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Colombia
Security at What Cost?
The Government's Failure to Confront the Human Rights Crisis

Introduction

"*I cannot understand those who seek to eliminate or reduce rights […] In a democratic society, security as a concept is inseparable from the set of guarantees that acknowledge that individuals, without exception, are the holders of human rights*".

Luis Eduardo Cifuentes, Colombia's Human Rights Ombudsman

President Álvaro Uribe Vélez won the 26 May 2002 elections in large measure due to his promise to put an end to Colombia's four decade-long armed conflict. Since taking office, he has begun to introduce a series of hardline security measures encapsulated in the so-called doctrine of Democratic Security (*Seguridad Democrática*). However, this strategy to end the armed conflict – which, according to Amnesty International, has cost the lives of more than 60,000 people since 1985, 80% of them civilians playing no part in the hostilities – does not include a program to combat violations of human rights and international humanitarian law (IHL). This failure is all the more serious given that the vast majority of non-combat killings and "disappearances" are committed by paramilitaries operating with the support and acquiescence of the armed forces. The government has thus failed to acknowledge that security cannot be guaranteed without full respect for human rights. Rather than ensure the security of all its citizens – by shielding the civilian population from the armed conflict – the government's measures are, instead, dragging civilians further into the conflict; consolidating a wall of silence behind which violations can be committed unobserved and with impunity; and strengthening the already powerful position of paramilitary groups in the country.

Four months on from Álvaro Uribe's inauguration as president on 7 August, and 10 months since the breakdown of peace talks between the government and the main armed opposition group, the Revolutionary Armed Forces of Colombia, *Fuerzas Armadas Revolucionarias de Colombia* (FARC), on 20 February, the evidence suggests that the armed conflict between the security forces in conjunction with the paramilitaries, and the guerrilla groups has intensified. This has resulted in a marked deterioration of the human rights crisis, and political killings, displacements and other violations of human rights and IHL continue unabated. This cycle of political violence has been exacerbated by the security policies of the new government, which has failed to put human rights concerns at the centre of its agenda.

These policies run counter to recommendations made by the United Nations (UN) and the Inter-American Commission of Human Rights (IACHR) of the Organization of American States (OAS). These have called on successive Colombian governments to confront impunity in cases of human rights violations, combat and dismantle army-backed paramilitaries, respect

the rights of the civilian population not to be drawn into the conflict, and to adopt measures to guarantee the safety of vulnerable sectors, such as human rights defenders.

Senior members of the government have on several occasions expressed their support and admiration for the work carried out by those at the forefront of the fight for human rights in Colombia, especially human rights defenders. President Uribe has also publicly stated his readiness to maintain a dialogue with national and international human rights organizations. While this is welcome, senior members of the government have also called into question the work of many human rights organizations, often equating their work with collaboration with the insurgency. These statements will only serve to reinforce the view that the government is engaged in a dangerous game of "double-speak" – praising human rights defenders to appease the international community, while simultaneously undermining their work at home by stigmatizing them as guerrilla collaborators or sympathizers, thus placing them at increased risk of revenge attacks by the security forces and their paramilitary allies.

Policies which call into question the legitimacy of human rights work, coupled with measures to restrict the capacity of civilian, criminal and disciplinary investigative bodies to undertake independent investigations into human rights violations and to restrict access to international human rights workers to conflict zones, will only serve to strengthen the wall of silence.

Weakening the Role of Civilian Institutions

The government has suggested that it will reform the 1991 Constitution, in particular some of its important human rights mechanisms and safeguards. The international community, and human rights organizations in particular, at the time welcomed the introduction of strong human rights safeguards in Colombia's *Magna Carta*. These provisions, such as petitions of *tutela*, and state institutions created under the 1991 Constitution, and which have played a critical role in safeguarding human rights, including the Constitutional Court and the *Defensoría del Pueblo*, must be protected and strengthened, if the human rights crisis is to be resolved. Amnesty International fears that, given repeated government attacks on these institutions and mechanisms, legislation will be introduced that will undermine these constitutional safeguards, as well as other institutional mechanisms, such as the Municipal Ombudsmen, *Personerías Municipales*.

