the security forces.³ In July 2007, the Colombian Supreme Court of Justice also ruled that paramilitarism did not act against the state but was complicit with it.⁴ As this report shows, despite government claims to the contrary, paramilitary groups continue to operate and to commit serious human rights violations, despite their supposed demobilization, and continue to be able to count on the support or acquiescence of sectors of the security forces.⁵

However, strong evidence has also emerged over the past year that the FARC has been creating “strategic alliances” with paramilitary groups in several parts of the country in an effort to better manage their respective drugs-trafficking trade. Such alliances appear to include collaboration on managing coca crops, protecting the laboratories which manufacture cocaine, and sharing drugs routes, mainly to the Caribbean coast where the cocaine is shipped overseas.

At the very least, the government’s interpretation of the Colombian armed conflict

as a “war on terror” risks undermining the practical application of international human rights and humanitarian standards. However, regardless of whether or not the Colombian government acknowledges the existence of an armed conflict in the country, international standards, as well as Colombia’s domestic law, continue to apply.

Nevertheless, political rhetoric which defines the conflict as a “war on terror”, especially a conflict in which civilians have often been systematically targeted by all sides, cannot but undermine the day-to-day respect for human rights and humanitarian standards on the ground. In particular, it sends a dangerous message to combatants that IHL – a set of “rules” applied exclusively to situations of armed conflict and designed to minimize suffering in conflicts – does not need to be respected in practice since, according to the government, there is no armed conflict. As the UN Working Group on Enforced or Involuntary Disappearances said in its 2006 report on Colombia, “Denying the condition of an internal armed conflict has important implications. One of which is that it becomes possible to refuse any distinction between combatants and non-combatants.”¹

THE HUMAN RIGHTS SITUATION TODAY – A COMPLEX AND CONTRADICTIONARY PICTURE

The 40-year-old conflict has been defined by its civilian victims. Over the last 20 years, more than 70,000 people, the vast majority of these civilians, have been killed as a result of the conflict, while between 3 and 4 million have been forcibly displaced from their homes. Between 15,000 and 30,000 people have also been the victims of enforced disappearances since the start of the conflict, while more than 20,000 people have been kidnapped or taken hostage in the last 10 years.

It is difficult to precisely quantify human rights abuses, especially given that in most cases official complaints or reports are not made. However, despite the chronic under-reporting, it is clear that in recent years there have been reductions in some types of human rights abuses.

The number of kidnappings has fallen, from a recent high of 3,570 in 2000 to just over 520 in 2007. Moreover, a number of high-profile hostages held by the FARC, including former presidential candidate Ingrid Betancourt, regained their freedom in 2008 after many years in captivity. Similarly, there has been a reduction in the number of conflict-related killings of civilians, from a recent high of around 4,000 in 2002 to some 1,400 in 2007. The security situation in some of the larger urban centres, such as Bogotá and Medellín, as well as on many of the country’s principal highways, has also improved.

However, this is only a part of the picture. Colombia remains a country where millions of civilians, especially outside the big cities and in the countryside, continue to bear the brunt of this violent and protracted conflict. Their voices are increasingly silenced because their stories would vividly and convincingly undermine the official account that this is a country that has largely overcome its bloody past. These Colombians include the hundreds of thousands forcibly displaced each year; the hundreds of civilians abducted every year by guerrilla groups; the victims of enforced disappearances by paramilitary groups and the security forces; the growing numbers of civilians extrajudicially executed by the security forces; the children, some as young as 12, recruited by paramilitary and guerrilla groups; those killed or maimed by guerrilla anti-personnel mines; the women raped by all the parties to the conflict; the human rights defenders, social activists and community leaders threatened and killed, mainly by paramilitaries; and the victims of bomb attacks in urban areas, many of which have been blamed on the FARC.⁶

All the warring parties have failed to avoid drawing the civilian population into the hostilities. The deliberate and systematic failure to distinguish between civilians and combatants has been one of the hallmarks of the conflict. The security forces often employ a counter-insurgency strategy which focuses primarily on undermining what they perceive to be the civilian population’s support for guerrilla groups. This strategy is based on the premise that those living in conflict areas are part of the enemy, simply because of where they live, rather than victims of guerrilla abuses. The results of labelling such communities as “sympathetic” to guerrilla forces has been a pattern of often systematic abuses targeting human rights defenders, trade unionists, campesinos,⁷ Indigenous and Afro-descendant communities, and those living in areas of strategic importance to the warring parties.

The use of paramilitaries, who have long operated with the acquiescence and support of the security forces, often working as auxiliaries alongside them, has formed an integral part of this strategy. Such forces have been used to sow terror and to deflect responsibility for human rights violations away from the armed forces. Most paramilitary action continues to be directed against civilians rather than guerrilla forces.

Guerrilla forces have also failed to respect the rights of civilians. They often systematically target civilians and are responsible for serious and repeated human rights abuses and violations of IHL. Such abuses have included the killing of civilians, hostage-taking, and indiscriminate and disproportionate attacks⁸ against military targets which often result in civilian casualties.

The attitude of guerrilla groups towards international law and standards, including IHL, is contradictory. The FARC do not accept that they are bound by IHL, although they claim to include many IHL norms in their rules of engagement while reserving the right to use anti-personnel mines and to take hostages, two activities expressly prohibited in IHL. Their claim not to target civilians is not substantiated by their

conduct on the ground. The ELN is reportedly more willing to engage on the issue of IHL, but claims not to be in a position to apply those norms prohibiting the taking of hostages. In short, any expressions of support for human rights and IHL are hollow so long as guerrilla groups continue to kill and kidnap civilians with such disregard.

The Colombian government has over the years introduced measures which have dragged civilians further into the conflict rather than shielding them from hostilities. While a state may urge its citizens to cooperate with its judicial institutions and denounce human rights abuses, in an armed conflict it must not promote practices that expose civilians as direct targets.

The creation of a “civilian informer network” at the start of the first administration of President Uribe in 2002 has been of particular concern. This scheme has required civilians to compile and pass on intelligence on illegal armed groups to the security forces. The network has in the past been criticized by the UN High Commissioner for Human Rights and by Colombia’s Human Rights Ombudsman (Defensor del Pueblo). This initiative, by giving civilians a direct role in the conflict, has blurred the distinction between civilians and combatants and exposed members of the networks to attacks by guerrillas. In addition, the evidence of anonymous, paid informants is unreliable, since an informant decides on his or her own criteria for deciding who is “suspicious”; many are motivated by financial rewards and others could be influenced by personal grudges or interests. In August 2004 the government also issued Decree 2767, which allows the Ministry of Defence to pay demobilized combatants for their “collaboration” with the security forces. This has further blurred the distinction between civilians and combatants.

Since the start of the paramilitary demobilization process in 2003, the government has encouraged demobilized combatants to join the informer or co-operative network or to become “civic guards” in charge of security in towns and cities, public parks and roads. However, the main function of these bodies is to provide military intelligence services to the security forces. Demobilized combatants have also been employed by private security firms – which form part of the network – where they can legally be armed and thus can potentially exploit their position of power to commit new abuses. In June 2007 the Defence Ministry issued a Directive prohibiting demobilized combatants from joining such networks. It is unclear how effective this has been or what controls have been put in place.⁹

THE HUMAN RIGHTS COMMUNITY – SUPPORTED OR DEMONIZED?

In Colombia, human rights defenders have long played a pivotal role in denouncing abuses and supporting victims and have often paid a heavy price for their dedication.¹⁰ Far from supporting their efforts, high-ranking government, state and military officials have effectively undermined human rights protection – and even undercut the Colombian state’s own measures to improve their security – by making public statements equating human rights work with “subversion”. Such accusations can and frequently do expose human rights activists to increased risk of attack. In fact, such negative statements have given indirect approval to the security forces to target human rights defenders, trade unionists and community leaders during intelligence and counter-insurgency operations.¹¹

- In September 2003, President Uribe publicly described some government critics as “hack politicians in the service of terrorism”, and said that: “Every time a security policy to combat terrorism is launched in Colombia, when the terrorists begin to feel weakened, they immediately send their spokespersons to talk about human rights.”¹²

- In June 2004, in a speech made to members of the Colombian police, President Uribe wrongly claimed that Amnesty International “does not condemn violations of international humanitarian law committed by guerrilla groups” and that “it legitimizes terrorism”.¹³

- In a speech in July 2007, President Uribe said that “the guerrillas have another strategy: every time there is a casualty in the guerrillas, they immediately mobilize their chorus leaders in the country and abroad to say that it was an extrajudicial execution”.

- In a speech in May 2008, President Uribe, referring to human rights defender Iván Cepeda – the target of numerous death threats – said that “before feeling sorry for the crocodile tears of these human rights imposters”, members of the international community should visit Colombia to see what is really happening in the country.¹⁴

This hostile rhetorical stance towards human rights defenders and the government’s reluctance to acknowledge the existence of an armed conflict in Colombia is hard to reconcile with some of the human rights policies introduced over the years by successive Colombian governments.

Since 1997 several presidential and ministerial directives have been issued that formally recognize the work of human rights defenders.¹⁵ These are purportedly aimed at preventing public officials from making statements which could generate a climate of hostility or question the legitimacy of the work of human rights activists. These directives are supposed to send a message about the importance that the government attaches

to the work of human rights defenders. But this message has been undermined by the repeated hostile statements made by senior government officials and by the fact that the directives make no mention of any sanctions against those who breach them.

Over the years, there have also been efforts by the Ministry of the Interior to administer special programmes to physically protect human rights defenders and trade unionists. These are to be welcomed, but the programmes have suffered from financial, operational and administrative problems. While these programmes have undoubtedly saved the lives of activists, such measures will continue to prove inadequate unless concrete and effective political measures are adopted to support the legitimate work of those defending human rights in the country, and to put an end to the impunity enjoyed by the perpetrators of human rights abuses.¹⁶

IMPUNITY FOR HUMAN RIGHTS ABUSES – PROGRESS OR DETERIORATION?

Impunity lies at the heart of the conflict and is a principal factor in its continuation. The knowledge that the perpetrators of abuses, whoever they are, will not be brought to justice sends a clear and powerful message to victims not to seek justice. It also sends a message to individuals and groups, such as human rights organizations or trade unions, which stand up to the perpetrators of abuse, that their members and leaders could suffer persecution, harassment or human rights abuses. Impunity also ensures that the perpetrators remain at large and are confident that they need fear no consequences for continuing to commit abuses.

Impunity remains the norm in most cases of human rights abuses in Colombia. Although in the last few years there has been some progress in a number of high-profile cases, mainly as a result of international pressure, in many cases there have been very few, if any, advances in identifying chain-of-command responsibility.

■ In February 2007, the Office of the Attorney General announced it was investigating 69 soldiers for the unlawful killing of eight members of the Peace Community of San José de Apartadó, Municipality of Apartadó, Antioquia Department, on 21 February 2005. In March 2008, 15 soldiers were arrested for their suspected role in the massacre, and in April, six of these soldiers were charged. In July, army captain Guillermo Armando Gordillo Sánchez, arrested in November 2007, admitted his responsibility for the killings. The government and senior military officials had long claimed the 2005 massacre had been carried out by the FARC. More than 170 members of the Peace Community have been killed since it was established in 1997.¹⁷

■ In November 2007, it was made public that a team from the Office of the Attorney General had reopened investigations into 294 of the more than 3,000 killings of

members of the left-wing Patriotic Union (Unión Patriótica, UP) party since 1985. Paramilitaries and the security forces are believed to have been responsible for most of these killings.¹⁸

- In September 2007, three members of the Colombian air force were sentenced by a civilian judge to six years' house arrest for what was described in the ruling as the accidental killing of 17 people in Santo Domingo, Tame Municipality, Arauca Department, in 1998. The three men had previously been acquitted by a military court which concluded that the deaths occurred after a truck driven by guerrillas exploded. The 2007 ruling by the civilian judge found that the killings were caused by a cluster bomb released from an air force helicopter whose occupants had mistakenly identified the civilians as guerrillas.

- In August 2007, four members of the army and a civilian were sentenced to 40 years in prison for the killing of three trade unionists in Saravena Municipality, Arauca Department, in August 2004. The army and senior government officials had long claimed that the three trade unionists were guerrillas killed in combat.¹⁹

- In June 2008, the trial began of retired army Colonel Alfonso Plazas Vega for his part in the enforced disappearance of 11 people. The disappearances occurred during a military assault on the Palace of Justice in Bogotá after M-19 guerrillas took hostage those inside in November 1985. More than 100 people died during the occupation and the military assault, including 12 Supreme Court judges. Alfonso Plazas Vega has been in detention since July 2007. The Office of the Attorney General ordered the arrest of retired General Iván Ramírez in May 2008, and in June 2008 two retired generals, Rafael Samudio Molina and Jesús Armando Arias Cabrales, were questioned in connection with their alleged role in the disappearances. In September 2007, Attorney General Mario Iguarán said there was strong evidence that many of those who disappeared were alive when they left the building in military custody.

The fact that some key cases involving human rights violations committed by the security forces – either acting alone or in conjunction with paramilitaries – are now being investigated by the civilian courts, rather than the military justice system, is a sign of progress. These cases have advanced largely because of international pressure to bring to justice the perpetrators of some key and emblematic human rights cases, and because many of them have been examined by the Inter-American Commission on Human Rights and the UN Treaty Bodies. However, in the vast majority of human rights cases, the perpetrators continue to evade effective scrutiny.

THE PARAMILITARY DEMOBILIZATION – EFFECTIVE DISARMAMENT OR WHITEWASH?

International standards require that everyone be given access to justice and an effective remedy.²⁰ The paramilitary demobilization process and the legal framework which regulates it fail to meet that standard on a number of counts. The process has failed to ensure that victims are able to participate fully; that demobilized combatants are really removed from the conflict; that the paramilitaries and their backers are held effectively to account; and that there is full reparation for victims. Some 90 per cent of paramilitaries, many of whom may bear responsibility for war crimes and crimes against humanity, have already benefited from measures which in effect granted them amnesties. The crimes and other human rights abuses they are alleged to have committed and the role played by those who provided them with material and political support are unlikely to be properly investigated. In this context, the right of victims to receive justice, a right so desperately desired and essential to any eventual reconciliation, is also unlikely to be fulfilled.

There are significant, but not insurmountable, difficulties in the search for truth and justice in any peace or demobilization process. But for such a process to succeed in reality, rather than simply give the superficial appearance of succeeding in the short term, it must incorporate human rights at its core. A just and long-lasting peace will not otherwise be possible. In Amnesty International's experience, this applies to all peace and demobilization processes, whether with paramilitaries or guerrilla groups.

Amnesty International has repeatedly been asked by the government to acknowledge that the much-vaunted demobilization of more than 31,000 paramilitaries has proved to be a unique and overwhelmingly positive development in long-standing efforts to resolve the armed conflict. However, Amnesty International does not share this analysis, and has repeatedly expressed serious doubts about the government-sponsored paramilitary demobilization process since it began in 2003.²¹

The government claims that paramilitaries are no longer active, and that any violence is attributable to criminal gangs involved in drugs trafficking. There is evidence that some paramilitary groups have evolved into drugs-related criminal gangs, while others have a long history of links to the drugs trade. And some violence is clearly linked to disputes between such groups. But there is also strong evidence that many of these so-called "former" paramilitaries continue to operate as "traditional" paramilitaries – often with new names such as the New Generation Organization (Organización Nueva Generación) and the Black Eagles (Águilas Negras). These groups continue to use the threat of force and actual violence to further their economic and political objectives. Indeed, many paramilitary groups operate on two distinct yet inter-related levels; they pursue criminal activities linked to the drugs trade while at the same time supporting the security forces' counter-insurgency strategy.



“Death to leaders of the march for peace and guerrillas and guerrilla auxiliaries.

You disguise yourselves as displaced people but you are guerrillas and that is why we are declaring you a military target of the Black Eagles, as well as NGOs, associations and foundations such as Minga, Reiniciar, Fundip, Asopron, Andas, Asdego, Fenacoa, Asomuje, Tao, Codhes, CUT and others.

You used the march on 6 March this year to bring us down further and turn people against us, we will begin to kill you one by one, we mean business, and we won't leave any loose ends

We already know that on 14 March, TAO will march against us and we will be watching their activities so be careful sons-of-bitches because your days are numbered.”

Death threat sent by a paramilitary group to members of civil society organizations in March 2008. Several similar threats were sent to human rights groups, trade unions and other social organizations in the aftermath of the 6 March demonstration against human rights violations committed by paramilitaries and the security forces.

In figures published in 2007, the National Reparation and Reconciliation Commission (Comisión Nacional de Reparación y Reconciliación, CNRR) referred to 3,500-5,000 combatants belonging to “dissident, rearmed, and emerging” groups operating in 200 municipalities (out of 1,098) in 22 departments in the country.²² Also in 2007, the Organization

of American States’ Mission to Support the Peace Process in Colombia (MAPP-OEA) suggested that 22 groups with around 3,000 combatants had re-emerged, led by middle-ranking paramilitary leaders, and consisting mainly of supposedly demobilized rank-and-file paramilitaries.²³ The Colombian non-governmental organization (NGO) Indepaz calculated that, as of November 2007, there were more than 6,300 of what they term “narcoparas” and “neonarcoparas” organized in 69 armed structures in 224 municipalities in 24 departments.²⁴

Despite government claims that these are simply criminal gangs, the evidence suggests that the victims of such groups are the same human rights activists, trade unionists and community leaders targeted in the past by paramilitary groups. Supporters of the demobilization process also argue that since these groups are no longer engaged in armed confrontation with guerrilla forces, they cannot be classed as paramilitaries. But this is to misunderstand the *raison d’être* of paramilitarism. Their military strategy is not about confronting guerrilla groups head-on – armed

skirmishes between guerrillas and paramilitaries were always rare – but about “removing the water from the fish”; that is, sowing terror among civilians in order to destroy the guerrillas’ real or perceived support base.²⁵

Amnesty International’s concerns about the demobilization process stem from its commitment to the rights of victims. They are based on the organization’s long and varied experience of observing similar disarmament and peace processes in other countries and its understanding of what constitutes an effective demobilization. It is often claimed that sacrificing justice for the sake of peace is a price worth paying. But the paramilitary demobilization process, and its accompanying legal framework, have failed to deliver either peace or justice. This failure is typical of many other disarmament, demobilization and reintegration and transitional processes elsewhere in the world that have failed to effectively address human rights concerns.

By claiming that paramilitaries are no longer active, the government is also undermining the effective application of IHL. If these groups, which continue to exhibit the same modus operandi as paramilitaries, are engaged in criminal activity but no longer form part of the armed forces’ counter-insurgency activities, then it becomes more difficult to justify the application of IHL, since IHL is only applicable to armed actors in the context of an armed conflict and not to criminals. Such an interpretation stands to further undermine the protection of those Colombians still affected by human rights abuses and violations of IHL committed on a daily basis by all groups.

Law 782 of 2002, Decree 128 of 2003 and Law 975 of 2005 (the Justice and Peace Law) – the legal framework for the supposed demobilization of most paramilitaries – have served to consolidate the impunity enjoyed by perpetrators of human rights abuses. These have not only protected the paramilitaries, but also those who have supported them, as well as members of guerrilla groups responsible for human rights abuses. The Constitutional Court and the Supreme Court of Justice have sought to overrule some of the more contentious aspects of Law 782, Decree 128 and the Justice and Peace Law. However, the legal framework, as well as other related legislative measures – some of which have sought to circumvent aspects of the Constitutional Court ruling – have ensured that the demobilization remains a deeply flawed process.

The Justice and Peace Law is only applicable to the few members of illegal armed groups who are under investigation or have already been convicted of human rights abuses. Most paramilitaries and guerrillas are not under investigation as a result of the high level of general impunity that they have traditionally enjoyed.

Only about 10 per cent of the more than 31,000 paramilitaries that are said to have demobilized have qualified for inclusion in the Justice and Peace process, which grants them significantly reduced sentences as well as other procedural benefits in return for disclosure (“full” confessions) about their involvement in human rights violations and reparation to their victims. Around 90 per cent of those paramilitaries

Law 782 removed the legal requirement that peace negotiations be carried out only with armed groups that have been granted political status (which the paramilitaries have not). It also allows amnesties and pardons for members of armed groups who are considered to have committed “political and related crimes”. Law 782 has been implemented through Decree 128. Articles 13 and 14 of Decree 128 grant legal and economic benefits to members of armed groups who have demobilized. These benefits include “pardons, conditional suspension of the execution of a sentence, a cessation of procedure, a resolution of preclusion of the investigation or a resolution of dismissal”. Article 21 excludes from these benefits those “who are being processed or have been condemned for crimes which according to the Constitution, the law or international treaties signed and ratified by Colombia cannot receive such benefits.” Such crimes are defined in Law 782 as “[...] atrocious acts of ferocity or barbarism, terrorism, kidnapping, genocide, and murder committed outside combat”. Only combatants under investigation or sentenced for the illegal carrying of arms and membership of an illegal armed group can benefit from Decree 128. The Justice and Peace Law has therefore been applied to members of illegal armed groups who wish to demobilize but are not eligible to benefit from Decree 128.

Articles 13 and 21 of Decree 128 infer that those who are not under investigation or have not been tried will have a right to these legal benefits even though they may have committed or participated in serious human rights abuses. But given the endemic nature of impunity in Colombia, most paramilitary members – and guerrillas for that matter – are not formally under judicial investigation for violations of human rights or international humanitarian law, and are unlikely to have been tried or convicted for such offences.

who have demobilized have benefited from de facto amnesties by virtue of Decree 128, which grants pardons to members of illegal armed groups who are not under investigation for human rights abuses and/or have not been convicted of such crimes. In theory, this 90 per cent could still be brought to justice if evidence emerges in the future about their possible role in human rights violations not covered by Decree 128, but such a scenario is unlikely given the prevailing lack of political will to undertake effective investigations and prosecutions.

In May 2006, the Constitutional Court issued a ruling which struck down many of the more controversial articles of the Justice and Peace Law, including removing the strict time limits on criminal investigations.²⁶ The government responded by issuing Decree 3391 in September 2006, which revived some of the Law’s contents. It includes provisions which could allow demobilized combatants to benefit from the reduced sentences foreseen in the Justice and Peace Law even if they have not freely admitted to all of the human rights violations which they committed. Decree 3391 stipulates that the demobilizing combatant has to make “a complete and true confession of all

of the crimes in which they have participated or of which they have sure knowledge". Since it is almost impossible to prove "sure knowledge", paramilitaries are in effect able to offer only partial confessions. The Decree further undermines the "full confession" requirement which is supposed to exist in the Justice and Peace Law by qualifying "confessions" with the phrase "in as far as co-operation is possible".

Decree 3391 also reintroduced an 18-month reduction in sentences of between five and eight years, which had been provided for in the Justice and Peace Law to take into account the time spent by the paramilitaries in so-called placement zones (*zonas de ubicación*) during their demobilization. The Constitutional Court had ruled that these reductions were unconstitutional, since the concentration of paramilitaries in these zones was voluntary. The Decree also leaves the door open for demobilized paramilitaries to serve their sentences in military installations rather than in prison. This is a matter for concern given the links which still exist between the security forces and paramilitaries. It might also be possible for them to serve their sentences working on so-called "agricultural colonies", possibly in areas still under their effective military control and on land illegally misappropriated by them through human rights violations.

In order to speed up the legal process – which three years after its inception has yet to result in a single sentence – in October 2007 the government announced it was considering a proposal from the Office of the Attorney General to allow paramilitaries to make collective rather than individual confessions. The government has said that criminal responsibility would still be determined individually. However, "collective confessions" could further reduce the chances for the emergence of the complete truth about violations and impede full access to justice for victims. Given that paramilitaries are already failing to confess fully, they are even less likely to do so if required to confess in the presence of their peers.

The Justice and Peace process is also failing to protect the lives of those very people it is supposed to be helping, a problem highlighted by human rights groups and by the Inter-American Commission on Human Rights of the Organization of American States and the MAPP/OEA. Since the paramilitaries began giving evidence before the Justice and Peace Units, at least 15 people associated with the Justice and Peace process have been killed and around 200 threatened. The victims have included those seeking to recover land and other assets misappropriated by paramilitaries, those seeking justice for human rights abuses committed against them or their families, critics of the Justice and Peace process, and those representing or supporting the victims.

On 7 February 2007, Carmen Cecilia Santana Romaña, who represented victims seeking the return of their lands and their right to participate in the Justice and Peace process, was killed by unidentified gunmen in Apartadó Municipality, Antioquia Department.

On 31 January 2007, Yolanda Izquierdo was shot and killed in the city of Montería, Córdoba Department, by gunmen suspected of being paramilitaries. Yolanda Izquierdo had received several death threats since December 2006. These threats are believed to have stemmed from her work representing survivors of paramilitary human rights violations at the demobilization hearing of paramilitary leader Salvatore Mancuso. She requested protection several days before she was killed. Protection measures were reportedly not in place at the time of her death.

On 30 June 2007, a group of victims presented a writ of protection of fundamental rights (*tutela*) to the courts to force the state to take concrete action to stop threats and killings.²⁷ The courts ruled in favour of the victims and in September 2007 the government created a protection programme for victims and witnesses participating in the Justice and Peace process. However, in May 2008 the Constitutional Court ruled on a *tutela* presented on behalf of 13 women leaders who were victims of paramilitary violence.²⁸ The ruling stated that the government’s strategy for protecting victims was in breach of the state’s constitutional and international obligation to prevent discrimination and violence against women. The Court gave the authorities six months to revise the protection programme for victims.

STATE-PARAMILITARY LINKS – A FEW ROTTEN APPLES OR A LONG TRADITION OF COLLUSION?

Political, military and economic links between paramilitary groups and certain sectors of the state apparatus, including the security forces and many individuals involved in local, regional and national politics and business, have existed since the very emergence of paramilitary groups in Colombia. These links have played a critical role in fuelling human rights violations in the Colombian conflict. Given the apparent solidity of this alliance over several decades, few could have predicted that some of those influential politicians, high-ranking public officials and senior military officers would be facing criminal investigations and prison sentences for their alleged links to paramilitary groups.

These investigations, if tardy, are very much to be welcomed. However, the legal framework set up under the Justice and Peace process will most likely ensure that the responsibility of many other third parties – including members of the security forces, high-ranking politicians, and senior state officials – for human rights violations committed by paramilitaries will not be fully investigated and that perpetrators will continue to evade justice.

- The Justice and Peace Unit of the Attorney General’s Office can only investigate human rights abuses committed by members of illegal armed groups. Cases of human rights violations involving the security forces fall within the jurisdiction of

THE 'PARA-POLITICS' SCANDAL

At the time of writing, more than 60 parliamentarians – most of whom are part of President Uribe's governing coalition in Congress, and many of whom voted in favour of the Justice and Peace Law – were under formal or preliminary investigation for their suspected links to paramilitary groups. Around half of these parliamentarians were in detention while their cases were investigated by the Supreme Court, while several have either pleaded guilty or have been found guilty of association with paramilitary groups, electoral fraud, murder, and the organizing, arming and financing of paramilitary groups. Most of these have been sentenced to around six years in prison. Many of these parliamentarians owe their electoral victories to widespread electoral fraud, either through the manipulation of votes or through direct threats by paramilitaries against voters and other candidates.

The Office of the Attorney General was reviewing more than 100 cases of alleged collusion between paramilitaries and state officials, including political figures, civil servants and members of the judiciary, and the security forces, while the Office of the Procurator General had created a special unit to investigate alleged links between public employees and paramilitary groups.

Many commentators in Colombia, and even officials of the Colombian government, have expressed astonishment at the sheer scale of paramilitary infiltration of state institutions, even though human rights organizations, including Amnesty International, have been raising concerns about this deep-rooted malaise for decades. Their warnings were invariably ignored, with successive Colombian governments denying a problem existed and accusing NGOs of politically motivated exaggeration and even distortion.

President Uribe has claimed full credit for the current avalanche of revelations, asserting these exposés were made possible only as a consequence of the government-sponsored paramilitary demobilization process and the legal framework that has accompanied it. Information revealed by some of the paramilitaries in the Justice and Peace process has indeed resulted in further revelations, but they were not the catalyst for the "para-political" scandal. The real credit for opening investigations into these deep-rooted links must go to several Colombian state institutions – such as the Supreme Court of Justice, the Office of the Procurator General and the Human Rights Unit of the Office of the Attorney General – which independently of the executive opened investigations, as well as to those Colombian investigative journalists, human rights defenders, and a few members of Congress who have kept this issue alive, often at great personal cost. In 2007, several Supreme Court judges investigating the alleged criminal activities, and their families, were threatened.

Human Rights Unit of the Office of the Attorney General. Since many human rights cases involve collusion between paramilitaries and the security forces, criminal investigations will be separated and dealt with by different investigating bodies. This could fatally weaken criminal investigations into the responsibility of the security forces for these human rights violations.

- Although the Constitutional Court eliminated the strict time limits imposed for criminal investigations under the Justice and Peace Law, a relatively small number of units (originally 20 and now around 60) have been created under the Justice and Peace process. The ability of those units to investigate cases effectively is, therefore, limited and it is thus likely that investigators will focus more on the individual responsibility of each suspect, rather than on the armed structure to which they belong or the role played by the security forces and other state agents in such structures.

- Those paramilitaries who benefited from Decree 128 – some 90 per cent of those who were said to have demobilized – did not submit to complete investigations into their possible role and that of state agents in human rights violations. Questioning from judicial investigators during their demobilization was at best rudimentary.

- The Principle of Opportunity established under Law 906 of 2004 allows the Attorney General to close criminal investigations if it is considered “opportune”, for example if the defendant collaborates to prevent further crimes from being committed. This standard is vague and ill-defined and could lead to criminal investigations involving third parties in paramilitary activities being closed if it can be argued that such an investigation would not be in the public interest.

- The government has sought, but so far failed, to guarantee the impunity of paramilitaries and third parties by seeking to redefine paramilitarism as sedition, making it a political crime. Under the 1991 Constitution, amnesties or pardons can be granted to those accused of political offences. In addition, those accused of political crimes, such as sedition, cannot be extradited.

Article 71 of the Justice and Peace Law defined membership of paramilitary groups as sedition. But a May 2006 ruling of the Constitutional Court declared this article to be unenforceable as a result of procedural flaws. In December 2006 the government issued Decree 4436 by which paramilitaries who demobilized prior to the Court’s ruling could be considered responsible for “political crimes” and could thus be pardoned. The definition of paramilitarism as sedition also opened the door to the pardoning of third parties implicated in having links with paramilitarism before May 2006.

In July 2007 the Supreme Court of Justice ruled that since paramilitarism did not act against the state, but was complicit with it, it could not be defined as sedition. As such, it was not a political crime whose perpetrators could benefit from pardons or



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amnesties. The judgement thus undermined the legality of the pardons granted to the 19,000 paramilitaries who demobilized according to the provisions of Law 782 and Decree 128 and whose legal status had not been settled prior to the Court's ruling. The 2007 ruling also potentially closed the door to the granting of pardons to those members of Congress, mayors, governors and other public servants under investigation for their links with paramilitarism. At the time of writing the government was preparing new legislation to remove these paramilitaries from their legal limbo. Such measures could benefit third parties, some of whom are currently in prison, although the government has stated that these measures will not benefit the "para-politicians" (see page 19).

Diego Fernando Murillo, a paramilitary leader, being escorted to a Justice and Peace Tribunal hearing in Medellin, July 2007.

On 13 May 2008, 14 national paramilitary leaders who were in the Justice and Peace process were extradited to the USA to face drugs-related charges. Among them were Salvatore Mancuso, Rodrigo Tovar Pupo (alias "Jorge 40") and Diego Fernando Murillo (alias "Don Berna") – all of whom had supposedly demobilized under the Justice and Peace Law and who were responsible for widespread and systematic torture, enforced disappearances and killings of numerous civilians and the internal displacement of tens of thousands more. Their extradition followed claims by the Colombian government that they had failed to tell the whole truth about human rights violations they had committed, had continued to engage in criminal activity while in prison, and had failed to make reparations to their victims.²⁹ This meant they had reneged on commitments made as part of the demobilization process and the Justice and Peace Law.

In July 2008, the US and Colombian authorities signed a co-operation agreement which will reportedly grant Colombian investigators access to the extradited paramilitaries. However, the extradition of 14 top paramilitaries on drugs-trafficking charges without reference to human rights violations has nevertheless created a real danger that the tentative investigations being carried out by the Justice and Peace tribunals, the Human Rights Unit of the Office of the Attorney General, and by the Supreme Court of Justice could be severely weakened. The full scale of human rights violations committed over the years by paramilitaries, as well as the key role played by the security forces, state officials and leading political and business figures in these crimes, could thus remain hidden. The risk that those responsible for human rights violations will evade justice will be even greater should the US courts decide not to investigate the 14 paramilitary leaders for human rights violations. Despite the extraditions, criminal investigations in Colombia into human rights atrocities committed by these paramilitaries, and their links with the security forces and others, must continue, if their victims are ever to receive any semblance of truth and justice.

There are concerns that the extradition of the 14 paramilitary leaders might also undermine investigations into allegations about the reported involvement of US agencies in supporting Colombian paramilitary groups. Not only have the US authorities provided military assistance to Colombian military units operating closely with paramilitaries, but in the 1990s evidence emerged that the PEPES paramilitary structure – created to hunt down drugs trafficker Pablo Escobar – was operating with the support of US security agencies. Diego Fernando Murillo allegedly had close links with the PEPES. The PEPES later evolved into the paramilitary Autodefensas Campesinas de Córdoba y Urabá (ACCU).

THE VEXED ISSUE OF LAND – REPARATION OR LEGALIZED THEFT?

At the root of the Colombian conflict lies the vexed issue of land. Much of the wealth accumulated by the paramilitaries and their backers in politics and business has been based on the misappropriation, through violence or the threat of violence, of land. Some estimates suggest that between 4 and 6 million hectares of land which had previously been owned by hundreds of thousands of small-scale farmers, as well as collectively by Indigenous and Afro-descendant communities, have been appropriated in this way. More than 130,000 victims of paramilitary groups – a small percentage of the total number of victims – have thus far officially registered an interest in receiving reparation under the Justice and Peace Law.

As part of the deal with the government, paramilitary leaders made a commitment to hand over land and other assets and to return these to their rightful owners. But the



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paramilitaries have so far resolutely failed to hand over any significant tracts of land. Much of this land has been signed over to third parties – so-called *testaferros*, often close family members and friends – in order to shield it from scrutiny. The government, far from enforcing this commitment, has made clear its lack of political will to pursue these *testaferros* with the full vigour of the law. In addition, the government has introduced legislation that will make it harder for those displaced to reclaim their land by making it easier for those who stole it in the first place to legalize their ownership.

A young boy helps to clear up the remains of his father's shop destroyed by FARC bombs, Toribío, Cauca Department, April 2005. More than 20 homes and businesses were destroyed during the attack.

The possibility that demobilized combatants could benefit from illegally obtained assets has serious consequences for the right of victims to reparation. Decree 4760 of December 2005 states that land and other assets illegally obtained by demobilized paramilitaries can be classified as reparation if these are considered to be of economic benefit both to the local community and to the demobilized paramilitaries themselves. These demobilized paramilitaries could then receive government subsidies for developing agricultural projects on those lands – under the government's "rural reinsertion" programme – if they do so with the participation of local campesinos and displaced people. These "rural reinsertion" projects could therefore potentially force campesinos and displaced communities to work in a position of subservience with the very people who displaced them, often violently, from their lands in the first place and possibly on lands still under the control of paramilitary groups. Such communities would

also be at risk of revenge attacks from guerrilla groups who might accuse them of collaborating with paramilitaries.

Under Decree 3391, the Principle of Opportunity (see page 17) can be applied to *testaferros* who manage assets obtained through the illegal activities of paramilitaries. The Decree also stipulates that the legal assets of a combatant may only be used to cover the costs of reparation if their illegal assets are insufficient to cover such costs. However, combatants are not obliged to provide a list of their legally held assets, thus limiting the ability of the authorities to investigate them and identify those that are in effect stolen assets.

On 22 April 2008, the government issued Decree 1290. This creates a programme to allow victims of abuses by illegal armed groups, both guerrilla and paramilitary, to receive individual monetary reparations from the state following an administrative rather than judicial adjudication and decision. The Decree appears to be an acknowledgement that most cases of reparation will not be resolved judicially. This is because most guerrillas and paramilitaries are not subject to any legal proceedings. More than four years on from the start of the demobilization process, very few victims have received reparation. Moreover, the Justice and Peace Law stipulates that no reparation will be forthcoming until each legal process against the paramilitary or guerrilla in question has been finalized. It is unlikely therefore that victims would receive any reparations in the short-term unless this was the result of an administrative, rather than judicial, process.

Decree 1290 provides for individual monetary reparation, albeit with a strict upper limit on the amount, depending on the type of human rights abuse committed against the victim. However important and welcome this is, it will prove virtually meaningless to millions of victims, many of them campesinos, who were forcibly displaced from their lands. For these men and women, their land was their only means of subsistence. Reparation can only be effective if these lands are returned to their rightful owners, and the Decree has failed to address this issue.³⁰

The Decree also fails to address reparation for victims of violations by the security forces and other state agents, and of collective reparations for organizations and groups that have been particularly hard-hit by the conflict, such as members of the UP, trade unions, human rights organizations, civilian communities that have insisted on their right not to be drawn into the conflict, and Indigenous and Afro-descendant communities. Reparation is much more than economic compensation; for it to be effective it must also be integral – it should therefore be aimed at returning as far as possible the victim to the condition they enjoyed prior to the violation and include legal and psycho-social assistance, lead to truth and justice, and ensure non-repetition.³¹

3/THE BLOODY CONSEQUENCES OF THE CONFLICT

All the parties to the conflict – guerrilla groups, the security forces and paramilitaries – have been responsible for widespread and often systematic human rights abuses and violations of IHL mostly, but not exclusively, committed against civilians. Such abuses include threats against and killings of civilians; enforced disappearances; hostage-taking; forced displacement; torture and other cruel, inhuman or degrading treatment; and indiscriminate and disproportionate attacks against the civilian population. These abuses constitute crimes under national and international law.

KILLING OF CIVILIANS

Civilians account for the vast majority of the more than 70,000 people killed in the armed conflict over the past 20 years. In recent years the number of civilians killed in the context of the conflict has fallen, from some 4,000 in 2002 to around 1,400 in 2007 (which was a slight increase on the at least 1,300 civilians killed in 2006).³²

Over the last 20 years, paramilitary groups – acting in co-ordination with, or with the acquiescence of, the security forces – have been responsible for the largest number of killings of civilians. However, especially since the start of the paramilitary demobilization process in 2003, there has been an increase in reports of extrajudicial executions carried out directly by the security forces. Around 330 extrajudicial executions³³ by the security forces were reported in 2007, compared to some 220 a year in 2004-2006, 130 in 2003, and around 100 in 2002.³⁴

Most victims have been either campesinos or community leaders who the security forces have falsely claimed were guerrillas killed in combat. The victim is typically taken from their home or place of work in front of witnesses and taken to another location to be killed. The body is presented wearing army fatigues by the security forces, although witnesses testify that the victim had been wearing civilian clothes when detained. Many of the victims are buried as unidentified individuals despite being identified by family members. The bodies also often show signs of torture.

At around 8am on 24 March 2008, 22-year-old campesino Eiber Isidro Mendoza and his wife, Astrid Sanabria, set off from the hamlet of Monterralo in Aguazul Municipality, Casanare Department, to walk to the village of Los Lirios in the same municipality. After walking for about 1km, Astrid Sanabria stopped to wash her hands in a pool of water while her husband continued on his way. When Astrid Sanabria resumed her journey she was stopped at a roadblock controlled by the XVI Brigade of the army. She asked them to let her through since she wanted to catch up with her husband, but they told her they had not seen anyone pass. They refused to let her pass, but she stayed at the roadblock until 1.30pm, after which she returned to Monterralo and then to Cupiagua. At 3.30pm, members of the Technical Investigative Unit (Cuerpo Técnico de Investigaciones, CTI) of the Office of the Attorney General contacted Astrid Sanabria's sister and informed her that Eiber Isidro Mendoza had been killed by the army in Monterralo and that she should go to the offices of the army's anti-kidnapping unit (Grupo de Acción Unificada de Libertad Personal, GAULA), in Yopal, the capital of Casanare Department, to claim the body. The army claimed that Eiber Isidro Méndoza had been a guerrilla killed in combat.

At around 8.00am on 20 January 2008, five men in military uniforms, but with their insignia covered, entered the homes of three families in the hamlet of Nueva Unión in Puerto Asís Municipality, Putumayo Department. Two of the soldiers entered the home of Hugo Armando Torres. The other three soldiers approached the neighbouring property and forced the three men inside, a father and his two sons, to leave the house. The soldiers stayed in Hugo Armando Torres' house for half an hour, during which time they insulted him and accused him of being a guerrilla. At around 8.15am, shots were heard from the area surrounding the hamlet. The soldiers who were with Hugo Armando Torres said: "Listen, those sons-of-bitches are in a shooting match with the army".

According to witnesses, at 8.30am the soldiers led Hugo Armando Torres to the outskirts of the hamlet. Minutes later, rifle fire was heard as well as two explosions. An army helicopter flew over the hamlet soon after, twice firing towards the homes of three families. Between 10.30am and 12.30pm, two more helicopters arrived, one of which landed near the house of Herney Alexander Guerrero from where gunfire could be heard, while the other flew past the hamlet. That afternoon the local civilian authorities asked the military about the detention of Hugo Armando Torres. The military authorities claimed no one had been detained, but that there had been a clash with the FARC during which two members of the guerrilla group, Hugo Armando Torres and Herney Alexander Guerrero, had been killed. The next day, the army confirmed that they had removed the bodies from the scene and handed them over to the morgue in Puerto Asís.

Effective and impartial investigations into such deaths are extremely unlikely. The same soldiers accused of the killing usually remove the body from the scene and little or no effort is made to preserve the scene of the crime. Any autopsy carried out

is at best superficial. Since in most cases of suspected extrajudicial execution the military justice system quickly claims jurisdiction over the investigation, cases are often closed quickly and those responsible rarely identified and brought to justice.³⁵

Paramilitaries also continue to kill hundreds of civilians – sometimes during joint operations with the security forces – albeit in much smaller numbers than in the recent past. Paramilitaries are thought to have been responsible for at least 300 killings of civilians in 2007, compared to around 240 in 2006, 590 in 2005, 740 in 2004, 1,440 in 2003, and 1,560 in 2002.³⁶

On 18 February 2008 around 20 armed and uniformed men belonging to a paramilitary group calling itself Black Eagles Central Bloc (Bloque Central Águilas Negras, BCAN) set up a temporary roadblock on the San Pablo-Santa Rosa highway in Bolívar Department. They reportedly stopped a vehicle belonging to the South of Bolívar Association of Cocoa Producers (Asociación de Productores de Cacao del Sur de Bolívar, Aprocasur). They forced Miguel Daza, a co-ordinator of Aprocasur, and Jhon Martínez, his driver, from the vehicle and shot them dead. Shortly after, the paramilitaries stopped Wilmar Tabarez, who was travelling on his motorcycle, and also shot him dead. Witnesses have claimed that during the one hour the roadblock was in operation, army soldiers were present 500m away. Eyewitnesses have also said that these same paramilitaries, who they say are officially demobilized, patrol the urban centre of San Pablo in a taxi despite the heavy presence of the security forces in the area.

On 17 October 2007, paramilitaries killed six campesinos and injured a further three in Istmina Municipality, Chocó Department. According to a witness: “we were going towards the camp around midday to have lunch when the armed group appeared and locked us in a building and began to threaten us with machetes. Some of us began to run and they shot at us”.