The Constitutional Court

The Court plays a crucial role in ensuring that the human rights provisions enshrined in the Constitution are upheld, in principle if not in practice. Among its most important decisions was the 1997 ruling that upheld civilian jurisdiction over alleged human rights violations committed by members of the security forces. The Court has also restricted the president's ability to impose extraordinary measures that limit or suspend rights. Amnesty International therefore views with concern statements made by Interior and Justice Minister Fernando Londoño implying that the government will restrict the Court's powers – for example, by

eliminating its right to rule on the legality of emergency legislation – or reduce its status by merging it with the Supreme Court of Justice, *Corte Suprema de Justicia*.

The Defensoría del Pueblo

The creation of the *Defensoría* in the 1991 Constitution is of particular relevance to human rights protection. The constitutional role of the *Defensoría*, which forms part of the Public Ministry, is to oversee the "promotion, exercise and dissemination of human rights". Although the *Defensoría* has no role in criminal investigations, since early 1992 it has provided an important and accessible point for receiving complaints of human rights violations and providing advice to victims. It has been effective in drawing attention to continuing human rights violations by analysing human rights issues and joining national debates relevant to human rights, including on statutory legislation on states of emergency.

The government has apparently reversed its decision to merge the *Defensoría del Pueblo* with that of the Office of the Procurator General, *Procuraduría General de la Nación*.[1] This would have undermined the *Defensoría*'s ability to pursue its role of vigilance and monitoring of human rights. However, Amnesty International still fears that other methods could be employed to undermine the work of the *Defensoría*, such as budgetary cuts or failure of other state bodies to cooperate with it effectively. Its financial position is so precarious that in late October the *Defensoría* ran out of funds to pay for the public defence of detainees. Unless extra funds are found, the authorities will be in breach of the 1991 Constitution and international standards which state that every citizen has the right to a defence. This makes it all the more urgent that the *Defensoría* is extended and strengthened, together with the capacity of the *Procuraduría* to carry out disciplinary investigations into the responsibility of public officials in human rights violations.

Petitions of Tutela

The 1991 Constitution also expanded citizens' basic rights by introducing petitions of *tutela* (writs of protection of fundamental rights) under which immediate court action can be requested by an individual if he or she feels that their constitutional rights – whether political, civil, economic, social or cultural – are being violated and if there is no other legal recourse. For example, given the state's repeated failure to implement existing measures to assist displaced people, these have often needed to exercise petitions of *tutela* to force the Colombian state to comply with its obligations. Petition of *tutela* have also been used to appeal cases in which military courts have claimed jurisdiction in cases implicating senior members of the security forces in serious human rights violations.

The government has expressed its commitment not only to end economic and social petitions of *tutela*, which would impair the justiciability of economic, social and cultural rights, but also in instances where a court has already issued a ruling, arguing that cases can often drag

[1] The *Procuraduría*'s role is to carry out disciplinary investigations into the responsibility of public officials in human rights violations.

on for years.[2] In an ironic criticism of this mechanism, Interior and Justice Minister Fernando Londoño stated that "would it not be better to take that ruling to the International Court in The Hague and after, I don't know, to God's Court? […] There are so many guarantees that there is never any justice in Colombia."[3] The likely impact on human rights of ending this mechanism, however, is of a rather less frivolous nature, since it will put an end to a valuable tool of legal redress for the most vulnerable sectors of Colombian society.

The Personerías Municipales

Since 1990, the *Personerías Municipales* have played an increasingly important role in the reception and initial investigation of reports of human rights violations. In 1990 legislation was introduced which enhanced and strengthened their powers. Of particular importance are the provisions granting municipal ombudsmen formal right of access to inspect all police and military establishments to establish the presence and condition of prisoners. Military and police authorities are also legally obliged to inform ombudsmen of all detentions carried out in the previous 24 hours. Municipal ombudsmen in cities and rural municipalities have found themselves in the vanguard of human rights protection and particularly the protection of prisoners' rights. The *personerías* therefore play an important role in ensuring that citizens have recourse to action when they believe their fundamental rights have been violated.