Paramilitaries also continue to carry out informal “private security” operations, for which they often charge local residents, as well as acts of “social cleansing” – the killing of civilians they label as “social undesirables”, such as drug addicts, petty criminals and sex workers.

On 8 January 2008, in the city of Bucaramanga, Santander Department, paramilitaries belonging to the Black Eagles are believed to have killed a suspected drug addict, Melvin García Alfonso. The killing appeared to form part of illegal private security operations that paramilitaries were carrying out in a number of poor neighbourhoods in the city, as well as in neighbouring municipalities.

The sharp fall in killings attributed to paramilitary groups appears to coincide with the recent increases in killings attributed directly to the security forces. This development may be the result of the security forces once again assuming a primary

role in attacking civilians they deem supportive of guerrilla groups because paramilitary groups who previously carried out this role are fewer in number and possibly because those that are still operating are exercising greater restraint as a result of the demobilization process. Two other possible explanations for this trend are the increasing pressure on the security forces to show “results” (traditionally measured by the number of killings of “guerrillas”), and the rewards and recognition still bestowed upon those members of the security forces who can demonstrate such “successes” in the field.

Guerrilla groups also target civilians they deem to be co-operating with their enemies. Guerrilla groups have also been responsible for the killing of civilians they have taken hostage and of members of the security forces who are no longer taking a direct part in hostilities, either because they have already been captured or because they are injured.

Some 260 civilians were killed by guerrilla groups, principally the FARC and the ELN, in 2007, compared to around 200 in 2006, 265 in 2005, 350 in 2004, 580 in 2003, and 720 in 2002.³⁷

Guerrilla groups have also threatened, abducted and killed company employees and local officials. And both guerrilla and paramilitary groups have killed those who resist their attempts to extort protection money or who fail to keep up with such payments.

On 2 October 2007, members of the FARC are alleged to have killed three employees of the electricity company Ingeolétrica, and abducted two other workers in the municipality of Sonsón, Antioquia Department. All five men were carrying out work for the company Empresas Públicas de Medellín (EPM). The two men abducted were released the next day. According to information received, the FARC had prohibited EPM from carrying out work in municipalities of the Eastern Antioquia (Oriente Antioqueño) region of Antioquia Department.

On 17 July 2007, the ELN is reported to have killed Pedro Nel Canole Polo, a campesino from the hamlet of Santo Domingo, Cantagallo Municipality, Bolívar Department, while he was working his land. Witnesses claimed he was killed because he failed to keep up with extortion payments.

Workers in the health sector have also long been targeted, primarily because many work in areas of intense conflict and as a result are accused by combatants from all factions of siding with their enemies. Medical professionals are often accused by the security forces of siding with guerrilla groups, particularly when they treat wounded guerrillas (whether voluntarily or as a result of coercion). Similarly, guerrilla groups accuse them of “collaboration” when medical personnel treat members of the security forces. Both the guerrilla and paramilitary groups have also killed patients, whether civilians or injured combatants, travelling in ambulances or in hospital.

On 16 April 2008, army soldiers Luis Emilio Gómez and Diego Echeverri received medical attention in a health centre in Cedro in Yarumal Municipality, Antioquia Department. They had been injured by landmines reportedly placed by a guerrilla group. After receiving basic medical attention, they were transferred by ambulance, which was clearly identified with the Red Cross emblem, towards the municipal centre of Yarumal. The ambulance was stopped by guerrillas reportedly belonging to the FARC. When the two patients were identified as soldiers, the guerrillas reportedly shot each man five times at close range, killing them instantly.

Civilian as well as military medical personnel, facilities and transport are entitled to special protection under IHL and must be respected at all times. IHL stipulates that medical personnel cannot be compelled to carry out duties that are not compatible with their humanitarian mission and must not be required to give priority to any person, except on medical grounds, nor be punished for carrying out medical duties.

The FARC also continue to threaten and kill local politicians and election candidates. The guerrilla group was allegedly responsible for most of the 29 killings of candidates in the run-up to the October 2007 local and regional elections. There was also strong evidence that paramilitary groups used threats and killings to coerce electors into voting for their preferred candidates.

On 22 October 2007, the FARC detonated an explosive device at the headquarters of the Alas Equipo Colombia political party in Puerto Asís, Putumayo Department. One woman died and eight others were injured.

A confrontation between the FARC and the ELN – over control of territory and resources – in Arauca Department has in recent years led to hundreds of selective killings of campesinos, trade unionists and human rights defenders, most of them accused by one guerrilla group of collaborating with the other. Armed skirmishes between the two groups in Arauca Department have also led to the displacement of thousands of people in recent years.

IHL prohibits the deliberate killing of those who are not, or are no longer, directly participating in armed hostilities. Article 3 Common to the four Geneva Conventions sets out the minimum standards of humane conduct for parties to a non-international conflict. It expressly prohibits, among other things, “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture” of “[p]ersons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause.” Such deliberate killings constitute war crimes according to the Rome Statute of the International Criminal Court (ICC).

Under international human rights law, the deliberate killing of a civilian or a combatant no longer directly participating in hostilities is an extrajudicial execution if committed

by an agent of the state or their proxies. In domestic criminal law, killings committed outside the conflict, or by guerrilla groups (who are not legally recognized as combatants), are classified as murder, homicide or manslaughter, depending on the criminal code applicable in a particular country.

States have a duty to effectively investigate extrajudicial executions. Paragraph 9 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions states:

“[t]here shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.”

ENFORCED DISAPPEARANCES

The Colombian conflict has also been marked by the widespread incidence of enforced disappearances. Thousands of civilians have allegedly been subjected to enforced disappearance by the security forces and paramilitaries. Enforced disappearances – and the mutilation and subsequent burial of the bodies in unmarked mass graves – are a longstanding feature of the security forces’ counter-insurgency strategy. Most cases of enforced disappearance are not investigated and those responsible are rarely brought to justice.

Emblematic cases of enforced disappearance, in which dozens of civilians are forcibly disappeared from a single place – such as in Pueblo Bello, Antioquia Department, in January 1990, when paramilitaries abducted 43 people in retaliation for the theft of 43 cattle belonging to a paramilitary commander – have not been reported recently. However, enforced disappearances continue to this day in Colombia. Few cases are denounced and as a result reliable figures for the total number of disappearances are very difficult, if not impossible, to gauge. There are various reasons for this chronic under-reporting.³⁸ The Office of the Attorney General is reportedly investigating more than 15,000 cases of enforced disappearances. However, according to some Colombian NGOs, the true number of enforced disappearances could be 30,000 or more. In 2007, at least 190 people were victims of either enforced disappearances by the security forces and paramilitaries or

missing following abductions by guerrilla groups,³⁹ compared to around 180 in 2006, 150 in 2005, 290 in 2004, 500 in 2003 and 450 in 2002. In 2007, the security forces were reportedly responsible for around 65 cases of enforced disappearances, and the paramilitaries for some 50. While the number of enforced disappearances attributed to the security forces has remained relatively stable over the last few years, the number attributed to paramilitaries has, on the whole, tended to fall. The number of people missing following abductions by guerrilla groups increased significantly in 2007 when some 30 cases were reported; only a handful of cases had been reported in the previous few years.⁴⁰

On 26 May 2008, members of the paramilitary group, the Peasant Self-Defence Forces of Nariño (Autodefensas Campesinas de Nariño, ACN) shot and killed Willinton Riascos in the hamlet of Bocas del Canal, in Olaya Herrera Municipality, Nariño Department, after he failed to obey their order of “Nobody run, all to the floor” when they entered the village. They then started to hit his companion, a man known as “El Pipe”, with the butts of their guns. The paramilitaries took “El Pipe” away by boat, in the direction of a paramilitary encampment located a five-minute journey from a permanent military post operated by the 70th Marine Infantry. At the time of writing there had been no further news of the whereabouts of “El Pipe”.

On 5 June 2008, members of the ACN, some wearing masks, entered the nearby hamlet of San José de la Turbia, announcing that they had come for those with connections with the FARC. They forced all the men to stand outside the church and told them that if anyone tried to “collaborate [or] betray us, we will take them away... Don’t even think about calling the army because we know them, we cooperate with them and they tell us who the snitches are, we work together... those who flee do it because they owe something and have connections with the guerrilla”. Members of the ACN then grabbed Francisco Hurtado from the group and accused him of supporting guerrilla forces. They forced him to leave with them later that day; he has not been seen since.



A map of Colombia covered with the pictures of those missing or killed in the conflict. Bolívar Square, Bogotá, September 2007.



Exhumation in 2007 in San Carlos, Antioquia Department, of the remains of campesinos killed by paramilitaries.

On 14 June 2008, members of the ACN again entered the hamlet of San José de la Turbia. They segregated all the men and women in the community, and forced both groups to stand in front of the church. They warned them that the Colombian navy was nearby and that they were working together. They then called out the name of one community member, Tailor Ortiz. When he raised his hand, the paramilitaries said, “We’re going to kill this one right away”. They tied him up and after telling all the women to go back to their houses, including Tailor Ortiz’s wife, they shot him in the head three times. They then told those present: “This is so that you learn that we aren’t fooling with anyone, we are being serious. Each time we come, we’ll come for someone else”. On 15 June, the majority of the 111 families living in San José de la Turbia left the area, fearing for their safety. At the time of writing, none of these families had been able to return to their homes.

More than 1,560 bodies of people believed to be victims of enforced disappearance by paramilitaries were exhumed by the authorities from 1,300 graves between the beginning of 2006 and 26 August 2008. Many of the bodies appear to have been discovered as a result of information from rank-and-file paramilitaries outside the

Justice and Peace process. Most of these bodies had yet to be positively identified – around 200 had been fully identified and returned to their families.⁴¹

On 11 November 2007, 15-year-old Jaider Sted Suárez set off by bus from Barrancabermeja, Santander Municipality, to Puerto Wilches in the same department. According to witnesses, the bus was stopped at a paramilitary roadblock and Jaider Sted Suárez was forced off the vehicle by the paramilitaries. At the time of writing his whereabouts remained unknown.

Enforced disappearance constitutes a crime under international law. The International Convention for the Protection of All Persons from Enforced Disappearance defines enforced disappearance as:

“the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support

or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”

The Convention, adopted by the UN General Assembly on 20 December 2006, has yet to come into force. However, it promises to provide a powerful tool for preventing such violations, ensuring reparations for victims, and helping to hold to account those responsible.⁴² While the Rome Statute of the ICC only addresses disappearances which are part of a widespread and systematic attack against civilians and, as such, a crime against humanity, the Convention covers all cases of enforced disappearance. However, unlike the Rome Statute, the Convention does not directly address non-state actors, although it does call on the state to investigate cases carried out by such groups.

The Rome Statute of the ICC defines enforced disappearances as:

“the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.”

State and non-state actors can, therefore, be held to account for enforced disappearances when they constitute a crime against humanity.

DEATH THREATS

“A detachment of men is ready to carry out our order and will clean up those sons-of-bitches camouflaged guerrillas. Take care you bastard shits. You did not believe you were military targets. Well now you will believe it with the death of your son.”

Death threat from the Black Eagles to a trade union leader from Bucaramanga, Santander Department, 1 May 2008

In Colombia, death threats against human rights defenders, community activists, trade unionists, and leaders of campesino, Indigenous and Afro-descendant communities are common. The security forces and paramilitary and guerrilla groups all use death threats as a powerful tool to intimidate those they deem to be a threat to their interests or whom they accuse of collaborating with their enemies.

On 23 April 2008, José Humberto Torres, a lawyer for the Committee of Solidarity for Political Prisoners (Fundación Comité de Solidaridad con los Presos Políticos, FCSPP), and Jesús Tovar, a leading member of the Trade Union Congress (Central Unitaria de Trabajadores, CUT), received a death threat via

email, signed by the Black Eagles paramilitary group. The threat, dated 21 April, accused them of being guerrillas and said that “The demobilization has not weakened us; on the contrary it has rearmed us – a bullet for you”. It continued: “Look, son-of-a-bitch José Humberto, take care, wherever we see you we will give it to you”. It warned members of other human rights and trade union organizations not to speak out and claimed it was keeping FCSPP members María Cedeño and Nicolás Castro under surveillance.

On 22 April 2008, members of the CUT in Santander Department received a written death threat from the paramilitary group, the New Generation of the Black Eagles in Santander (Nueva Generación de Águilas Negras de Santander). The threat, dated 18 April, warned against holding any marches or demonstrations to mark International Workers’ Day on 1 May. It said, “There is a detachment of men available who will fulfil our orders and cleanse all you servants of the guerrilla”. It named 17 members of human rights and trade union organizations as “military targets” including human rights activists Carolina Rubio, Príncipe Gabriel González and María Cardona, and trade unionists Martha Cecilia Díaz, Javier Correa and Nicanor Arciniegas.⁴³

Guerrilla groups have commonly used “resign or die” threats against electoral candidates and local elected officials in an effort to destabilize local governments in many parts of the country. For example, in the run-up to the October 2007 local elections, hundreds of councillors, mayors and candidates received death threats; many were forced to resign, and some were killed.

On 10 October 2007, Medardo Vásquez, a candidate for the Alas Equipo Colombia party, was shot dead, allegedly by the FARC, in Cocorná Municipality, Antioquia Department. After the killing, the President of the Cocorná Council said: “a week ago a person who identified himself as a member of the FARC called the Council to warn us that unless the candidates and councillors resigned they would declare us military targets”. According to the President one councillor and five candidates resigned following the “resign or die” threats issued by the FARC.

All the parties to the conflict have also threatened journalists. For example, on 7 August 2007 the FARC are alleged to have threatened journalists in Arauca and Saravena, Arauca Department, for failing to read out a press release issued by the guerrilla group. Journalists who have read such statements have also been threatened by the security forces and paramilitary groups.

On 8 May 2008, several employees of Sarare FM Stereo, a community radio station based in the town of Saravena, Arauca Department, including Isnelo González, Élide Parra Alfonso, Emiro Goyeneche Goyeneche, Ismael Antonio Rodríguez, Alexis Iván Rojas and Deibys Pantoja Cerrero, received an identical text message, apparently from the paramilitary United Self-Defence Forces of Colombia

(Autodefensas Unidas de Colombia, AUC). The message said: “For the wellbeing of you and your loved ones, do not meddle in subjects that do not concern the radio station. AUC Arauca”. On 28 May 2008, fears for the employees of the radio station increased when the letters “AUC” were daubed on the front entrance of their building. On 27 September 2007, employees of the radio station had participated in a public meeting attended by members of a Congressional Human Rights Commission, at which members of the public denounced human rights abuses committed in Arauca Department by different parties to the armed conflict.

The security forces often threaten civilian communities they come across during military operations or incursions. Often the threat is that paramilitaries will descend on the community. This is designed to sow terror or to coerce communities into collaborating with the armed forces. Members of the military have directly threatened individuals as well as whole civilian communities.

Soldiers from the Second Mobile Brigade and the High Mountain Battalion were camped in the hamlet of San Bartolo in the Naya River basin, in the departments of Cauca and Valle del Cauca, between 1 April and 20 April 2008. They told the people living in San Bartolo that paramilitary groups were returning to the area. Soldiers warned the local inhabitants, most of whom are Afro-descendant, that “You act like you are really courageous but those who follow on behind us are even more courageous than you are.” Once the two military units left the area on 20 April, paramilitary graffiti was found in areas where members of both units had camped. One said “AUC murders, God forgives”, another said “Coastal ACCU kills seven.” The ACCU – the Peasant Self-Defence Forces of Córdoba and Urabá (Autodefensas Campesinas de Córdoba y Urabá) – was a paramilitary organization which subsequently became part of the umbrella paramilitary organization, the AUC. On 5 May, local people reported that members of the armed forces were seen fraternizing with four paramilitaries.

Army troops of the “Agustín Codazzi” Battalion of Engineers, the “Batalla de Pichincha” Infantry Battalion, the High Mountain Battalion, the Counter-guerrilla Battalion No. 3, and mobile forces of the special forces – all of which form part of the III Brigade – began a military operation on 26 October 2007 in the mountainous region of Corinto Municipality, Cauca Department, specifically in El Jagual, Santa Rosa, La Cominera, El Descanso, San Luis Arriba and Guacas. Between 2 and 4 November 2007, the same troops demanded that families in the area buy food for them, but they refused. On 5 November some of the soldiers visited the house of the Cañas family in El Jagual. Rosalía Peteche, who was pregnant, was in the house at the time, as was Ceferino Cañas and his two young sons. The family claimed the soldiers stole some of their kitchen equipment, some eggs, and some money. When Ceferino Cañas asked the soldiers why they were doing this, they proceeded to burn his clothes and those of his family. They then reportedly tried to hit him but Rosalía Peteche

intervened. The soldiers finally left the house. They then went to the home of Raúl Muñoz, where they kicked Ilvanover Moreno Restrepo and accused him of being a guerrilla, and told him to leave the house. The soldiers then proceeded to wreck the house. While there they kicked and threatened Jairo Trochezl. They told him that when they left the area the “*mochacabezas*” (literally, those that hack off heads – a euphemism for the paramilitaries) would arrive.

IHL defines threats as acts which are accompanied by physical or psychological threats against protected persons or collectively against civilian communities. Additional Protocol II prohibits threats to commit murder, collective punishments, hostage-taking, acts of terrorism, torture, and slavery, as well as any threat of violence whose principal aim is to spread terror among civilians.

HOSTAGE-TAKING AND KIDNAPPING

Guerrilla groups are responsible for the vast majority of cases of hostage-taking and kidnapping carried out in the context of the armed conflict. They carry out such acts mainly to obtain resources with which to finance their activities or to assert their presence and authority in a particular area. It has proved a lucrative business and, together with extortion and drugs trafficking, provides their main source of finance.

On 17 February 2008, journalist Mario Alfonso Puello and two people he was travelling with were stopped at a checkpoint reportedly controlled by the ELN on the Santa Marta-Riohacha road in La Guajira Department. According to witnesses, all three were taken away by the armed men stationed at the roadblock. The three men were released in June.

Hostage-taking, particularly of high-profile victims, such as former presidential candidate Ingrid Betancourt – who finally gained her freedom together with three US contractors and 11 members of the Colombian security forces following a military operation to release them on 2 July 2008 – has also been used as a powerful tool in guerrilla efforts to exchange these hostages for guerrilla prisoners held by the authorities. The release of Ingrid Betancourt’s running-mate Clara Rojas and former congresswoman Consuelo González on 10 January 2008, and of Gloria Polanco, Luis Eladio Pérez, Orlando Beltrán and Jorge Géchem on 27 February 2008, were two such efforts towards reaching a so-called “humanitarian exchange”. But the rescue of some of the FARC’s most high-profile hostages, including Ingrid Betancourt, kidnapped in 2002, and of the US contractors, taken captive in 2003, has weakened the FARC’s negotiating capacity in this respect.

Amnesty International has unequivocally insisted that guerrilla groups must immediately and unconditionally release all civilians under their control, and

immediately commit to ending the practice of hostage-taking. Guerrilla groups must also ensure the safety and well-being of all those they hold captive, be they civilians or members of the security forces.

Cases of hostage-taking have fallen significantly over the last few years, primarily as a result of government efforts to increase security in urban areas and on the country's principal highways. Reported kidnappings fell from 687 in 2006 to 521 in 2007. This compares to a recent high of 3,500 in 2000.⁴⁴ Guerrilla groups, mainly the FARC, were responsible for most of the conflict-related kidnappings, accounting for some 147 cases in 2007. Most kidnappings were attributed to "common criminals" who were held responsible for around 245 cases in 2007. Paramilitary groups may have been responsible for some of these, but since the paramilitary "demobilization" the statistics on hostage-taking attribute all such kidnappings to "criminal gangs". Some 126 kidnappings in 2007 could not be attributed to any specific group. Between January and May 2008, 188 people were kidnapped. Kidnappings carried out by the FARC over the past few years have fallen much more significantly than those carried out by common criminals.

On 18 June 2007, 11 of the 12 deputies from the Valle del Cauca Departmental Assembly, kidnapped by the FARC in April 2002, were killed in disputed circumstances. The FARC claimed they were killed in crossfire during combat with an unidentified group, but the authorities disputed this explanation and claimed they were deliberately killed by the FARC. While the circumstances of the killing of the deputies remain unclear, there is no doubt that the FARC must take responsibility for the deaths, as the deputies were placed in danger because they had been taken hostage, a serious violation of IHL.

According to the ICRC, hostage-taking – conduct commonly referred to as kidnapping in Colombia – is defined as when "a person has been captured and detained illegally" and when "a third party is being pressured, explicitly or implicitly, to do or refrain from doing something as a condition for releasing the hostage or for not taking the life or otherwise harming him physically".⁴⁵

Hostage-taking, whether of civilians or combatants, is prohibited and, in the context of an armed conflict, may constitute a war crime.⁴⁶

FORCED DISPLACEMENT

Forced displacement continues to be one of the most visible expressions of unlawful conduct directed at civilians in the Colombian conflict. There are thought to be some 3-4 million displaced people in Colombia.⁴⁷ Armed exchanges, particularly in the border areas, have also had an impact on neighbouring countries where at least half a million

Colombians are reported to have sought refuge.⁴⁸ The incidence of internal displacement is one of the highest in the world, second only to that in Sudan. Some families experience short-term displacement. However, many more leave their homes for long periods of time, while countless others are forced to flee the conflict several times.

The causes of displacement are varied: counter-insurgency operations, guerrilla operations, land conflict, economic interests and fear of impending armed skirmishes. Aerial fumigation and manual eradication of coca crops is also a cause of displacement because of fears about the health consequences of aerial fumigation and because of the significant security force presence during manual eradication campaigns. However, most people who have been internally displaced in Colombia are fleeing political violence caused by the conflict. Some are accidental victims caught up in the hostilities, but in many cases displacement is a deliberate strategy routinely used by the parties to the conflict to "cleanse" civilians from areas which they believe are controlled by their enemies, or as a means to win control over areas of economic or strategic importance.

The number of people forcibly displaced by the conflict continues to increase, despite repeated claims by the government that the conflict is abating as a result of the demobilization of paramilitaries and military successes against guerrilla forces. According to the Office of the UN High Commissioner for Refugees (UNHCR), 250,000 Colombians were displaced in 2007, compared to 200,000 in 2006. One Colombian NGO suggests the figure is higher – 305,000 people displaced in 2007 – the highest figure for five years – compared to 220,000 in 2006.⁴⁹

Intense combat operations in 2007 and 2008 between the security forces and guerrilla groups, especially in the south of the country, are thought to be responsible for most of this increase. Such forced displacement has been caused by aerial bombardments by the security forces, and the use of landmines and forced recruitment by guerrilla groups to compensate for losses and desertions.

On 22 April 2008, the UNHCR reported that hundreds of members of Indigenous communities living along the River Guaviare in Meta Department had fled to nearby towns and villages fearing impending clashes between the security forces and guerrilla groups in the area. Those who stayed were reported to have faced severe shortages of food and medicines.⁵⁰

Fighting between the FARC and the security forces in rural areas of Toribío Municipality, Cauca Department, in March 2008 led to the displacement of more than 400 campesinos and members of Indigenous communities who were forced to take temporary shelter in a school in the area.

To add to their already serious economic and other problems, the displaced are often stigmatized by local and regional authorities in the reception areas who



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often label them “guerrillas” or “guerrilla sympathizers”, merely because they have fled from areas of guerrilla presence, and claim the displaced will bring the conflict with them. Fear of persecution leads many not to admit they have been forcibly displaced. As a result, they have no access to what little help is available.

People fleeing the Bojayá massacre in Chocó Department in May 2002. During a confrontation with FARC guerrillas, paramilitaries took up positions around a church where civilians had taken refuge from the fighting. The FARC used gas cylinder mortars in the attack, one of which hit the church killing 119 civilians, almost half of whom were children.

Forced displacement is defined as the movement of individuals or groups of people within the national territory because they fear for their lives, physical integrity or liberty for reasons associated with the armed conflict. Internally displaced people are those who have been forced to leave their homes in this way and who stay within the boundaries of the national territory.

Under Article 8(2)(e)(viii) of the Rome Statute of the ICC, “[o]rdering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand”, constitutes a war crime.

Under IHL, warring parties are prohibited from forcibly displacing civilians except for the civilians’ own safety or when absolutely necessary for military reasons. According to Article 17 of Protocol II:

“The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.

Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.”

Forced displacement can occur when civilians are forced to flee because parties to a conflict are terrorizing the civilian population or committing other violations, as well as when they are physically expelled. The UN Guiding Principles on Internal Displacement⁵¹ addresses this situation. According to Principle 5: “All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.”

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT

Amnesty International continues to document cases of torture and other ill-treatment carried out by the security forces, paramilitaries and guerrilla forces, both against civilians and their own personnel. Torture and other ill-treatment may be carried out for any number of purposes. As with other abuses, it is often employed as a means of intimidation to ensure civilian communities do not provide support to an enemy; to undermine and hinder organizations campaigning for human rights; to force civilians to incriminate themselves or others; or to extract information. Amnesty International has also documented numerous cases of civilians being tortured before they are extrajudicially executed and of captured or wounded combatants being tortured before they are killed.

Some 80 cases of torture were reported in 2007; around 45 of the victims were subsequently killed and seven were women. Of those cases where the perpetrator is known, the security forces were responsible for 60 per cent of the total, paramilitaries for 27 per cent, and guerrilla groups for around 11 per cent.⁵² However, because of serious problems of under-reporting, these figures are thought to significantly under-estimate the scale of the problem.⁵³

According to witnesses, on 14 April 2007 brothers Luis Guillermo Robayo Mora, aged 25, and Rubén Darío Avendaño Mora, aged 14, left their home in Agua Blanca in the municipality of Sácama, Casanare Department, to buy

livestock in Paz de Ariporo, also in Casanare Department. Because of this they were reportedly carrying a significant amount of money. The bodies of the two brothers were found on 16 April 2007. They had apparently been killed by members of the army's anti-kidnapping unit (Grupo de Acción Unificada de Libertad Personal, GAULA). The army claimed the brothers were guerrillas who were killed by army troops as they were about to receive an extortion payment. They had apparently been tortured. Rubén Darío had burns on his fingers and deep cuts across his throat. Luis Guillermo had acid burns on his abdomen.

“ The body of an unidentified man was found on 20 October 2007 in the municipality of Istmina, Chocó Department. Witnesses claim the man was killed by Black Eagle paramilitaries. The body bore the marks of a severe beating about the head and the abdomen had reportedly been cut open.

“ On 12 October 2007, the FARC killed Moisés Camaño Barrios and Wilson Hernando Fuentes in Sabana de Torres Municipality, Santander Department. The bodies reportedly showed signs of torture. Pamphlets accusing the two men of being army auxiliaries were found next to the bodies.

The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, defines torture as the intentional infliction of pain or suffering, whether physical or mental, for the purposes of punishment, obtaining information or a confession, intimidation or coercion.⁵⁴ The Convention sets the standards for methods by which states should implement the prohibition on torture at the national and international levels. These include introducing effective legislation and administrative and judicial measures to prevent torture and investigate reports of torture. States are also required to exercise universal jurisdiction to bring torturers to justice. Colombia ratified the Convention on 8 December 1987. However, it has not as yet ratified the Optional Protocol to the Convention, which came into force in June 2006. This requires states to allow visits to all places of detention by an international expert body and to set up national bodies to undertake such visits.

Common Article 3 of the Geneva Conventions prohibits torture, mutilation, cruel treatment and outrages upon personal dignity, in particular humiliating and degrading treatment. Under the Rome Statute of the ICC, torture, mutilation, cruel treatment and outrages upon personal dignity committed in situations of armed conflict are war crimes; and torture, if committed as part of a widespread or systematic attack, can constitute a crime against humanity.

INDISCRIMINATE ATTACKS: THE USE OF LANDMINES AND BOMBING

Guerrilla groups – mainly the FARC and to a lesser extent the ELN – continue to use anti-personnel mines, which more often than not are improvised. Reports of landmine use by paramilitaries are rare, although in February 2006 the security forces reported that they had discovered a paramilitary arms cache which included 500 anti-personnel mines in Meta Department.

Colombia reportedly has the highest number of landmine victims in the world.⁵⁵ According to the Colombian government’s Presidential Programme for Human Rights and International Humanitarian Law, there were 884 victims of landmines in 2007 – 193 of whom died of their injuries. This was a slight decrease from 2006 when 1,167 cases were recorded, the highest figure since 1990, when 22 victims were registered.⁵⁶

Of the total number of casualties recorded in 2007, 696 were military and 188 civilian. However, the figure for civilian casualties is probably an underestimate since many victims are likely to live in inaccessible areas with scant access to medical services. Many civilian victims are also likely to be unwilling to report such injuries because of well-founded security concerns. According to Colombia’s 2007 Article 7 report,⁵⁸ more than half of the country’s 1,098 municipalities spread over more than 30 departments – especially Antioquia, Meta and Bolívar – are affected by landmines.⁵⁹

On 7 February 2008, a 12-year-old boy was killed and his father injured when they stepped on a mine reportedly placed by the ELN in the hamlet of El Decio in Samaniego Municipality, Nariño Department. That same month, the UNHCR reported that more than 1,000 families in Samaniego were trapped in their homes because of fears about land mines in the area.⁵⁷

On 29 October 2007, three manual coca eradicators were killed by anti-personnel mines placed by the FARC in the Municipality of Puerto Guzmán in Putumayo Department. Three other workers and two police officers were injured.

Guerrilla groups, principally the FARC, also continue to use other low-precision weapons, such as gas cylinder mortars, car bombs, booby traps and other improvised explosive devices. These devices are more often than not used against military targets but are almost always placed in areas, such as urban centres, which are primarily used by civilians. Although usually not the intended target, civilians have often been the main victims of these attacks. The FARC were allegedly involved in at least some of the bomb attacks which rocked a number of urban areas in 2007.



© AP Photo/William Fernando Martinez

One woman civilian and two members of the security forces were killed and nine other people were injured when an explosive device, allegedly detonated by the FARC, went off in the centre of the city of Buenaventura, Valle del Cauca Department, on 26 October 2007.

Three people who lost limbs in landmine explosions receive help and support to cope with their injuries at a home run by the church in Bogotá, April 2006. Colombia reportedly has the highest number of landmine victims in the world.

On 16 March 2007, a car bomb exploded outside a police building in the centre of the city of Cali, Valle del Cauca Department. One civilian was killed and more than 40 were injured. Some 240 properties were damaged. The authorities attributed the explosion to the FARC.

Under the IHL principle of distinction, attacks must be directed only against military objectives. Parties to the conflict must distinguish between civilians and combatants and between civilian objects and military objects. Intentionally directing attacks against civilians and civilian infrastructure constitutes a war crime. Intentionally launching indiscriminate attacks, including disproportionate attacks, is also a war crime. Although civilian defence personnel, equipment and facilities are not mentioned in IHL rules governing non-international conflicts, as civilian organizations (objects) they must be protected.⁶⁰ Methods of warfare must be chosen that avoid or at least minimize loss of civilian life, injuries and damage to civilian property. Each party to a conflict must seek to protect civilians and civilian property under its control

from the effects of an attack. Whenever feasible, military objectives should not be located in or near densely populated areas.

IHL also prohibits the use, production, stockpiling or transfer of certain weapons, mainly because they cause excessive suffering or injury or may be inherently indiscriminate (or both). Such weapons include anti-personnel landmines.

All sides in the conflict continue to flout the principles of distinction and proportionality. Military operations by the warring parties often take place in or close to civilian communities, while guerrilla groups often use weapons which are expressly prohibited, such as anti-personnel landmines, or use other weapons, such as gas cylinders, in a manner which poses a disproportionate and indiscriminate threat to the safety of civilians.

The 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (the Ottawa Convention) banned all anti-personnel mines. It was ratified by Colombia on 6 September 2000. In 2004, the government announced it had destroyed all the military’s stockpile of anti-personnel landmines. However, as of August 2007, at least 30 military bases were still mined; the government has said it will demine these by 2011.

4/CIVILIANS: STILL BEARING THE BRUNT OF THE CONFLICT

Colombians from all walks of life have suffered as a result of the conflict, from poor subsistence farmers forced to abandon their homes and livelihoods because of armed skirmishes between the warring parties, to wealthy businesspeople kidnapped for ransom. But there are specific groups and communities which have been disproportionately affected by the conflict. These are not victims caught in the crossfire, or “collateral damage”, but individuals and groups who have been deliberately targeted because of who they are, what they do or where they live.

VIOLENCE AGAINST WOMEN

Women and girls are targeted by all parties to the conflict – to sow terror within communities and so make it easier for military control to be imposed; to force whole families to flee their homes and allow land to be appropriated; to wreak revenge on adversaries; and to exploit them as sexual slaves. Women are also targeted in retaliation for their work as human rights defenders.⁶¹

Sexual and gender-based violence is not a new phenomenon in Colombia; it has been a constant in the country’s history, and a defining part of the conflict. Rape, used as a method of torture and sometimes as a means of injuring the “enemy’s honour”, has been a common feature of the conflict. It is not only women civilians that have been affected. Some women guerrilla combatants have been forced by their commanders to use contraception and to have abortions.⁶²

The sexual abuse and exploitation of women and girls in the context of the conflict remains a largely “hidden problem” compared to other human rights abuses. In part this is because violence against women is often still seen as a private matter and as a normal fact of life. Fear and shame about sexual abuse have also prevented many women from speaking out. Women and girls in Colombia, as elsewhere, experience domestic and community-based violence. However, the conflict exacerbates these forms of violence and the gender stereotyping which underpins them.

In 2007, more than 125 women were killed for socio-political reasons outside of combat (97 in 2006, 187 in 2005, 257 in 2004, 343 in 2003 and 413 in 2002) – in



Women's march for peace, to mark International Day for Elimination of Violence Against Women, 25 November 2007. The demonstration was held in Popayán, Cauca Department, and continued on to Rumichaca, on the border with Ecuador, to highlight the plight of displaced women in the south of the country.

the street, home or workplace – and 17 subjected to enforced disappearances (5 in 2006, 16 in 2005, 34 in 2004, 55 in 2003, and 34 in 2002).⁶³

However, in Colombia, as elsewhere, official figures on sexual violence do not reflect the sheer scale of the problem. Rape, for example,

is thought to be significantly under-reported. Few perpetrators are ever brought to justice for human rights abuses and levels of impunity for crimes of sexual violence are among the highest of all.

Women are typically the most affected by the trauma of displacement. Many displaced women will have recently lost their husbands as a result of the conflict. They will have been forced to flee their rural homes with their children, abandoning their livestock and possessions. What refuge is available in the surrounding shanty towns and cities is often precarious. Displaced women are at greater risk of being subjected to sexual violence, including rape, or having to resort to prostitution because their livelihoods and support networks have been destroyed. While on the move, and once they have settled elsewhere, displaced women encounter barriers preventing them from accessing goods and services and face a climate where they are often stigmatized as suspected guerrilla supporters.

One witness from Meta Department told Amnesty International delegates in March 2008 how paramilitaries in the area recruit under-age girls for prostitution. Many of these girls live in camps for displaced people next to the local military base. Delegates were told how soldiers from the base have sexual relations with girls from these camps, some of whom have become pregnant. These relationships have placed these girls at risk of attack by guerrilla forces who accuse them of having sexual relations with the enemy. There have also been many cases of under-age girls becoming pregnant through sexual activity as a result of relationships with members of guerrilla groups.

On 23 May 2007, army soldiers reportedly raided a house in Toribío Municipality, Cauca Department, where they attempted to sexually assault an 11-year-old girl.

On 26 March 2007, five paramilitaries from the Black Eagles – two women, two minors and a man – reportedly entered the home of two sisters aged 14 and 10 in the municipality of Bello, Antioquia Department. Some of the paramilitaries allegedly beat the two girls and sexually assaulted and killed the older one. A 60-year-old neighbour, José Mendieta, who reportedly came to the girls' assistance, was stabbed to death by the assailants.

Paramilitary groups have also threatened and killed sex workers in many parts of the country in an effort to remove people they regard as socially undesirable.

On 24 August 2007, Black Eagle paramilitaries reportedly circulated a pamphlet containing death threats in Santander park in Sincelejo, Sucre Department. The pamphlet listed at least seven women, all of them thought to be sex workers, who were declared to be military targets.

At the same time, paramilitary groups, together with criminal gangs, have abducted and raped women and girls in various parts of Colombia. As they subsequently forced these women and girls to work as prostitutes, these paramilitaries and criminal gangs are responsible for ongoing acts of rape. At least five women sex workers were killed, reportedly by paramilitaries, in Putumayo Department in 2007.

The right of women to live free from sexual violence is provided for expressly in international treaties, including the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará Convention), the UN Convention on the Rights of the Child, and the Rome Statute of the ICC. Under the International Covenant on Civil and Political Rights, the American Convention on Human Rights, the UN Convention against Torture and the Inter-American Convention to Prevent and Punish Torture, states are also under a general obligation to protect women from conduct, including sexual violence, which impairs enjoyment of human rights.

Several treaties – including the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and Belém do Pará Convention, both of which Colombia has ratified – stipulate that the state has a duty to assist victims of sexual abuse. Specific measures and means by which states can comply with their obligations in this area have gradually been established by international human rights protection bodies. On 23 January 2007 Colombia ratified the Optional Protocol to CEDAW, which provides for an international mechanism to which individuals can submit complaints alleging violations of CEDAW rights.

UN Security Council Resolution 1325, adopted on 31 October 2000, addresses gender issues in situations of conflict and post-conflict. It calls on all parties to armed conflict:

“to respect fully international law applicable to the rights and protection of women and girls, especially as civilians, in particular the obligations applicable to them under the Geneva Conventions of 1949 and the Additional Protocols thereto of 1977, the Refugee Convention of 1951 and the Protocol thereto of 1967, the Convention on the Elimination of All Forms of Discrimination against Women of 1979 and the Optional Protocol thereto of 1999 and the United Nations Convention on the Rights of the Child of 1989 and the two Optional Protocols thereto of 25 May 2000, and to bear in mind the relevant provisions of the Rome Statute of the ICC.”

Resolution 1325 also calls on all parties to armed conflict to take special measures to protect women from gender-based violence, especially rape and sexual abuse, and all other forms of violence in situations of armed conflict. It emphasizes the responsibility of states to end impunity and prosecute those responsible for genocide, crimes against humanity, and war crimes, including those relating to sexual and other violence against women and girls. It stresses the need to exclude these crimes, where feasible, from amnesty provisions. It also calls on:

“all actors involved when negotiating and implementing peace agreements, to adopt a gender perspective including, inter alia: (a) The special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction; (b) Measures that support local women’s peace initiatives and indigenous processes for conflict resolution, and that involve women in all of the implementation mechanisms of the peace agreements; (c) Measures that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary”.

On 14 April 2008, the Constitutional Court issued a judicial decree on the rights of women displaced by the conflict.⁶⁴ The judicial decree made an explicit link between displacement and sexual violence, and concluded that the conflict, and forced displacement, has a qualitatively and quantitatively disproportionate impact on women. It called on the government to establish 13 specific programmes to protect women displaced by the conflict. The programmes cover issues such as sexual

violence, health promotion, educational assistance, access to land, assistance for Indigenous and Afro-descendant displaced women, prevention of violence against women leaders, the right to truth, justice and reparation, and psycho-social assistance for victims of the conflict.

Rape and other forms of sexual abuse are prohibited under Common Article 3 and Additional Protocol II of the Geneva Conventions. Additional Protocol II explicitly prohibits crimes such as rape, enforced prostitution, sexual slavery, indecent assault, sterilization, and degrading treatment. Sexual violence can be committed against both women and men. While international human rights law defines rape as torture, IHL defines them as two distinct categories of violation.

Under Article 8(2)(c)(ii) of the Rome Statute of the ICC, “Committing outrages upon personal dignity, in particular humiliating and degrading treatment” constitutes a war crime. Under Article 8(2)(e)(vi), “Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions” is a war crime. Under the Article (7)(1)(g), rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity, are defined as crimes against humanity when committed as part of a widespread or systematic attack against any civilian population. When committed in the context of an armed conflict, these offences constitute war crimes. The ICC has jurisdiction over individual acts of “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions”, when committed in international and non-international armed conflicts.

CHILDREN IN THE ARMED CONFLICT

Children are not immune from the horrors of the conflict. All the warring parties have killed and committed other types of human rights abuses against children.

Two children, aged 15 and 16, and an 18-year-old man, were forced to walk along a narrow path. In the darkness they were forced to stand at the edge of the path and hold hands. Then each one was shot through the heart. The killings in Filadelfia, Caldas Department, on 11 April 2007 were reportedly carried out by paramilitaries.

On 16 January 2008, two boys aged 12 and 14 were killed, allegedly by the FARC, in the municipality of La Hormiga, Putumayo Department. Their families' homes were then burned down. The killings were apparently in reprisal for the boys' refusal to join the FARC.

On 16 March 2007 at around 6am, residents of the hamlet of El Triunfo, Aguazul Municipality, Casanare Department, heard gunfire although no fighting had been reported in the area. When the residents approached, the army had cordoned off the area. Some residents expressed their concerns that the victims might be Daniel Torres Arciniegas and his 16-year-old son Roque Julio Torres Torres, because they had been the subject of constant harassment by the army and Roque was a witness to several extrajudicial executions. When Ángela Torres Valbuena went to look for her husband and son she found the road blocked by army troops. At the same time a truck passed by with two bodies. A soldier told her the bodies could be those of her husband and son while another soldier apparently was laughing as he made a victory sign at her. Daniel and Roque Torres were reportedly killed by members of the XVI Brigade of the army, which claimed they were guerrillas killed in combat.

All parties to the conflict use children in a variety of ways to further their military objectives. Both the guerrilla and paramilitary groups continue to recruit children as combatants. Estimates suggest there are between 8,000 and 13,000 child soldiers in Colombia. The average age at which children are recruited is 13, although some have been as young as seven. Many of these children join the ranks of the illegal armed groups “voluntarily”, because they seem to offer a way out of poverty and misery, and because the children, and especially girls, are often sexually seduced by the combatants. Many families have been forced to flee for fear that their children might be recruited or because they have been threatened by paramilitary and guerrilla groups after they tried to stop their children from being taken away.

In February 2008, four girls and five boys, aged between nine and 15, were taken in by an NGO for their protection after guerrillas attempted to recruit them. Their stories of how they were forced to flee to prevent their forced recruitment by guerrilla and paramilitary groups are typical of the dangers facing children throughout Colombia.

“They told my friend she had a beautiful body. She is 13 like me. We were thinking of going, but I didn’t go. She did.”

13-year-old girl, name withheld

“They tell you so many things, they promise things, so you think about it.”

13-year-old boy, name withheld

“I confronted them and told them to leave me and my daughter in peace, not to insist. They threatened me. I left immediately with what I had and brought my daughter.”

Father of a 13-year-old girl, name withheld

“They already took one of my daughters... They have just taken her. I don’t want the same for my other children. The father, who abandoned us a long time ago, found out and is now very angry about what’s happened to us, but I couldn’t do anything. It happened so quickly and I don’t even know how it happened, but they took her... who knows if I will ever be able to see my daughter again some day.”

A mother forced to leave the area because of fears that her son would also be recruited by guerrillas

“They told me not to take him out of there, that why was I doing that. I told them that I had asked [name withheld] for help and that he had found a way out for us and that I would not pass over the chance to save my son [...]. But we don’t know what will happen when we return.”