The government has argued that many *Personerías* are not cost effective and should therefore be eliminated, especially those in municipalities with more than 100,000 inhabitants. However, the possible elimination of the *Personerías* threatens to close off access to justice by victims of human rights violations. Eliminating the *Personerías* will also undermine the *Procuraduría* and the *Defensoría* since these two bodies do not have the capacity to take on the additional work that closing down the *Personerías* would imply. As such, this move has been criticized both by the Office in Colombia of the UN High Commissioner for Human Rights and Colombia's Human Rights Ombudsman, Luis Eduardo Cifuentes.

States of Emergency: Targeting Civilians

Colombia has spent most of the last 50 years under various states of emergency through which constitutional guarantees have been side-stepped, governments have ruled by executive decree, and the armed forces have been granted broad powers to deal with public order issues. This has led to widespread, flagrant human rights violations. In an effort to break the trend of

[2] The concept of "justiciability" asserts that states are legally responsible for the implementation and protection of economic, social and cultural rights. Every individual can legitimately expect the state to work towards the full realization of these rights, if the state has failed to do so, and therefore one should be able to lodge a complaint against a state, not only before national jurisdictions but also in front of international courts or commissions.

[3] *El Colombiano*, 6 September 2002.

government by emergency powers, the 1991 Constitution replaced the much criticized State of Siege with a State of Internal Commotion (*Estado de Conmoción Interior*).

State of Internal Commotion

The government declared a State of Internal Commotion on 11 August 2002.[4] This is the first time since 2 November 1995 that a State of Internal Commotion has been declared. Unlike the state of siege – which was not subject to legislative or judicial oversight – the State of Internal Commotion is intended as a temporary mechanism which is subject to both legislative and judicial oversight. It remains in force for 90 days, during which time it must be endorsed by the Constitutional Court. It can be extended for a further two 90-day periods, the second of which must be approved by the Senate. A State of Internal Commotion can therefore remain in force for 270 days. On 8 November 2002, the government extended the State of Internal Commotion for a further three-month period.

A State of Internal Commotion gives significant powers to the authorities, including the right to restrict freedom of movement and residence, prevent radio and television from transmitting "sensitive" information, restrict meetings and demonstrations, intercept communications subject to judicial authorization, and carry out preventive detentions.[5] There are, however, certain rights that are non-derogable under international law. These include Articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 of the International Covenant on Civil and Political Rights (ICCPR), and Articles 3, 4, 5, 6, 9, 12, 17, 18, 19, 20 and 23 of the American Convention on Human Rights, as well as the judicial guarantees for the protection of the rights and freedoms enshrined in those articles (Inter-American Court of Human Rights Advisory Opinions OC-8/87 and OC-9/87). Under international law, the right to life, to be free from torture, ill-treatment and enslavement, freedom from arbitrary arrest, the right to a fair trial, and freedom of thought cannot be subject to derogations even in times of emergency.

The decree on the State of Internal Commotion does not appear to violate, *strictu sensu*, any of these rights. It was declared constitutional by the Constitutional Court on 2 October 2002, and it has been backed by the *Defensor* and the *Procurador General.* However, while acknowledging that states not only have the right but the obligation to combat armed violence, a number of international bodies, such as the UN Human Rights Committee, which monitors compliance with the ICCPR, have in the past expressed concern about the repeated use of emergency legislation in Colombia. In its Concluding Observations of 1997 it stated that: "The Committee […] expresses its concern that the resort to declarations of states of emergency is still frequent and seldom in conformity with article 4, paragraph 1, of the Covenant [ICCPR], which provides that such declaration may be made only when the life and existence of the nation is threatened. The Committee is also concerned that, despite constitutional and legal guarantees, enjoyment of the rights provided for in article 4, paragraph 2, of the Covenant is not fully protected in such circumstances and that under

[4] Decree 1837, 11 August 2002.
[5] Law 137, 2 June 1994, Chapter 3, which regulates states of exception in Colombia.

article 213 of the Constitution, the Government may issue decrees suspending any laws considered to be incompatible with the state of disturbance".[6]

The Office in Colombia of the UN High Commissioner for Human Rights has also questioned whether the State of Internal Commotion complies with the requirement that, in order for a state of emergency to comply with international law, "the situation must amount to a public emergency which threatens the life of the nation."[7] The security situation in Colombia is indeed very serious and has deteriorated over the last year, but it does not pose a new threat. It might thus be possible to argue that the nation is not facing a new or exceptional emergency.