Mother of a young boy, name withheld

Guerrilla groups tend to recruit individual or relatively small groups of children at any one time, and in most cases in rural areas. In contrast, throughout 2007 and 2008, there were numerous reports of large-scale recruitment of children by paramilitaries in major cities such as Medellín, Bogotá and Cartagena. During 2007 and 2008, Amnesty International also received reports that guerrilla groups were recruiting children in and around a school in Putumayo Department, while paramilitaries and criminal gangs were recruiting girls for prostitution from that same school. The school authorities were forced to create boarding facilities for the students to try and protect them.

The security forces do not officially recruit children as combatants. But they do use children as informers, both to pinpoint the whereabouts of guerrilla groups and to identify individuals who sympathize or collaborate with them. There are also reports of soldiers soliciting information from children in schools, enticing them with sweets, money or threats. Deserters from guerrilla groups, including children, have also been used by the army to identify guerrillas and their sympathizers.

In December 2007, two men in civilian clothes approached 12-year-old Felipe⁶⁵ and some other boys in a street at the entrance to his neighbourhood in Valle del Cauca Department. They told the boys that in the next few days the guerrilla militia which operates in his neighbourhood would bomb the area and that their families would be killed. They asked the boys whether they preferred to die in the bombing or would instead warn the authorities. The boys agreed to inform the army and police about any strange goings-on. A few days later the men gave the boys mobile phones so that they could warn the authorities. Felipe met up with the men on several occasions and even visited the police headquarters to verify the identity of a recently captured person. He was rewarded with 20,000 pesos (around US\$10). In February 2008, while Felipe was in the street, he received a call from one of the men asking him about the “bandits”. He did not reply since the street was full of people. A member of the guerrilla militia observing Felipe grabbed the phone, smashed it

and threatened to kill Felipe. However, another member of the militia intervened and told Felipe to leave the neighbourhood, which he did. “I only helped them so that I could get a mobile phone, and the money is useful”, Felipe said.

On 6 March 2007, the Ministry of Defence issued Directive 30743 which prohibits the use of children by the security forces for intelligence purposes, especially children rescued from the ranks of illegal armed groups. But according to the 2007 UN Secretary-General’s report on Children and armed conflict, the security forces continued to employ children in intelligence and other similar activities.

“[T]he Defensoría del Pueblo reported that in Cauca, a child demobilized from FARC was used by the XXIX Brigade as an informant for the armed forces in an operation and was later killed at the age of 19 years while in combat with FARC, in contravention of the Paris Principles and Guidelines on children associated with armed forces or armed groups. In April 2007, two children aged 8 and 11 in Urrau, Chocó Department, were forced by the national army to carry materials for them. In Bebedo, Chocó Department, reports received by the United Nations in June 2007 confirm that the armed forces operating in that area provided children with food in exchange for cleaning and maintaining their weapons. The Defensoría del Pueblo continues to report children being kept for unauthorized periods in police stations, army battalions or judicial police premises.”⁶⁵

Amnesty International has also received information on many similar cases involving the use of children by the security forces.

On 2 August 2007, two boys aged seven and 10, members of the Peace Community of San José de Apartadó, were stopped by army soldiers as they walked along a road five minutes from the community to San Josesito. The soldiers asked the boys if they would like to carry a rifle like the ones they were carrying and join them. The boys responded that they wanted to be campesinos in the community. The soldiers then accused the boys of being guerrillas and threatened them.

Despite concerns about involving children in the conflict, the security forces also apparently continue to carry out civic-military activities with children. The Colombian Air Force, for example, has developed a programme in Antioquia called “Grupo Juvenil Halcones” involving some 70 children between the ages of eight and 16. These children participate in activities designed to “serve the Fatherland, Colombia, through the Air Force”. The children are reportedly given military insignias and uniforms. Such programmes are not strictly speaking breaches of IHL, but they do place these children, and their families, at risk of revenge attacks by guerrilla forces and while they are on air force premises the children are in danger should guerrilla forces launch an attack on the installation.

The army, as well as guerrillas and paramilitaries, have breached the right to education by repeatedly using school buildings in rural areas as posts for their combatants. In some cases the school buildings are still in use by children. Guerrilla groups have also violated IHL by placing mines around schools which had previously been occupied by army soldiers, making such schools unusable.

“The [guerrilla] has placed a series of explosive devices in the urban centre of Arauquita [Arauca Department], three in the main park, one in the stadium, one on the bank of the Arauca River, one near the electricity substation... and two devices more, near the Simón Bolívar school, which damaged the computer room of the school... This wave of attacks has caused panic and anxiety among the population of this municipality, especially among students, who are the most affected by this type of offence.”

Witness recounting events at the end of February 2007

Battles between the army, guerrillas and paramilitaries have also taken place near or in school buildings, or near to where children are playing. Such actions demonstrate the failure by all sides to take precautions to protect the civilian population as required by IHL.⁶⁷

According to witness testimonies, on 5 July 2007, children from the Indigenous reservation of Piapoco de Cali Barranquilla, in Cumaribo Municipality, Vichada Department, were playing by the River Uva, when they were surprised by the arrival in four motorized canoes of troops from the Marine Infantry No 52 of the navy. The terrified children fled into the rainforest, leaving their canoe behind. On seeing the abandoned canoe, the troops reportedly opened fire without warning in the direction in which the children had fled, causing panic. The troops fired rockets which detonated 50 metres from where the children were hiding.

In February 2007, Indigenous communities reported that army helicopters fired indiscriminately on the Indigenous reservation of Honduras, Morales Municipality, Cauca Department. During the shooting the canteen of the local school was damaged.

The Optional Protocol to the UN Convention on the Rights of the Child on the involvement of children in armed conflict, which is also applicable to internal conflicts and which Colombia ratified in 2005, prohibits the recruitment of children (under 18) as combatants. Article (4)(3)(c) of Protocol II of the Geneva Conventions expressly prohibits children under 15 being conscripted or enlisted into the armed forces or armed groups or used in other military activities, such as information gathering, transporting ammunition and food, and transmitting orders. The Rome Statute of the ICC makes recruitment of children under 15 years of age a war crime.

Article 13 of the International Covenant on Economic, Social and Cultural Rights ensures the right of everyone to education. As part of the obligation to respect this



Pedro Jota Gómez School, Medellín, Antioquia Department. In 2002 the school was caught in the crossfire between the security forces and a guerrilla group using it as a base.

right, states should ensure access to schools and ensure that the schools are safe. This guarantee is also reflected in IHL. Article 4(3)(a) of Protocol II of the Geneva Convention also provides that children are entitled to receive an education as a component of

fundamental guarantees of humane treatment.

On 12 February 2008, the Colombian government finally accepted the reporting and monitoring mechanisms under UN Security Council Resolution 1612 (2005) on children and armed conflict, but expressed reservations about extending the mechanism to cover acts of sexual violence. Under Resolution 1612 those countries on the agenda of the Security Council would be examined first – so-called Annex I countries like Burundi, Congo, Côte d'Ivoire, Somalia and Sudan – and then, after a review, it would be extended to Annex II countries – Colombia, Myanmar, Nepal, Philippines, Sri Lanka and Uganda – that are not on the Security Council agenda. Colombia was one of the last countries in Annex II to express a willingness to formally accept the mechanism. The Security Council Working Group on Children and Armed Conflict will now be able to examine reports on Colombia and make any appropriate recommendations on the issue.

INDIGENOUS AND AFRO-DESCENDANT COMMUNITIES

Together with campesinos, Indigenous and Afro-descendant communities are among the groups of civilians most affected by the conflict. For example, they are more likely to be forcibly displaced. This is because such communities are more often than not located in areas of intense military conflict, most of which are rich in biodiversity, minerals and oil. At particular risk of attack are those communities living in areas earmarked for large-scale economic projects, such as mineral and oil exploitation, agro-industry developments or hydro-electric schemes. The precariousness of the situation of these communities is compounded by deeply entrenched discrimination and marginalization.

Combat between the parties to the conflict has often placed Indigenous communities, as well as other civilian communities, including poor farmers, in danger. Such combat has also led to whole communities being isolated and trapped (*confinamiento*) and unable to access food or medicine because of the fighting. People have also been confined to their communities because of landmines or because of restrictions placed on the transportation of foodstuffs and medicines by the warring parties, who often argue that such goods are destined for the enemy.

On 12 February 2008, fighting between the security forces and guerrilla groups in and around the Huila Indigenous reservation in the municipality of Tierradentro, Cauca Department, led to the displacement from the area of more than 700 people.

On 8 February 2008, in the Murindó and Chageradó reservations in Antioquia Department, residents reported how two fighter jets strafed and bombed an area around the community's burial ground causing panic among the inhabitants. The bombing destroyed part of the cemetery – a sacred site for the Indigenous communities – and left a 4m² crater, 2m deep. Two bombs landed less than 200m from a house. An 18-month-old baby was hospitalized after she suffered from smoke inhalation which caused vomiting and breathing difficulties.

On 17 January 2008, army troops reportedly entered the Indigenous communities of Salinas and Chanó in Bojayá, Chocó Department. The troops reportedly used the community's football pitch as a landing strip for their helicopters and occupied a number of community buildings such as the school and the *tambos* (traditional meeting places). The community has complained that since the arrival of the troops, their freedom of movement has been restricted and that they have not been able to tend their crops, or go fishing or hunting. At the time, the community warned that the around 2,000 people living there were at risk of running short of food, especially the children.

Many Indigenous and Afro-descendant territories are legally and collectively owned by those communities who live on them, but many also reside on land which they

have inhabited for many years without land titles. With or without legal land titles, these communities are often attacked by both sides, often removing them from lands which are subsequently opened up for large-scale economic development. Those communities that campaign against such economic development are also often attacked by the security forces and paramilitaries, who repeatedly label these communities as "subversive". These accusations are often followed by paramilitary attacks. Guerrilla groups also threaten and kill members of Indigenous and Afro-descendant communities they accuse of siding with the enemy.

The human rights and humanitarian situation faced by Afro-descendant communities in the port city of Buenaventura, Valle del Cauca Department, is illustrative of the difficulties faced by many of these communities. In recent years, and especially since the supposed demobilization of paramilitaries, Buenaventura has experienced increasing levels of violence, much if not all of it involving FARC militias, paramilitaries and "common criminals" linked to the lucrative drugs trade. While many of the deaths have been associated with disputes over territory between these groups, civilians continue to bear the brunt of conflict-related violence.

On 16 November 2007, members of the security forces killed 17-year-old Brayam Andrés Valencia Mosquera in the neighbourhood of 12 de Abril. He was riding his motorbike when soldiers at a roadblock fired at him after he failed to stop immediately.

On 10 November 2007, the body of 18-year-old Elton Brayan Riascos, a student leader, was found with signs of torture. His face had been burned with acid and his genitals had been cut off. In the days prior to his death, Elton Brayan Riascos had been seen in the neighbourhood of Bellavista which, according to sources, is under the control of paramilitary groups.

The FARC have also been responsible for many killings in Buenaventura, often of those they accuse of siding with their enemies. Among the victims were Robinson Colorado Torres, killed on 11 November 2007; 18-year-old Mauricio Murillo González, killed on 12 September 2008; Winston Caicedo Valencia, killed on 6 September 2007; and Jessica Leidy Herrera, killed on 4 March 2007.

Civilians have also died as a result of explosive devices placed by the FARC. Victims have included 16-year-old Gladys Arboleda, killed on 26 October 2007, and Claudia Ximena Barahona, killed on 25 June 2007.

The FARC have also sought to undermine the organizational structures, such as the Community Councils (Consejos Comunitarios), of Afro-descendant communities in several parts of the country, including Chocó, Nariño, Cauca and Valle del Cauca



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departments. The FARC, and also the paramilitaries, see such community councils as a challenge to their authority and also as a threat to their drugs-trafficking interests, given these communities' refusal to grow coca. Afro-descendant and Indigenous communities living along the River Atrato in Chocó Department have repeatedly been forcibly displaced in the aftermath of killings and threats against community leaders.

Burial of four members of an Indigenous community killed in August 2005 when hooded men from an unidentified group armed with assault rifles raided their communities in the Nuestra Señora Candelaria de la Montaña Indigenous reservation in Caldas Department.

On 7 November 2007, the FARC kidnapped Bonifacia Caicedo Valoyes from the community of Tanguí, on the banks of the River Atrato, Chocó Department. This followed the kidnapping by the FARC of two leaders from the same community in August 2007; the two were released after a few days. These kidnappings led to the mass displacement to the city of Quibdó on 11 November of 674 people from Tanguí and 82 people from the neighbouring Afro-descendant community of Paina, including 300 children.

At the end of 2007, the FARC issued an ultimatum to all Community Council leaders in Nariño Department, giving them until April 2008 to disband the organizations or face death. Many leaders have since been forced to leave the area, while others have

been killed. The FARC have sought to promote their own community organizations. Paramilitary groups in the area have also pressurized Afro-descendant communities to grow coca. As part of their coca-growing strategies, guerrilla and paramilitary groups have promoted the migration of “colonos” – non-Afro-descendant campesinos from outside Nariño – into the area to grow coca.

Afro-descendant communities living in the Curvaradó and Jiguamiandó River Basin in Chocó Department have also been the victims of threats and killings, primarily from paramilitary groups and the security forces. In the late 1990s many of these communities were violently displaced from their lands by paramilitary groups acting in collaboration with the security forces. Many of those who left have since sought to return but have found that their lands – over which they have legal collective ownership – had been taken over by illegal palm oil and logging concerns. Despite the fact that the Colombian authorities have acknowledged the communities' legal ownership over their land, the palm oil and logging companies have refused to leave and have continued to sow more palm and to cut down virgin forest in land owned by the community.

Some members of these Afro-descendant communities have organized themselves in Humanitarian Zones (see page 60) to protect themselves more effectively from attacks and to send out a message to the parties to the conflict that their rights as civilians must be respected. However, many members of the Community Councils in the area have been threatened because of the stance they have adopted in defence of their land rights and against the local palm oil companies.

On 5 February 2008, information was received by a Colombian NGO working with the Afro-descendant communities in the Jiguamiandó and Curvaradó River Basin that a Colombian palm oil company operating in the area had offered US\$2,500 to anyone who killed Ligia María Chaverra, the legal representative of the Curvaradó Community Council, and Manuel Denis Blandón, the former legal representative of the Jiguamiandó Community Council.

In an interview published in the newspaper *El Tiempo* on 23 December 2007, Attorney General Mario Iguarán announced that the Human Rights Unit of the Attorney General's Office had opened a formal investigation into 23 businesspeople linked to palm oil firms in Curvaradó and Jiguamiandó. They are reportedly being investigated for membership of paramilitary groups, forced displacement, falsification of documents, land seizures and environmental crimes.

The human rights and humanitarian situation of Indigenous communities living in Nariño Department – in particular the Awá – has been especially acute because of fighting between the security forces and guerrilla groups, which has affected much of the south of the country. This led to repeated mass displacements of Indigenous communities in Nariño throughout 2007.

“ In September 2007, more than 1,000 members of the Awá, almost half of them children, were displaced from the Inda Sabaleta reservation in Tumaco Municipality, Nariño Department, following fighting between the army and guerrilla groups inside the Awá reservation.

“ In April 2007, more than 6,000 civilians, many from Indigenous communities, were forced to flee their homes in Nariño Department following repeated outbreaks of fighting between the army and guerrilla groups. Most of these displaced Indigenous communities have gradually returned.

All the parties to the conflict also continue to kill members of Indigenous communities. In the department of Nariño alone, 46 Awá were killed in conflict-related violence in 2000-2007. Of these, the FARC were responsible for 22 killings, the ELN for three, the security forces seven, and the paramilitaries six. According to statistics from Indigenous organizations, more than 40 members of Indigenous communities were killed in 2007 in the country as a whole, down on the 75 recorded in 2006 and the 112 in 2005. More than 400 Indigenous people were killed in 2002. There were also at least 14 deaths of members of Indigenous communities as a result of anti-personnel mines in 2007.⁶⁸

“ On 22 March 2008, armed men, thought to be paramilitaries, reportedly entered the Awá reservation of La Vega Changüí Chimbuza, Ricaurte Municipality, Nariño Department, looking for Alonso Rosero Moreno, John Sotelo Rosero and Paulino Fajardo Marín, whose names were on a list the armed men were carrying. The three men were taken away and their bodies were subsequently found. They had been shot dead.

The UN Declaration on the Rights of Indigenous Peoples was adopted on 13 September 2007 after more than two decades of discussions. The Declaration provides guidance on basic measures needed to ensure the dignity, survival and well-being of some of the world's most impoverished and marginalized peoples. The Declaration recognizes the rights of Indigenous Peoples to the lands, territories and natural resources that are critical to their ways of life. The Declaration also affirms that Indigenous Peoples, like all peoples, have the right to self-determination. The Declaration was adopted by the UN General Assembly by a vote of 143 to four with 11 abstentions. Colombia abstained.

RESISTANCE IN ACTION: THE PEACE COMMUNITY OF SAN JOSÉ DE APARTADÓ

The Colombian conflict has forced millions of civilians, mostly from remote rural areas, to flee their homes. Faced with the stark choice of living in miserable conditions in shelters far away from their homes, some communities have organized themselves to demand the conditions that would allow them to return to their lands. They have demanded that the parties to the conflict respect their decision not to take sides in the conflict. Such communities are known by a variety of names, such as Humanitarian Zones or Peace Communities and have involved Afro-descendant, Indigenous and campesino communities. The inhabitants of the Peace Communities, for example, have pledged not to participate or be drawn into the conflict and have therefore refused to bear arms or to provide information or logistical support to either side in the conflict. In return they have demanded that the parties to the conflict do not enter the boundaries of their communities and respect their right to life, their status as civilians and their decision not to participate or collaborate with any of the warring parties. But these efforts have generally been viewed with suspicion and met with hostility from all the parties to the conflict.

In the 1990s, faced with the constant threat of forced displacement and human rights abuses committed by both sides in the conflict, one such community, living in San José de Apartadó in the municipality of Apartadó in Antioquia Department, sought the support of the Catholic Church and of Colombian human rights organizations to examine strategies which would enable the community to resist forcible displacement and demand respect for their right to life. In 1997, this led to members of some of the communities which make up San José de Apartadó declaring themselves a Peace Community. This declaration represented a call to the warring factions to respect the neutrality of the civilian population in the conflict and to respect their right to life.⁶⁹

Since the self-proclamation of the community as a Peace Community, San José de Apartadó’s history has been marked by continued human rights abuses and violations of IHL committed mostly by paramilitaries and the security forces, but also by guerrilla groups. Since 1997, more than 170 of its members have been killed or subjected to enforced disappearance. There are currently some 210 families living in the Peace Community, a total of some 1,100 people.

On 21 February 2005, eight members of the Peace Community were killed and their bodies mutilated.⁷⁰ The victims were Luis Eduardo Guerra Guerra, a prominent leader of the Community, Alejandro Pérez, Alfonso Bolívar Tuberquia Graciano and Sandra Milena Muñoz Pozo, as well as four children, Bellanyra Areiza Guzmán, aged 17, Deiner Andrés Guerra, aged 11, Santiago Tuberquia Muñoz, aged two, and Natalia Andrea Tuberquia Muñoz, aged six.

Despite immediate efforts by the security forces and senior government officials to attribute the massacre to the FARC, strong evidence has emerged in judicial investigations that the killings were carried out by the security forces and paramilitaries. On 21 November 2007 army captain Guillermo Armando Gordillo Sánchez was arrested and charged with involvement in the massacre. Two XVII Brigade units were reportedly operating in the area at the time of the massacre: the Counter-insurgency Battalion No.33 Cacique Lutaima and the Francisco de Paula Vélez Battalion. The army had asserted that no troops were in the area on the day of the massacre. In February 2007 the Office of the Attorney General had announced it was investigating 69 soldiers from the XVII Brigade over their participation in the massacre. In March 2008, arrest warrants were issued against 15 members of the army, and in April 2008, six of the soldiers were charged in relation to the killings. In July 2008, Guillermo Armando Gordillo Sánchez, who at time of the massacre was in charge of the Bolívar Company of the Francisco de Paula Vélez Battalion, admitted his responsibility in the killings, and having links to paramilitary groups.

The scale and nature of the 2005 massacre galvanized an often indifferent international community into putting pressure on the Colombian authorities to take action to bring the offenders to justice. However, the state's response to the 2005 massacre remains an exception to the general rule; the story of San José de Apartadó is one of impunity for human rights abuses. Little, if any, progress has been made in the vast majority of investigations into abuses committed against members of the Peace Community over more than two decades. Because of its continued insistence that the parties to the conflict – including the security forces – remain outside its urban spaces, government authorities, the security forces and paramilitaries also continue to label it a subversive community, while guerrilla groups repeatedly accuse it of siding with its enemies.

The government contends that the Peace Community is failing to cooperate with judicial investigations into the killings. But such an assessment appears to be a serious misreading of the position adopted by the Peace Community. The Peace Community has repeatedly called on the Colombian authorities, initially through the creation of a Special Investigation Commission and subsequently through a Judicial Evaluation Commission, to create the conditions necessary to advance criminal investigations into human rights abuses and to guarantee the safety of witnesses. The Peace Community has also repeatedly called on the Colombian authorities to guarantee the safety of its members by ensuring the permanent presence of the Human Rights Ombudsman and the Office of the Procurator General in the Community.

On 3 December 2007, in a ruling made public in January 2008, Colombia's Constitutional Court ruled that:



The cross marks the place where the bodies were found of five of those killed in the massacre of the Peace Community of San José de Apartadó, Municipality of Apartadó, Antioquia Department, in February 2005.

*“With regard to the events that have taken place in San José de Apartadó, it is evident that the State has not done enough to prevent the Community from being a victim of so many crimes. The failing in their duty to provide protection is very serious. Equally serious is the lack of results achieved during the criminal investigations initiated after these crimes took place”.*⁷¹

On the issue of impunity, the Constitutional Court’s ruling stated that:

*“Despite the seriousness of the crimes committed against the Peace Community, and despite the fact that many of these crimes took place quite a number of years ago... no-one has yet been convicted for these crimes”.*⁷²

Paramilitaries continue to operate in the San José de Apartadó area and to threaten and harass the community, often in collusion with or with the acquiescence of the security forces.

On 24 April 2008, two armed men dressed in civilian clothes who identified themselves as members of the Black Eagles stopped Emilio Vasquez, a member of the Peace Community, Juan Goetz and Ever Goetz at a paramilitary roadblock in the hamlet of Mandarinos, one and a half hours walk from Arenas Altas, a hamlet which forms part of the Peace Community.

The armed men told the three community members that they would kill them if they saw them again and that all those living in the area were guerrillas. They pointed their guns at the three men and told them it might be better if they killed them right there and then. They then told them to go and that they knew what would happen if they saw them again. Reports suggest that members of the army looked on passively as this was happening.

On 20 April 2008, four paramilitaries reportedly stopped Alberto García in San José de Apartadó and offered to buy his land. They told him that if he refused they would have to negotiate with his widow. They said they had some “social cleansing” to carry out, and that they were buying land in the area because the region belonged to them. The four paramilitaries stayed in San José

de Apartadó the whole day and witnesses claim they spoke with the police on various occasions.

On 20 December 2007, some 20 paramilitaries held a meeting in the nearby town of Apartadó in which they reiterated their intention to destroy the Peace Community because its members “were talking a lot about what they [the paramilitaries] are doing in the zone.” That same day members of the army in San José de Apartadó told residents that they had a plan to end the Peace Community.

On 19 December 2007, Alfonso Usuga, who purchased goods from the Peace Community, was killed, reportedly by paramilitaries, on the outskirts of Apartadó on the road that leads to San Josesito. In the past, those transporting goods to and from the Peace Community have been threatened by paramilitaries and some have been killed.

On 12 July 2007 in the area of Tierra Amarilla on the road between Apartadó and San José de Apartadó two gunmen who reportedly identified themselves as members of the Black Eagles forced a bus to stop (for many years paramilitaries have operated illegal checkpoints in the Tierra Amarilla area). They reportedly told the bus passengers they were controlling the area and that the “son-of-a-bitch Peace Community” was going to suffer. The next day on the same road a bus was reportedly stopped by the same two paramilitaries. They forced Dairo Torres off the bus and ordered the bus driver to continue his journey. The paramilitaries reportedly killed Dairo Torres there. The killing occurred a short distance from a police checkpoint situated along the same road. Witnesses also reported that earlier that same day two paramilitaries had been seen talking to the police. Dairo Torres was a member of the Peace Community and co-ordinator of the Alto Bonito Humanitarian Zone (Zona Humanitaria de Alto Bonito). In recent years, several co-ordinators from humanitarian zones have been killed, reportedly, by paramilitaries.

The security forces have also continued to directly threaten members of the Peace Community.

On 20 March 2008, a member of the Peace Community was stopped by the army on the outskirts of San José de Apartadó. They asked him what he was doing in the Community. He said that he would not give the army any information. The soldiers replied that they had informants everywhere and that everyone in the Peace Community was a guerrilla, that they all had to be exterminated. They also told him that if he valued his family and friends he would leave the Community because those “sons-of bitches guerrilla leaders and auxiliaries would die sooner rather than later”.

On 23 December 2007, María Margarita Giraldo Usuga, a member of the Peace Community, was reportedly abducted by members of the army in the hamlet of Arenas Bajas. She was subsequently killed and presented by the army as a guerrilla killed in combat. Her body reportedly showed signs of torture. On 6 January 2008 members of the army reportedly went to Margarita Giraldo's home in Arenas Bajas and threatened her family if they did not publicly admit that Margarita Giraldo was a guerrilla. The family members refused. Subsequently, the army reportedly told the family members to leave the area otherwise paramilitary forces would kill them.

On 10 December 2007, XVII Brigade soldiers reportedly threatened Yurlandis Tuberquia, a resident of La Unión and member of the Peace Community. The soldiers accused her of being a guerrilla and ordered her to leave the area or they would kill her and the child she was expecting.

On 23 November 2007 in Arenas Altas army troops reportedly detained Efen Espinoza Goes, a 10-year-old boy and resident of the Peace Community. The soldiers reportedly punched him, accused him of being a guerrilla and threatened to kill him if he did not tell them where the guerrillas were and to cut his fingers off so that he "could no longer fire a gun". The soldiers released him the same day and told him that next time they captured him they would kill him.

HUMAN RIGHTS DEFENDERS AND CIVIL SOCIETY ACTIVISTS

Human rights defenders, trade unionists and community leaders, among other activists, are at the forefront of efforts to ensure that political, social and economic rights in Colombia are respected. Many are active in reporting human rights abuses and violations of IHL by all parties. Sectors of the security forces and other state, government and judicial officials have long sought to tarnish their reputations and undermine their work through, for example, making public statements equating their activities with subversion⁷³ or through arbitrary detentions and criminal proceedings. Such proceedings have sometimes been accompanied by paramilitary threats or killings. Guerrilla forces have also targeted human rights and civil society activists, either because they criticized guerrilla actions or pursued activities that did not conform to guerrilla ideology.⁷⁴

The number of killings and enforced disappearances of human rights defenders, trade unionists, and community leaders had fallen in recent years. In 2007, 39 trade union members were killed or were the victims of enforced disappearance, compared to 77 in 2006. However, there was a sharp increase in killings and enforced disappearances of trade union members in the first half of 2008. At least 40 trade

union members were killed or were victims of enforced disappearance in the first eight months of 2008, more than in the whole of 2007.⁷⁵

On 17 April 2008, the body of Jesús Heberto Caballero Ariza, a leader of the Union of SENA Public Sector Employees (Sindicato de Empleados Públicos del SENA, SINDESENA) was found in Sabanalarga Municipality, Atlántico Department. His body bore signs of torture. He had been shot, and attacked with a machete-like weapon. His skull was fractured while his face had multiple wounds. Prior to his death, he had received death threats made by the Black Eagles paramilitary group. His death occurred a few days before a death threat signed by the Black Eagles, dated 21 April 2008, was circulated in Atlántico Department by email to trade union and human rights organizations. Jesús Heberto Caballero was reported to have been exposing corrupt practices within the SENA, the National Apprenticeship Service (Servicio Nacional de Aprendizaje).

A member of the National Union of Coal Industry Workers (Sindicato Nacional de Trabajadores de la Industria del Carbón, SINTRACARBON), Adolfo González Montes, was tortured and killed in his home in the town of Riohacha, in La Guajira Department, on 22 March 2008. His killing coincided with telephone death threats received by other SINTRACARBON leaders. Some of these leaders have also reported that their homes have been kept under surveillance by unidentified individuals. Adolfo González was killed as the trade union was preparing to start negotiations on working conditions with the companies that own the Cerrojón mining operation in La Guajira Department.

The number of human rights defenders killed has also increased, from around five in 2006 to more than 10 in 2007. Many also continued to be threatened.⁷⁶

On the evening of 29 June 2008, an unidentified armed man shot and killed Martha Cecilia Obando, known as “Doña Chila”, in the San Francisco de Asís neighbourhood of the city of Buenaventura in Valle del Cauca Department. Martha Cecilia Obando was President of the Association of Displaced Women (Asociación de Mujeres Desplazadas, ASODESFRAN) and a member of the Mothers for Life Local Network (Red Local Madres por la Vida), a community project for victims of violence related to the armed conflict which also campaigns for the right of victims to truth, justice and reparation.

On 4 November 2007, when Yolanda Becerra, president of the human rights NGO, Popular Women’s Organization (Organización Femenina Popular, OFP), based in the city of Barrancabermeja, Santander Department, heard a knock at the door of her flat, she opened the door without asking who was there, as two of her colleagues from the OFP had just left and she thought they might have returned. Instead, she was confronted by two hooded armed men who shoved her against the wall and threatened her with a gun. One of the men said: “son-of-a

bitch, it’s over, you have 48 hours to leave otherwise we will put an end to your family and you will not escape”. The men then searched her home for the next 15 minutes. Yolanda Becerra left Barrancabermeja following the attack.

There has also been a recent spate of threats against human rights defenders, especially in the aftermath of mass demonstrations held in 24 cities in Colombia and in 60 other countries on 6 March 2008 to protest against human rights violations committed by the security forces and the paramilitaries. These demonstrations followed mass protests against kidnappings by the FARC held across Colombia – and including one of the biggest marches ever seen in Bogotá – and abroad on 4 February 2008.

On 11 March several organizations, many of which participated in the 6 March events, received a death threat via email from the Metropolitan Front of the Black Eagles in Bogotá (Águilas Negras – Bloque Metropolitano de Bogotá). The threat accused the organizations of being “guerrillas” and named them as “military targets”. The email said: “You used the march on 6 March this year to bring us down further and turn people against us, we will begin to kill you one by one, we mean business, and we won’t leave any loose ends”. It goes on to say “Watch out you sons-of-bitches, your days are numbered”. The threat included photographs taken of one of the marches and said “we will start to disappear left-wing leaders such as...”and listed 28 individuals, 18 of whom are women and many of whom belong to human rights and Indigenous and other organizations which participated in the march. The threat also included the names of several human rights organizations, trade unions and other groups.

A number of trade unionists and human rights activists, some of whom were closely involved in organizing events or whose organizations participated in them, were killed or threatened just before or soon after 6 March. On 4 March, Carmen Cecilia Carvajal, a member of the trade union ASINORT, was killed in Ocaña, Norte del Santander Department. On 8 March, Leonidas Gómez, of the UNEB banking union, was found dead in his apartment in Bogotá. On 7 March, Gildardo Antonio Gómez of the teachers’ union ADIDA, was stabbed to death in Medellín. On 12 March, the body of Carlos Burbano, a leader from the health union ANTHOC and organizer of the march in southern Colombia, was found shot dead and with his face disfigured by acid in a rubbish dump in San Vicente del Caguán in the department of Caquetá.

Adriana González, a member of the human rights NGO, Permanent Committee for the Defence of Human Rights (Comité Permanente por la Defensa de los Derechos Humanos, CPDH), and organizer of the 6 March demonstration in Pereira, Risaralda Department, survived an apparent attempt on her life when gunmen fired on her house on 29 February. Iván Cepeda, a leading member of the coalition group, the National Movement of Victims of State Crimes (Movimiento Nacional de Víctimas de

Crímenes de Estado, MOVICE) and one of the main organizers of the March demonstration, also received email death threats before and after the march.

On 10 April, an emailed death threat signed by the Black Eagles was received by several human rights NGOs, trade unions and Catholic priests. The death threat stated that they were military targets and that their names were on a list of “undesirables” who must be eliminated. It accused them of being guerrilla supporters or guerrillas and said that they and other members of their organizations had been under surveillance in the municipalities of Tiquisio, Arenal, La Gloria and Regidor in Bolívar Department and in Aguachica, Cesar Department. The email continued: “Going down the list, you will be killed one by one for each criminal act that you organize against ‘democratic security’ in these towns.” It concluded by saying “We won’t hesitate to kill you; start getting your loved ones ready so that they can bury you.”

During 2007 the offices of several human rights NGOs were broken into – including those of Corporación Reiniciar, the Corporación Jurídica Yira Castro, the US-based Fellowship of Reconciliation, and Justapaz, a Mennonite human rights organization – and confidential case information stolen.

On 6 November 2007, staff members of Corporación Reiniciar arrived at the office and discovered that there had been a break-in. The staff reported that locks had been forced on file cupboards and some of the desk drawers. The staff found that a file about the enforced disappearance of a member of the UP was missing. Members of the army have been linked to this particular case. Corporación Reiniciar has campaigned for justice for the families of over 3,000 members of the UP who have been killed or subjected to enforced disappearance since the party was formed in 1985, mostly at the hands of the security forces and paramilitaries. The intruders left a piece of black ribbon in one of the cupboards they had forced open. Members of the organization fear that the ribbon was meant as a threat due to its symbolic association with mourning. Also taken from the office were two mobile phones that had been provided by the government as a protection measure for the staff. The safe had also been opened and some money removed, although a considerable amount was left.

Sensitive data belonging to other human rights NGOs was also stolen in 2008. Some of the information stolen was linked to cases being presented by some of these organizations to the Justice and Peace process. On 23-24 April, information held by the Association of Women from Eastern Antioquia (Asociación de Mujeres del Oriente Antioqueño) was stolen from their offices. On 20 April, information on around 600 victims of the conflict was stolen from the Cesar Youth Network (Red de Juventudes Cesarenses) in Valledupar, Cesar Department. On 15 February, data and photographic material was stolen from the Colombian Women’s Peace Alliance (Alianza de Mujeres Colombianas por la Paz) in Bucaramanga, Santander Department.

Local activists standing up for their communities in more outlying regions of Colombia and in often inaccessible rural areas, are at even greater risk of attack than those in the cities. In particular, numerous presidents of so-called Community Action Councils (Juntas de Acción Comunal, JAC) have been killed by all the warring parties. Members of JACs, who are elected to their positions, often act as spokespeople and leaders for the community, manage limited state funds for local projects, which the various factions often wish to control, and are often the first point of contact for victims of human rights abuses. This makes them vulnerable to accusations of collaboration with one or the other side. Several JAC members, as well as other community leaders, have been victims of extrajudicial executions committed by the security forces. The guerrillas have also targeted JAC members and other community leaders, particularly in Arauca, where the ELN and the FARC often accuse such leaders, as well as trade unionists and human rights defenders, of supporting the opposing guerrilla group. Paramilitary groups have also killed community leaders, including JAC members.

On 5 October 2007, two paramilitaries from the Black Eagles, who were riding a motorbike, stopped the vehicle in which Carlos Alberto Urbano, the JAC President from the hamlet of El Caraqueño, Miranda Municipality, Cauca Department, was travelling together with other community leaders. They forced Carlos Urbano out of the vehicle and shot him six times. He died later in hospital. The paramilitaries then threatened the other occupants of the car and rode off in the direction of an army encampment. Witnesses claim the paramilitaries had first arrived at the centre of Miranda on 11 September at the same time as members of the army.

The FARC are believed to have been responsible for the killing of Edilberto Velásquez Mesa, the President of the JAC in the hamlet of Potosí in Cajamarca Municipality, Tolima Department. Edilberto Velásquez Mesa was abducted a few hours before his body was discovered on 16 September 2007. He had been shot and his body also reportedly bore signs of torture.

Human rights defenders are at the forefront of strengthening the rule of law, protecting the rights of the individual and demanding efficient judicial investigations and proceedings. Paradoxically, their principal line of defence – the law and the judicial system – has also been misused to harass and intimidate such activists by the use of unfounded criminal charges against them.

Criminal investigations based on spurious or unsubstantiated charges are often opened against human rights defenders and trade unionists in order to stigmatize and harass them and prevent them from carrying out their work. Those under investigation or in detention have often been presented in the media as “subversives” or as supporters of subversive groups. This undermines the ability of defenders to carry out their work by compelling them to focus on defending themselves against criminal charges. This is especially true of human rights defenders working in small grass-roots organizations at the local level.

Spurious criminal charges which are widely publicized can both undermine the credibility of the work of human rights defenders and put them at risk of physical attack by paramilitary groups. Amnesty International is concerned that the judicial investigations carried out against human rights defenders, and other activists, are part of a strategy to silence and discredit them and distract attention from their exposure of human rights violations. States and their judicial authorities have a duty to investigate any criminal activity and bring to justice those responsible. These investigations should be conducted lawfully and those charged have a right to trials which conform to international standards of fairness. However, many of the criminal proceedings opened against human rights defenders and other activists have been initiated in the course of security force operations on the basis of spurious information from military intelligence files and on accusations by paid military informers rather than on evidence gathered in the course of impartial criminal investigations by the civilian investigative authorities.

The long-standing legal case against the Inter-Church Justice and Peace Commission (Comisión Intereclesial de Justicia y Paz), is one of several criminal investigations initiated against human rights organizations, community-based groups and trade unions. In September 2003, criminal charges were first filed against five members of Justice and Peace. These included allegations of corruption, drugs smuggling, homicide and forming illegal armed groups. The legal proceedings appeared to be connected to a Constitutional Court decision to allow the organization to participate in judicial proceedings into over 200 human rights violations committed by paramilitaries operating in conjunction with the army's XVII Brigade in 1997-1998, and to their campaign in defence of the collective land rights of Afro-descendant communities in the Jiguamiandó and Curvaradó river basin communities, Chocó Department. Although some of the criminal investigations against Justice and Peace have been dropped, members of the organization, and of the Afro-descendant communities they support, are still facing charges of rebellion and terrorism. Justice and Peace Commission members also continue to receive death threats.

In March 2008, the Black Eagles paramilitary group sent death threats to three members of the Justice and Peace Commission, Frank William Cayapur Delgado, Edward Mina Cuero and Yimi Armando Jansoy Muñoz, who have been helping Afro-descendant communities living in the Naya river basin area in the western departments of Cauca and Valle de Cauca, to secure the ownership of the land they farm. Isabelino Valencia, a member of the Naya river basin Community Council, was also threatened. Before this, three death threats had been delivered to the house in the municipality of San Francisco Naya, Valle del Cauca Department, where the members of Justice and Peace were living. The first arrived on 19 March, and included drawings of a skull and of a gravestone. It read: "Death. Read on and take heed, Justice and Peace. After monitoring your work we ask you to leave the area as we do not want any obstacles. William we know a lot about you. Eduar Yimy you should take care of yourself and know that we are also following that big mouth, Isabelino. Leave the area

soon. We do not want you and we are talking seriously. We are the para [military] group in control – the Naya Black Eagles in Buenaventura. We are waiting for you.” Two similar letters were delivered shortly afterwards. One was found in the backyard at around 10am the same day; the other was found on one of the window ledges the following day. The four human rights defenders sought refuge outside the area.

According to Article 22(1) of the International Covenant on Civil and Political Rights “[e]veryone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.” The government is obligated to ensure enjoyment of this right and to protect persons from interference with its exercise by other actors.

According to Article 12 of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted in 1999 by General Assembly Resolution 53/144:

“1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.”

Successive Colombian governments have sought to improve the safety of trade unionists and human rights defenders through a variety of measures designed to increase their security. This support is co-ordinated by the Protection Programme of the Ministry of the Interior and Justice. Measures have included the provision of bodyguards, armoured vehicles and mobile telephones. Any measures to protect such activists, in line with what those under threat deem to be appropriate, is welcome. But such measures have sometimes been withdrawn or restricted, even at times of heightened security risk for the individuals concerned. Budgetary constraints are often used by the authorities to justify these restrictions. Whatever the merits of such security measures, continued threats and killings of activists indicate that on their own they are not sufficient.

Moreover, the security bodies that play an active role in protection – for example the civilian intelligence service (Departamento Administrativo de Seguridad, DAS) – have still not been fully investigated for their alleged role in co-ordinating and colluding with paramilitary groups.⁷⁷ There is also concern that military intelligence files have yet to be revised and unsubstantiated incriminating information about human rights defenders and trade unionists removed, as promised by the government as long ago as 1998. In addition, the government appears to be promoting legislation that might grant immunity from prosecution to agents of the intelligence services. The DAS, which currently provides bodyguards to human rights defenders, trade unionists and others in the protection programme, told Amnesty International delegates that the government is planning to privatize the provision of bodyguards, which will in future be provided by private security firms. Amnesty International has in the past expressed concerns over the fact that there appear to be no legal barriers to prevent former members of illegal armed groups from joining private security companies, where they can legally be armed.

The government has also recently taken some action to address the almost total impunity for human rights abuses against trade unionists, partly as a result of increasing international condemnation about the high rate of killings. During the 95th International Labour Conference of the International Labour Organization (ILO), held in 2006, a “Tripartite Agreement” was signed – between the Colombian government, business representatives and the trade union confederations – to establish a permanent ILO presence in Colombia. This Permanent Representation of the ILO began to operate in January 2007. Its mandate is to promote and defend the basic rights of trade unionists, as well as monitor progress made by a special investigation unit of the Office of the Attorney General set up to investigate killings and arbitrary detentions of trade unionists. This unit has resolved a small number of emblematic cases. However, most of those responsible for the more than 2,200 killings of trade unionists since 1991 have not been brought to justice.

One of the cases partly resolved by this special investigative unit involves the killing of trade unionist Luciano Enrique Romero Molina in September 2005. On 26 November 2007, a judge sentenced two paramilitaries – one a DAS informant – to 40 and 37 years in prison for their role in the killing. The judge linked the killing to Luciano Enrique Romero’s trade union activities, despite previous claims made by the judicial authorities and repeated by senior government officials, that the motive for the killing was personal and that Enrique Romero was a member of a guerrilla group. However, those who ordered the killing have yet to be brought to justice.

5/CONCLUSIONS AND RECOMMENDATIONS

The real tragedy of Colombia’s long-running conflict lies in the lack of political will shown by all the actors to put a stop, once and for all, to the pernicious cycle of killings and other serious human rights abuses and violations of international humanitarian law. As this report has demonstrated, some indicators of conflict-related violence have shown a significant improvement in recent years, especially the reduction in hostage-taking and in the overall number of conflict-related killings of civilians. However, other human rights indicators – such as extrajudicial executions by the security forces, displacement, enforced disappearances, the killing of trade unionists, threats against human rights defenders, and forced recruitment by guerrilla and paramilitary groups – have not improved and in some cases have even deteriorated.

Guerrilla groups must put a stop to the killings of civilians, the taking of hostages, and other serious violations of IHL amounting to war crimes. The government, for its part, must put a stop to the unlawful killing of civilians by the security forces. It must also put a stop to the constant barrage of verbal and legal attacks against those very groups at the forefront of the struggle in defence of human rights. And it must end, once and for all, the phenomenon of paramilitarism. Most importantly, the two sides in this conflict – the state and guerrilla groups – must definitively respect civilian immunity and protect the civilian population from the effects of the conflict.

Even though finding a lasting solution to the 40-year-long human rights tragedy will not be easy, a blueprint for doing so has existed for 10 years. The human rights recommendations repeatedly put forward by the UN High Commissioner for Human Rights and the Inter-American Commission on Human Rights²⁸ – most of which have been persistently ignored by successive Colombian governments and by guerrilla groups – describe in detail the steps that the parties should take to put an end to human rights abuses and violations of IHL. The parties to the conflict must immediately and fully implement these recommendations. Creating the necessary conditions for the full respect of human rights and IHL is essential to establish the foundations of a stable peace process.

Many of the victims of this conflict and their families, as well as some Colombian human rights groups, have chosen to participate in the Justice and Peace process – the framework through which the paramilitaries have supposedly demobilized – despite their deep reservations about its effectiveness. Amnesty International respects

their decision to do so – despite its misgivings about the process – as well as the decision of other victims not to participate. It is to be hoped that some truth, and perhaps even some justice, will come out of this process and that at least some of the victims of violations by paramilitary forces will succeed in obtaining some form of redress. However, others, such as Yolanda Izquierdo, killed in Montería in January 2007, have already had to pay the ultimate price for seeking the truth. Unless steps are taken to ensure their safety, many more victims who are searching for the truth, and many of those supporting them, risk a similar fate. As for the victims of abuses committed by the guerrillas or directly by the security forces, the Justice and Peace process does not address their needs at all.

The international community clearly has a pivotal role to play in efforts to resolve the human rights crisis in Colombia. The stance adopted by many in the international community on several human rights issues has often been clear and constructive, and it has been particularly commendable in the case of the safety of human rights defenders and trade unionists. But the international community is currently failing to engage critically with the Colombian government on those issues where it is still failing to ensure respect for human rights, such as on full compliance with UN human rights recommendations. This has sent the Colombian government the unfortunate message that there will be no repercussions from the international community if it fails to make good on such commitments. If the international community is to make a meaningful and helpful contribution to the human rights situation, it must insist on full and immediate compliance.

AMNESTY INTERNATIONAL CALLS ON THE COLOMBIAN GOVERNMENT TO:

On general concerns:

- Publicly acknowledge the existence of an internal armed conflict. Failure to do so could undermine the application of international humanitarian law (IHL), and allow those responsible for attacks against civilians to evade accountability for such attacks.
- Publicly acknowledge the state's responsibility to resolve the serious human rights situation. The state is obligated to act in accordance with its responsibility to uphold the law; respect, protect and fulfil human rights; and ensure justice and redress for victims.
- Withdraw the declaration made under Article 124 of the Rome Statute of the International Criminal Court (ICC), which allows Colombia to defer the jurisdiction of the ICC to investigate war crimes for a period of seven years, as well as the declaration on amnesties and pardons made upon ratification of the Rome Statute.

- Publicly commit to full and prompt implementation of the human rights recommendations, some of them more than a decade old, of the UN High Commissioner for Human Rights and other UN bodies, as well as by the Inter-American Commission on Human Rights.
- Co-operate fully with the UN Human Rights Council and all its mechanisms, including by accepting outstanding mission requests by Special Procedures in line with Colombia’s standing invitation. The government should also make a specific request to receive a mission from the Special Rapporteur on extrajudicial, summary or arbitrary executions.
- Participate fully in the UN Human Rights Council Universal Periodic Review in December 2008 to ensure that the key human rights challenges in Colombia are addressed in an effective and transparent manner, leading to concrete improvements in the human rights situation in the country. In the context of the Universal Periodic Review, take advantage of the broad national consultation process with all relevant stakeholders called for by the Council to develop the long-overdue National Action Plan. The Plan should include milestones and deadlines.
- Sign and ratify the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

On the security forces:

- Publicly condemn violations of human rights and IHL committed by the security forces, including the increasing number of reports of extrajudicial executions. Make clear that such violations will not be tolerated and adopt measures to prevent and investigate them.
- Ensure full and impartial investigations into violations of human rights and IHL, and insist that public officials, including members of the security forces, responsible for supporting paramilitarism are investigated and brought to justice in civilian courts. In addition, members of the security forces implicated by judicial or disciplinary investigations in such cases or in collusion with paramilitarism should be suspended from duty until such time as their responsibility or innocence has been determined.
- Ensure that the military justice system complies with the Constitutional Court’s 1997 ruling by not claiming jurisdiction in human rights cases involving members of the security forces, and that the Office of the Attorney General instructs its judicial investigators to act in accordance with international principles which

stipulate that members of the security forces implicated in human rights violations should always be investigated by the civilian justice system.

On the paramilitary demobilization process:

- Ensure that perpetrators of human rights violations do not benefit from any legal measures exempting them from criminal prosecution or conviction. Where there is evidence of human rights violations, the judicial authorities must also properly investigate and prosecute those paramilitaries who supposedly demobilized and who were given de facto amnesties under Decree 128.
- Ensure that third parties, whether members of the security forces, state or government officials, politicians, or private individuals, who have engaged in conduct amounting to complicity in the unlawful acts of paramilitary groups, are properly investigated and held to account in a court of law.
- Ensure that the Principle of Opportunity is not applied in a way that would reinforce the impunity currently enjoyed by many members of illegal armed groups suspected of human rights abuses and by third parties linked to such groups.
- Establish a fair, transparent and effective process to identify and return all lands and other assets misappropriated by paramilitaries, including those transferred to third parties, and set a deadline for the return of these assets to their rightful owners or their families.
- Guarantee the safety of those victims and their representatives, as well as witnesses, participating in the Justice and Peace process, as well as of critics of the process.
- Ensure that paramilitary groups, which still operate with the complicity or acquiescence of the security forces, are effectively disbanded, disarmed and prosecuted.
- Adopt measures to ensure that demobilized combatants are not “recycled” into the conflict.
- Ensure that criminal investigations are continued in Colombia into human rights violations committed by the 14 paramilitary leaders extradited to the USA in May 2008 on drugs-trafficking charges, and ensure truth, justice and reparation for their victims.
- Withdraw support for any legislative proposal that might exempt members of the intelligence services from criminal prosecution.

On human rights defenders, trade unionists and other social activists

- Publicly acknowledge the legitimacy of human rights work and stop making public statements questioning the legitimate work of human rights defenders. Take effective measures to ensure that all public servants, including members of the security forces, respect the work of human rights defenders and ensure that those responsible for making unfounded or unsubstantiated allegations against defenders are subject to the appropriate sanctions.
- Implement the recommendations made by the UN Special Representative on Human Rights Defenders and fulfil the request for a follow-up mission that is outstanding since 2005.⁷⁹
- Implement the recommendations made in Amnesty International’s report, *Colombia: Fear and intimidation – The dangers of human rights work* (Index: AMR 23/033/2006).
- Ensure that the International Labour Organization’s (ILO) permanent presence in Colombia is able to promote and monitor effectively freedom of association rights in line with the June 2006 Tripartite Agreement, and to implement fully ILO recommendations, as well as those contained in Amnesty International’s report, *Killings, arbitrary detentions, and death threats – the reality of trade unionism in Colombia* (Index: AMR 23/001/2007).
- Ensure that the judicial authorities advance full and impartial criminal investigations into human rights abuses committed against human rights defenders and trade unionists, and ensure that the special investigative units of the Office of the Attorney General, which are investigating killings of trade unionists, receive full political support and adequate resources.
- End the misuse of the legal system to undermine the work of human rights defenders, trade unionists and community activists and end criminal prosecution of activists on spurious charges.
- Make good the commitment to make public the military intelligence files held on many human rights defenders, trade unionists and other activists, which are often used as the basis for initiating criminal proceedings against them.

On civilian communities and groups at particular risk:

- Ensure that measures are adopted to improve the effective protection of civilians, including internally displaced people, in line with UN human rights recommendations and the UN Guiding Principles on Internal Displacement.

- Comply with the particular obligation of the state to prevent the displacement of Indigenous peoples from their lands and territories and commit to uphold the rights contained in the UN Declaration on the Rights of Indigenous Peoples.
- Take effective measures to prevent the displacement of Afro-descendant peoples, campesinos and other groups in conflict zones and areas of military or economic importance who have a special dependency on or attachment to their lands.
- Publicly acknowledge the right of civilians not to be drawn into the conflict, and the legitimacy of the position adopted by civilian communities, such as the Peace Community of San José de Apartadó, to actively assert these rights.
- Carry out an evaluation of the status of criminal investigations into human rights abuses against the Peace Community of San José de Apartadó (and against other communities that have pursued similar strategies). This would be in line with repeated requests made by the community since 2002 to evaluate the work of the commission set up in 2000 to investigate the more than 170 killings and enforced disappearances carried out against members of the Peace Community. Fully comply with the December 2007 Constitutional Court ruling on the Peace Community.
- Implement the recommendations made by the UN Special Rapporteur on Violence against Women, and in Amnesty International's report, *Colombia: "Scarred bodies, hidden crimes" — Sexual violence against women in the armed conflict* (Index: AMR 23/040/2004), including taking decisive action to comply with UN Security Council Resolution 1325 on Women, Peace and Security and all international instruments for the protection of women.
- Comply with the April 2008 Constitutional Court ruling on women and displacement, which calls on the government to establish 13 specific projects to protect women displaced by the conflict.
- Ensure the full participation of non-governmental organizations (NGOs) in the special teams set up by UN Security Council Resolution 1612 on children and armed conflict, effective co-ordination with the UN on the reporting and monitoring mechanism (RMM), and the inclusion of sexual violence as a specific category within the RMM. Also, acknowledge that paramilitaries, as well as guerrilla groups, continue to recruit children and, as such, should not be removed from the UN Secretary General's list of parties that recruit or use children in situations of armed conflict.

On talks with guerrilla groups:

- Commit to reach a humanitarian agreement with guerrilla groups to remove the civilian population from the conflict. Any humanitarian agreement must include a rejection of amnesties for those implicated in serious human rights abuses.
- In any peace talks with guerrilla groups, ensure that respect for human rights and IHL are placed at the top of its negotiation agenda.

AMNESTY INTERNATIONAL CALLS ON GUERRILLA GROUPS TO:

- Publicly acknowledge their obligations to comply fully with international humanitarian law and make a public commitment to respect international human rights law.
- Comply fully and immediately with the recommendations directed to it by the Office of the UN High Commissioner for Human Rights and Inter-American Commission on Human Rights.
- Immediately and unconditionally release all civilians held by its forces and commit to put an immediate end to all kidnapping and hostage-taking.
- Order their combatants to treat prisoners, the wounded and those attempting to surrender humanely, regardless of whether these are civilians, members of the armed forces, or paramilitaries, and never to kill people under their control.
- Prohibit and put an end to the deliberate killing of non-combatants in all circumstances.
- Make a public commitment not to recruit anyone under the age of 18. All child soldiers should immediately be released.
- Commit not to use inherently indiscriminate weapons, such as anti-personnel landmines. Ensure that necessary precautions are taken in planning and carrying out attacks to protect civilians and civilian objects.
- Publicly denounce gender-based violence, whenever and wherever it occurs, issuing clear warnings or instructions to their forces that violence against women, including rape and other forms of sexual violence, will not be tolerated, nor will the practice of forced abortion or contraception in the case of women combatants in their own ranks.

- Remove from their ranks any individuals accused of or implicated in committing or ordering abuses, such as deliberate killings, hostage-taking, torture or ill-treatment of prisoners.
- Agree to sign a humanitarian agreement with the government to remove the civilian population from the conflict.

AMNESTY INTERNATIONAL CALLS ON THE INTERNATIONAL COMMUNITY TO:

- Urge all parties to the conflict to comply with the human rights recommendations of the Office of the UN High Commissioner for Human Rights, other UN bodies, and the Inter-American Commission on Human Rights and, together with the Colombian government and civil society, put in place a process with a clear time-frame and milestones to monitor compliance with these recommendations.
- Use the opportunity of the review of Colombia under the UN Human Rights Council's Universal Periodic Review to address the key human rights concerns in Colombia and to make concrete recommendations to address those concerns.
- Insist that the Colombian government establish a legal framework to prosecute all those responsible for human rights abuses, which is in line with international standards on the rights of victims of human rights abuses to truth, justice and reparation.
- Insist that paramilitaries or members of guerrilla groups extradited to the USA to face drugs-trafficking charges should be subject to full and impartial investigations into war crimes and crimes against humanity in which they may be implicated in Colombia.
- Provide support to and emphasize the legitimacy of human rights defenders and trade unionists to enable them to carry out their work without fear, and to those civilian communities at particular risk of attack, such as the Peace Community of San José de Apartadó, and Indigenous and Afro-descendant communities which are seeking to assert their right to protection as civilians.
- Assist the Colombian government and NGOs in their efforts to improve protection programmes and other measures to prevent threats and attacks against human rights defenders and trade unionists. Make it clear to the Colombian government that the UN Declaration on Human Rights Defenders, for example, calls not only for practical protection measures but also for comprehensive measures aimed at preventing violations and addressing the root causes of violations, such as impunity.

- Desist from financing or giving political support to projects within the framework of the Justice and Peace process, such as the rural reinsertion programmes and similar initiatives, that could exacerbate impunity, legitimize the ownership of assets misappropriated through human rights abuses, and contribute to further human rights abuses.
- Call on the guerrilla to take immediate measures to comply with international humanitarian law, including releasing all civilians held by guerrilla groups.
- Suspend military assistance and all transfers of military and paramilitary equipment to the Colombian armed forces until the recommendations of the UN High Commissioner for Human Rights are fully implemented so there is no longer a clear risk of such assistance and equipment being used to facilitate serious violations of human rights and international humanitarian law in Colombia. Also, avoid all transfers of arms and military expertise to any entity (state, company or individual) which pose a high risk of diversion to illegal armed groups in Colombia so as to help prevent grave human rights abuses by such groups.

APPENDIX/INTERNATIONAL LAW AND THE CONFLICT IN COLOMBIA

Several bodies of international law apply to the conflict in Colombia. As a conflict taking place within the territory of a single state between one or more armed groups and the acting government, it is classified as an armed conflict of a non-international character.

International human rights law applies both in peacetime and during armed conflict and is legally binding on state forces and, sometimes, on non-state actors too. International humanitarian law (IHL), also known as the laws of war, is binding on all parties to an armed conflict, including non-state armed groups.

Under international criminal law, individuals incur criminal responsibility for certain violations of international human rights law, such as torture and enforced disappearance, and for crimes against humanity and genocide, as well as for serious violations of IHL, such as war crimes. International law also provides a framework to address the issue of the right to remedy and reparations for victims.

INTERNATIONAL HUMAN RIGHTS LAW: PROTECTING RIGHTS IN TIMES OF WAR AND PEACE

Colombia is a state party to the major international human rights treaties, including the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. On 27 September 2007 Colombia signed the International Convention for the Protection of All Persons from Enforced Disappearance; it has yet to ratify this Convention.

Colombia is also a state party to a number of regional human rights instruments, including the American Convention on Human Rights; the Additional Protocol to the American Convention in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador); the Inter-American Convention to Prevent and Punish Torture; the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women; and the Inter-American Convention on the Forced Disappearance of Persons.

Colombia is legally bound by its obligations under these international and regional treaties, as well as by relevant customary international law.

Among the international human rights law obligations most relevant to the conflict are:

- the right to life,
- the prohibition on torture and other ill-treatment,
- the prohibition on enforced disappearance,
- the prohibition on arbitrary detention,
- the right to adequate food and housing,
- the enjoyment of the highest attainable standard of physical and mental health,
- the right to water, and
- the right to education.

Actions that are aimed at or are likely to result in the destruction or impairment of infrastructure necessary for the enjoyment of these rights, including hospitals and schools, are violations for which the state can be held responsible.

Certain human rights violations, such as torture and enforced disappearance, may amount to crimes under international law and states are required to make such violations a criminal offence in domestic legislation.⁸⁰ They are also required to establish jurisdiction to prosecute or extradite for prosecution individuals responsible for such acts, whatever their nationality.⁸¹ Under the duty to protect, states are obliged to bring to justice those responsible for other serious crimes, including summary and arbitrary killings.⁸²

The International Court of Justice has affirmed that international human rights law applies in time of armed conflict as well as peacetime.⁸³ The UN Human Rights Committee has also affirmed this principle, and added that, with respect to the International Covenant on Civil and Political Rights: “While, in respect of certain Covenant rights, more specific rules of international humanitarian law may be specially relevant for the purposes of the interpretation of Covenant rights, both spheres of law are complementary, not mutually exclusive”.⁸⁴

INTERNATIONAL HUMANITARIAN LAW: PROTECTING INDIVIDUALS IN TIME OF WAR

International humanitarian law (IHL) applies only in situations of armed conflict. It contains the rules and principles that seek to protect primarily those who are not participating in hostilities, notably civilians, but also certain combatants, including those who are wounded or captured. It sets out standards of humane conduct and limits the means and methods of conducting military operations. Its central purpose is to limit, to the extent feasible, human suffering in times of armed conflict.

The four Geneva Conventions of 1949 and their two Additional Protocols of 1977 are among the principal IHL instruments. Colombia is a state party to these treaties and Additional Protocols. Article 3 Common to the four Geneva Conventions and Protocol II apply to non-international conflict, but they do not contain detailed rules on the conduct of hostilities. The rules governing the conduct of hostilities are included in

Protocol I, which governs conduct in international armed conflict. The rules on the conduct of hostilities, cited below, are considered part of customary international law and are thus binding on all parties to a conflict. The study on customary law by the International Committee of the Red Cross (ICRC) concluded that most of these rules are binding in non-international armed conflicts, as well as in international conflicts.⁸⁵ Violations of many of these rules may amount to war crimes. The generally accepted definitions of these crimes in non-international armed conflict are mostly contained in the Rome Statute of the International Criminal Court (ICC).

The application of IHL in non-international armed conflicts does not in itself constitute recognition of the authority or legitimacy of non-state armed groups. Government authorities may take lawful action against them and their members by all legitimate means under domestic legislation and members of non-state armed groups can be prosecuted, tried and sentenced for participating in armed hostilities. Consequently, and unlike in international armed conflicts, under international law there is no combatant, or prisoner of war (POW) status, for captured members of the security forces or of non-state armed groups. However, they must be treated humanely at all times, as outlined in Common Article 3 and Protocol II, and should be given treatment equivalent to that accorded to POWs. Civilians are defined in IHL as those who are not combatants. In the context of the non-international armed conflict in Colombia, Amnesty International uses civilians to describe people who are taking no direct part in hostilities.

PROHIBITION ON DIRECT ATTACKS ON CIVILIANS AND CIVILIAN OBJECTS – THE PRINCIPLE OF DISTINCTION

Article 48 of Protocol I sets out the “basic rule” regarding the protection of civilians – the principle of distinction. This is a cornerstone of IHL.

“In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.”

According to the Rome Statute of the ICC, intentionally directing attacks against the civilian population or against individual civilians not taking direct part in hostilities is a war crime.⁸⁶ Under Article 51(3) of Protocol I, civilians remain protected “unless and for such time as they take a direct part in hostilities”.

Article 52(1) of Protocol I stipulates that: “Civilian objects are all objects which are not military objectives.” Article 52(2) defines military objectives as “those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.” Objects that do not meet these criteria are civilian objects. In cases where it is unclear whether a target is used for military purposes, “it shall be presumed not to be so used” (Article 52(3)).⁸⁷ Intentionally directing attacks against civilian objects is a war crime.

Military advantage may not be interpreted so broadly as to render the rule ineffective. To justify under this provision attacks to harm the economic well-being of the adversary or to demoralize civilians perceived to support one's adversary in order to

weaken the ability to fight distorts the legal meaning of military advantage, undermines fundamental IHL principles, and poses a severe threat to civilians.

PROHIBITION ON INDISCRIMINATE OR DISPROPORTIONATE ATTACKS

Article 51(4) of Protocol I prohibits indiscriminate attacks, which are those “of a nature to strike military objectives and civilians or civilian objects without distinction.” Disproportionate attacks, a type of indiscriminate attack, are those that “may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated” (Article 51(5)). Intentionally launching a disproportionate attack is a war crime, as is launching an indiscriminate attack⁸⁸ resulting in loss of life or injury to civilians or damage to civilian objects.⁸⁹ The extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly, is also a war crime.⁹⁰

PRECAUTIONS IN ATTACK

Article 57 of Protocol I requires all parties to exercise constant care “to spare the civilian population, civilians and civilian objects.” Article 57(2) stipulates:

“(a) those who plan or decide upon an attack shall:

(i) do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection but are military objectives within the meaning of paragraph 2 of Article 52 and that it is not prohibited by the provisions of this Protocol to attack them;

(ii) take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects;

(iii) refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;

(b) an attack shall be cancelled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;

(c) effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit.”

PRECAUTIONS IN DEFENCE

Warring parties also have obligations to take all feasible precautions to protect civilians and civilian objects under their control against the effects of attacks by the adversary. Protocol I requires each party to avoid locating military objectives within or near

densely populated areas (Article 58(b)). Article 50(3) states that: "The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character."

As indicated by the ICRC in its authoritative commentary on the Additional Protocols to the Geneva Conventions:

"In wartime conditions it is inevitable that individuals belonging to the category of combatants become intermingled with the civilian population, for example, soldiers on leave visiting their families. However, provided that these are not regular units with fairly large numbers, this does not in any way change the civilian character of a population."⁹¹

INTERNATIONAL CRIMINAL LAW

Grave breaches of the Geneva Conventions and Protocol I and other serious violations of IHL are war crimes. The list of war crimes in Article 8 of the Rome Statute of the ICC basically reflected, in most cases, customary international law at the time of its adoption.

Article 86 of Protocol I requires that "[P]arties to the conflict shall repress grave breaches, and take measures necessary to suppress all other breaches of the [1949 Geneva] Conventions or of this Protocol which result from a failure to act when under a duty to do so."

Individuals, whether civilians or military personnel, can be held criminally responsible for such violations. Commanders and other superiors can be held responsible for the acts of their subordinates. According to Article 86(2):

"The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach."

Superior orders cannot be invoked as a defence for IHL violations, but they may be taken into account in mitigation of punishment. This principle has been recognized since the Nuremberg trials after the Second World War and is now part of customary international law.

There are several possible mechanisms for investigating the truth about crimes and bringing to justice perpetrators of IHL violations, in trials which meet international standards of fairness, cannot result in the imposition of a death sentence and allow victims and their families to seek and obtain full reparations.

- By Colombia: Colombia has an obligation to bring to justice anyone suspected of being responsible for violations of IHL.
- By other states: other states have obligations to conduct criminal investigations of anyone suspected of grave breaches of IHL during the conflict. If there is sufficient admissible evidence, states should prosecute the suspect or extradite him or her to

another state willing and able to do so or surrender him or her to an international criminal court. In addition to being obliged to exercise universal jurisdiction for grave breaches of the Geneva Conventions and Protocol I, states are permitted to exercise universal jurisdiction for other serious violations of IHL. If there is sufficient admissible evidence states should also prosecute, extradite the suspects to another state willing and able to try them, or surrender them to an international criminal court.

■ By the ICC: Colombia is a state party to the Rome Statute of the ICC.⁹² However, Colombia invoked Article 124 when it ratified the Statute. This allows a state party to the Rome Statute to reject the jurisdiction of the ICC to investigate war crimes for a period of seven years. The ICC will, therefore, not have jurisdiction over war crimes committed by its nationals or on its territory before November 2009, although the ICC still has jurisdiction over genocide and crimes against humanity. However, Colombia could still recognize the ICC's jurisdiction on its territory by making a declaration under Article 12(3) of the Statute, or the situation in Colombia could be specifically referred to the ICC by the UN Security Council, in accordance with Article 13(b) of the Rome Statute.

In addition to war crimes and genocide, the ICC also has jurisdiction over crimes against humanity. According to the Rome Statute, certain acts, if directed against a civilian population as part of a widespread or systematic attack, and as part of a state or organizational policy, amount to crimes against humanity. Such acts include murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, torture, rape and other sexual crimes, and enforced disappearance. Crimes against humanity can be committed both in times of peace and during an armed conflict.

INTERNATIONAL LAW AND REPARATIONS

The rules governing the responsibility of states have been incorporated into the 2001 International Law Commission's Articles of Responsibility of States for Internationally Wrongful Acts. These Articles codify the law on state responsibility and were commended to governments by the UN General Assembly in 2002.⁹³ Article 31 states that: "The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act... Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State." Internationally wrongful acts include violations of a state's obligations under customary and conventional international law.

The right to reparation of individual victims is also well established in international human rights law.⁹⁴ The Customary International Humanitarian Law⁹⁵ study by the ICRC concludes in Rule 150: "A state responsible for violations of [IHL] is required to make full reparation for the loss or injury caused." In addition, the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,⁹⁶ enshrines the duty of states to provide effective remedies, including reparation to victims. This sets out the appropriate form of reparation, including, in principles 19-23, restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

International human rights law focuses primarily on the obligations of states and therefore does not create obligations in respect to non-state armed groups, except the obligation of the state to exercise due diligence to prevent, punish, investigate or redress the harm caused by such actors. The ICRC notes that non-state armed groups are required to respect IHL. While the question as to whether non-state armed groups are under an obligation to make full reparation for IHL violations is unsettled,⁹⁷ practice indicates that such groups are required to provide a measure of appropriate reparation.⁹⁸

DOMESTIC HUMAN RIGHTS SAFEGUARDS

For International law and standards to be effective, they must be properly implemented at the domestic level. Colombia has developed strong domestic human rights legal and institutional safeguards. Under the provisions of the 1991 Constitution key mechanisms were created, such as writs of protection of fundamental rights. New state institutions were also established, such as the Constitutional Court and the Human Rights Ombudsman, which have played a key role in safeguarding human rights:

The Constitutional Court

The Court plays a key role in ensuring that the human rights provisions enshrined in the Constitution are upheld, at least in principle. Among its most important human rights decisions was the 1997 ruling that upheld civilian jurisdiction over human rights violations committed by the security forces. The Court has also restricted the president's ability to impose extraordinary measures that limit or suspend rights.

The Human Rights Ombudsman

The constitutional role of the Human Rights Ombudsman, which forms part of the Public Ministry, is to oversee the "promotion, exercise and dissemination of human rights". Although the Office of the Human Rights Ombudsman has no role in criminal investigations, it has provided an important and accessible point for receiving complaints of human rights abuses and providing advice to victims. It has also been effective in drawing attention to continuing human rights abuses by analysing human rights issues and joining national debates relevant to human rights.

Writs of protection

The 1991 Constitution also expanded citizens' rights by introducing writs of protection of fundamental rights (*tutelas*) under which court action can be requested by an individual if he or she feels their constitutional rights are being violated and if there is no other legal recourse. For example, given the Colombian state's failure to implement existing measures to assist them, displaced people have often exercised writs of protection of fundamental rights to force the state to comply with its obligations.

Other state institutions

Two other state institutions have played an invaluable role in ensuring that at least some of those responsible for committing human rights abuses are held to account:

The Office of the Procurator General – which is responsible for carrying out disciplinary investigations into, among other things, the responsibility of public officials in human rights violations – has imposed disciplinary sanctions against many senior military officers implicated in human rights violations.

The Human Rights Unit of the Office of the Attorney General – which is responsible for criminal investigations and prosecutions of all those accused of human rights abuses – has made important rulings on several emblematic and long-standing human rights cases. Both of these institutions are also playing a key role in investigating the links between paramilitaries and state officials.

Despite the important role played by these institutions and mechanisms, they continue to suffer from a lack of resources and inadequate protections for its employees. The government has also on occasions attacked and sought to weaken some of these human rights safeguards. To be truly effective these institutions and mechanisms must be protected and even strengthened.

ENDNOTES

- 1** E/CN.4/2006/56/Add.1, 17 January 2006.
- 2** See repeated reports by the Inter-American Commission on Human Rights and the Office of the UN High Commissioner for Human Rights, as well as numerous reports by Amnesty International.
- 3** For example, see Inter-American Court of Human Rights ruling on the 1989 La Rochela massacre issued on 11 May 2007.
- 4** Sentence 26945, 11 July 2007.
- 5** For a more detailed examination of how paramilitary groups evolved, see Amnesty International, *Colombia: The paramilitaries in Medellín – Demobilization or legalization?* (Index: AMR 23/019/2005).
- 6** For a detailed examination of conflict-related statistics, see Chapter 3/The bloody consequences of the conflict.
- 7** The term campesino is used throughout this report to refer to rural small-scale farmers.
- 8** See Appendix – International law and the conflict in Colombia for more information on indiscriminate and disproportionate attacks as defined in IHL.
- 9** Ministry of Defence, Control Directive (Directiva de Control), No.13 of 2007.
- 10** See Chapter 4/Civilians: still bearing the brunt of the conflict, for an examination of human rights abuses committed against human rights defenders.
- 11** See Amnesty International, *Colombia: Fear and intimidation – the dangers of human rights work* (Index: AMR 23/033/2006) and *Colombia: Laboratory of war – Repression and violence in Arauca* (Index AMR 23/004/2004).
- 12** Presidential Speech published by *El Tiempo*, 9 September 2003, and on the website of the Office of the President <http://web.presidencia.gov.co/discursos/discursos2003/septiembre/fac.htm>.
- 13** See Amnesty International press release, *Colombia: Amnesty International is always with the victims of human rights violations and abuses, whoever the perpetrators are* (Index: AMR 23/029/2004).
- 14** http://web.presidencia.gov.co/discursos/discursos2008/mayo/terminal_06052008.html, visited 29 June 2008.
- 15** In total, three presidential and one ministerial directives have been issued: Presidential Directive 011 in 1997; Presidential Directive 07 concerning “Support, communication and cooperation of the State with human rights organizations” in 1999; Presidential Directive 07 concerning “Support, communication and cooperation of the State with organizations that carry out humanitarian work in 2001; and Ministerial Directive 9 on national defence policies concerning protection of the human rights of trade unionists and human rights defenders in 2003.
- 16** For further information on the protection programme, see Chapter 4/Civilians: still bearing the brunt of the conflict.
- 17** For a more detailed analysis of the case of the Peace Community of San José de Apartadó, see Chapter 4/Civilians: still bearing the brunt of the conflict.
- 18** The UP was a left-wing alliance founded in 1985 as a legal political party during peace talks between the government and the FARC.
- 19** See Amnesty International, *Killings, arbitrary detentions and death threats – the reality of trade unionism in Colombia* (Index: AMR 23/001/2007).
- 20** Article 2 of the International Covenant on Civil and Political Rights states that:
“1. Each State Party to the present Covenant

undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted."

Also, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the UN General Assembly in 2005 (Resolution 60/147 of 16 December 2005), enshrine the duty of states to provide effective remedies, including reparation to victims. This instrument sets out the appropriate form of reparation, including, in Principles 19-23, restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.

21 There is strong evidence that many paramilitaries who demobilized were not actually combatants or people taking part in

hostilities, but rather the support personnel for paramilitary groups or, indeed, simply petty criminals or youths recruited by the paramilitaries just prior to their demobilization who took advantage of the economic support provided by the government for those supposedly demobilizing. Many of the weapons handed over at the time of demobilization were obsolete. There is strong suspicion that many paramilitaries held on to their more modern and powerful weaponry. In addition, many of the weapons handed over were destroyed soon after, leading to the loss of key forensic evidence.

22 CNRR, *Disidentes, Rearmados Y Emergentes: Bandas Criminales o Tercera Generación Paramilitar*, May 2007.

23 Eighth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP-OEA), OEA/Ser.G, CP/doc. 4176/07, 14 February 2007.

24 Camilo González Posso, *Desmonte del Narco Para Estatismo*, Indepaz, paper presented at the Seminario Internacional: Balance de dos años de aplicación de la ley de justicia y paz, Centro Internacional de Toledo para la Paz, Madrid, 13-14 November 2007.

25 For a more detailed examination of how paramilitary groups targeted civilian communities see Amnesty International, *Colombia: Return to Hope – forcibly displaced communities of Urabá and Medio Atrato region* (Index: AMR 23/023/2000), and *Colombia: The Paramilitaries in Medellín – Demobilization or legalization?* (Index: AMR 23/019/2005).

26 Sentence C-370/2006 of the Constitutional Court, 18 May 2006.

27 For more information on *tutelas*, see Appendix – International law and the conflict in Colombia.

28 Constitutional Court Sentence T-496 of 2008.

29 For more details about the human rights charges levelled against Salvatore Mancuso, Rodrigo Tovar Pupo and Diego Fernando Murillo, and other paramilitary leaders, see

Amnesty International, *Colombia: The Paramilitaries in Medellín – Demobilization or legalization?* (Index: AMR 23/019/2005).

30 According to Principle 29(2) of the UN Guiding Principles on Internal Displacement, “competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement.”

E/CN.4/1998/53/Add.2, 11 February 1998.

31 According to the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, reparation includes restitution, satisfaction, guarantees of non-repetition, rehabilitation and compensation (Principles 15-23).

32 Information supplied by the Colombian Commission of Jurists.

33 Extrajudicial executions are unlawful and deliberate killings carried out by order of a government or with its complicity or acquiescence. Extrajudicial executions can be carried out by regular military or police forces, by special units created to function without normal supervision, or by civilian agents working with government forces or with their complicity.

34 Information supplied by the Colombian Commission of Jurists.

35 The military justice system has played a key role in ensuring impunity in respect of most cases of human rights violations committed by members of the security forces. Repeated recommendations from the UN High Commissioner for Human Rights and from the Inter-American Commission on Human Rights have insisted that human rights cases must be excluded from the military justice system.

36 Information supplied by the Colombian Commission of Jurists.

37 Information supplied by the Colombian Commission of Jurists.

38 According to the UN Working Group on Enforced or Involuntary Disappearances:

“The general factors accounting for the underreporting of disappearances are similar in Colombia as elsewhere, and include the factors of poverty, illiteracy, submissiveness to fatalism, fear of reprisals, weaknesses in the administration of justice, ineffectual reporting channels and mechanisms, deeply rooted systems of impunity, and a culture of silence. To these generalized factors, explaining why so many acts of disappearance are often left underreported and undenounced must be added other, more specific, factors obviously critical to the Colombian situation: the collaborative links long established and perceived to subsist between the Colombian State or State Authorities and paramilitary groups; the pervasive atmosphere of fear, intimidation and terror, under which relatives of victims, their lawyers, witnesses to disappearances or their families, members of organizations of relatives and other NGOs or individuals live, particularly in those areas controlled or dominated by the paramilitaries; the profound lack of trust in the judicial system”, UN Doc. E/CN.4/2006/56/Add.1, 17, January 2006.

39 The figures of people still missing following abduction by guerrilla groups are in addition to those kidnapped or taken hostage by guerrilla groups. A person abducted by guerrilla groups can be classified as missing when the family of the victim has lost touch with the group holding them, thereby making it impossible to ascertain their whereabouts or whether they are dead or alive.

40 Data from the Colombian Commission of Jurists.

41 Data from the Office of the Attorney General.
http://www.fiscalia.gov.co/justiciapaz/EXH/Exhum_Home.htm, visited 26 June 2008.

42 Although the Convention has yet to come into force, Colombia, as a signatory, has an obligation not to defeat the object or purpose of the treaty until such time as it enters into force (Article 18, UN Vienna Convention on the Law of Treaties).

- 43** Príncipe Gabriel González had been arrested and charged on the basis of information from military intelligence files. Before his arrest he had been threatened by paramilitaries. See Amnesty International, *Colombia: Fear and Intimidation — The dangers of human rights work* (Index: AMR 23/033/2006).
- 44** Fundación País Libre, a Colombian NGO specializing on the issue of kidnapping and hostage-taking. www.paislibre.org
- 45** ICRC, *ICRC position on hostage-taking*, International Review of the Red Cross, No. 846, pp467-470, June 2002.
- 46** Rome Statute of the ICC Article 8(2)(c)(3).
- 47** The Colombian NGO, Consultancy for Human Rights and Displacement (Consultoría para los Derechos Humanos y el Desplazamiento, CODHES), calculates that there are around 4 million internally displaced people in Colombia, while the Office of the UN High Commissioner for Refugees (UNHCR) puts the figure at nearer 3 million. Government figures are much lower, but the methodology used by the authorities has been criticized by NGOs working on displacement issues, as well as by Colombia's Constitutional Court.
- 48** UNHCR, Regional Strategic Presentation Summary to 35th Standing Committee Meeting, 7-9 March 2006.
- 49** Figures from CODHES.
- 50** See UN High Commissioner for Refugees press release (in Spanish), 22 April 2008, www.acnur.org/paginas/?id_pag=7541, visited 26 June 2008.
- 51** UN Doc. E/CN.4/1998/53/Add.2.
- 52** Data from the Colombian Commission of Jurists.
- 53** Cases of torture are under-reported because of victims' fears of reprisal and because torture is usually accompanied by other types of human rights abuses, such as killings and detentions, and so tends not to be reported or investigated.
- 54** The UN Convention against Torture defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."
- The Inter-American Convention to Prevent and Punish Torture, which Colombia ratified in 1998, defines torture as "any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish."
- 55** Landmine Monitor Report 2007, <http://www.icbl.org/lm/2007/>
- 56** Mine Observatory of the Presidential Programme for Human Rights and International Humanitarian Law.
- 57** See UNHCR report on http://www.acnur.org/paginas/?id_pag=7275 (in Spanish).
- 58** Under Article 7 of the UN Convention on the Prohibition on the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (the Ottawa Convention), state parties are required to provide annual reports on the progress made in complying with the Convention.
- 59** For more details see International Campaign to Ban Landmines, *Landmine Monitor*, report on Colombia, <http://www.icbl.org/lm/2007/colombia>, visited 27 June 2008.
- 60** ICRC, *The Law of Armed Conflict – Non-international armed conflict*, 2002.

- 61** See below for more details on human rights defenders.
- 62** See Amnesty International, *Colombia: "Scarred bodies, hidden crimes" – Sexual violence against women in the armed conflict* (Index: AMR 23/040/2004).
- 63** Data from the Colombia Commission of Jurists.
- 64** Constitutional Court, Judicial Decree No. 92 of 2008 (Auto No.92 de 2008), 14 April 2008.
- 65** Not his real name.
- 66** Report of the UN Secretary-General on Children and armed conflict, A/62/609-S/2007/757, 21 December 2007.
- 67** For an analysis of the precautions that combatants must take under IHL, see Appendix – International law and the conflict in Colombia.
- 68** Organización Nacional Indígena de Colombia (ONIC), *Violaciones e Infracciones a los Derechos Humanos, Derecho Internacional Humanitario, Derechos Económicos Sociales y Culturales de los Pueblos Indígenas de Colombia. AÑOS 1974-2007*.
- 69** For an examination of the history of the Peace Community of San José de Apartadó see Amnesty International, *Colombia: Return to hope – forcibly displaced communities of Urabá and Medio Atrato region* (Index: AMR 23/023/2000).
- 70** See Amnesty International press release: *Colombia: Justice is the only way forward for the Peace Community of San José de Apartadó* (Index: AMR 23/004/2005).
- 71** Constitutional Court Ruling T–1025/07, 3 December 2007, unofficial translation.
- 72** Unofficial translation.
- 73** See Chapter 2/Separating myth from reality.
- 74** See Amnesty International, *Colombia: Fear and Intimidation – The dangers of human rights work* (Index: AMR 23/033/2006), and *Killings, arbitrary detentions, and death threats – the reality of trade unionism in Colombia* (Index: AMR 23/001/2007).
- 75** Data from the *Escuela Nacional Sindical*.
- 76** Data from the Colombian Commission of Jurists. These figures refer to a strict definition of human rights defenders which excludes trade unionists and community leaders. At the time of writing, figures for human rights defenders killed in 2008 were not available.
- 77** In 2006, claims were made by a high-ranking DAS official that the DAS had provided a list of 24 trade union leaders to the Bloque Norte paramilitary group. Several individuals named on the list were killed, threatened, or were reportedly the subject of arbitrary judicial proceedings.
- 78** The Office of the UN High Commissioner for Human Rights has for the last 10 years produced an annual report, including a series of recommendations, on the human rights situation in Colombia. The Inter-American Commission on Human Rights has also produced a number of documents examining human rights related issues in Colombia, including *Report on the implementation of the justice and peace law: Initial stages in the demobilization of the AUC and first judicial proceedings* (2007), *Violence and Discrimination against Women in the Armed Conflict in Colombia* (2006), and *Report on the demobilization process in Colombia* (2004), which have also included numerous recommendations.
- 79** The Special Representative on human rights defenders undertook a mission to Colombia in October 2001 (see UN Doc. E/CN.4/2002/106/Add.2). Note that the title of the Special Representative on human rights defenders was changed to Special Rapporteur on human rights defenders in March 2008.
- 80** Article 4 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- 81** Article 5 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- 82** Paragraph 18 of Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13 (2004).
- 83** International Court of Justice, Legal Consequences of the Construction of a Wall in

the Occupied Palestinian Territories, 9 July 2004, General List 131, paragraph 104.

84 Paragraph 11 of Human Rights Committee, General Comment 31.

85 See Jean-Marie Henckaerts and Louise Doswald Beck, *Customary International Humanitarian Law*, ICRC, 2005.

86 Article 8(2)(b)(i).

87 The authoritative ICRC Commentary on the Additional Protocols to the Geneva Conventions interprets the expression "definite military advantage anticipated" by stating that "it is not legitimate to launch an attack which only offers potential or indeterminate advantages."

88 Rome Statute of the ICC, Article 8(2)(b)(iv).

89 ICRC, *Customary International Humanitarian Law*, Vol. I: rules; Rule 156, p.589. Article 8(2)(b)(i).

90 Rome Statute of the ICC, Article 8(2)(a)(iv).

91 ICRC Commentary on Protocol I (on Article 50 paragraphs 2 and 3). See Sandoz, Yves, Swinarski, Christophe, and Zimmermann, Bruno (eds.), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Martinus Nijhoff for International Committee of the Red Cross, Geneva, 1987, p612.

92 When it ratified the Rome Statute of the ICC, Colombia made eight interpretative declarations and a declaration invoking Article 124, declaring that it did not accept the jurisdiction of the Court over war crimes committed by its nationals or on its territory for a seven-year period. Among these declarations, one in particular appears to be an attempt to limit the Court's jurisdiction. The declaration reads as follows: "None of the provisions of the Rome Statute concerning the exercise of jurisdiction by the International Criminal Court prevent the Colombian State from granting amnesties, reprieves or judicial pardons for political crimes, provided that they are granted in conformity with the Constitution and with the principles and norms of international law accepted by Colombia." Since the Court does not have

jurisdiction over political crimes, but only over crimes under international law, including genocide, crimes against humanity and war crimes, it may not be immediately apparent why Colombia made a declaration that the Rome Statute did not affect its powers to enact amnesty laws or pardons for political crimes. One possible explanation for this unilateral statement is the Justice and Peace Law (Law 975 of 25 July 2005). Until Colombia's Constitutional Court declared it unenforceable, this law granted political status to the members of paramilitary forces by defining all their activities, which would in effect include crimes against humanity and war crimes as sedition, a political offence under Colombian law. Colombia's 1991 Constitution forbids the extradition of those guilty of political offences. For an analysis of Colombia and other states' declarations amounting to prohibited reservations to the Rome Statute, see Amnesty International, *International Criminal Court: Declarations amounting to prohibited reservations to the Rome Statute* (Index: IOR 40/032/2005), available at <http://www.amnesty.org/en/library/info/IO40/032/2005/en> (also available in French and Spanish).

93 General Assembly Resolution, Responsibility of States for Internationally Wrongful Acts, UN Doc: A/Res/56/83 (28 January 2002), paragraph 3.

94 See, for example, the International Covenant on Civil and Political Rights, Article 2(3).

95 Volume I, Rules, Cambridge University Press, 2005.

96 Resolution 60/147 of 16 December 2005.

97 ICRC, *Customary International Law*, Volume I, Rules, Rule 150.

98 ICRC, *Customary International Law*, Volume I, Rules, Rule 139.

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