According to General Comment No.29 of the Human Rights Committee, states of emergency must be "of an exceptional and temporary nature" (paragraph 2), so that the principles of legality and rule of law are maintained when they are most needed; that "such measures are limited to the extent strictly required by the exigencies of the situation" (paragraph 4), in order to reflect the principle of proportionality which is common to derogation and limitation powers; and that the measures adopted "do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin" (paragraph 8), since there are elements of the right to non-discrimination that cannot be derogated. Measures introduced under a state of emergency must comply with principles of legality, proportionality and non-discrimination.

Although the government has contended that the threats against public officials issued by the FARC is a new and exceptional situation that places at risk many communities in Colombia, it might also be argued that the state has at its disposal ordinary powers with which to confront this threat. According to Article 213 of the 1991 Constitution, a State of Internal Commotion can only be declared if the "emergency" cannot be resolved via "ordinary powers" (*atribuciones ordinarias*). However, the government has a series of measures already at its disposal with which to tackle the crisis, mainly related to the implementation of the human rights recommendations made by the United Nations and other international organizations.

Decree 2002: A Violation of Human Rights Standards

Article 213 of Colombia's 1991 Constitution allows the government to issue decrees that "suspend any laws that are incompatible with the State of Internal Commotion". The administration has therefore issued several decrees, including Decree 2002, which came into force on 9 September. Its scope is broad and its powers draconian. On 25 November, the Constitutional Court declared that key parts of Decree 2002 are unconstitutional. It has also been criticized by the *Defensor del Pueblo* and the Office in Colombia of the UN High Commissioner for Human Rights.[8] Under Decree 2002 the armed forces can:

[6] UN Human Rights Committee, Concluding Observations (CCPR/C/79/Add.76): 05/05/97, para. 25.
[7] UN Human Rights Committee, General Comment No. 29, States of Emergency (Article 4) (CCPR/C/21/Rev.1/Add.11), para 2.
[8] See Office in Colombia of the UN High Commissioner for Human Rights, *Observaciones de la Oficina del Alto Comisionado de la Naciones Unidas para los Derechos Humanos sobre el Decreto 2002 de 2002*, October 2002.

- **Detain suspects without a judicial warrant (Article 3):** This grants judicial police powers to the military, an attribute contained in the Defence and National Security Law, declared unconstitutional by the Constitutional Court on 11 April 2002. Article 3 violates Articles 9.1 of the ICCPR and 7.3 of the American Convention on Human Rights, which state that arresting an individual without a judicial order (except in cases of *in flagrante delicto*) is arbitrary.[9] In the past, the UN Human Rights Committee has expressed its concern that the Colombian "military exercise the functions of investigation, arrest, detention and interrogation".[10]
- **Carry out house searches without a judicial warrant (Article 7):** Except in cases of *in flagrante delicto*, this article violates Articles 17 of the ICCPR and 11 of the American Convention, since "no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence".[11]

Article 1 of Decree 2002 also stipulates that a *fiscal* (public prosecutor from the Office of the Attorney General, *Fiscalía General de la Nacion*) and an official from the *Procuraduría General* will serve in "each of the operative units of the military, in a full time capacity". Their role will be to "accompany […] operations by the security forces, although this will not be a prerequisite for carrying out such operations". In the context of the Colombian conflict, the presence of judicial officials in military units will threaten the independence of the judiciary, since they will rely on the military for their security. The right to be heard by an independent judge or court is guaranteed in Article 228 of the 1991 Constitution, Article 8 of the American Convention on Human Rights and Article 14 of the ICCPR.

Given the widely acknowledged responsibility of the security forces for human rights violations, often in conjunction with the paramilitaries, the power to detain and search without judicial authority will facilitate the violation of human rights with impunity. Amnesty International has already received many reports of individuals being detained without judicial authority. It must be noted, however, that over the years Amnesty International has received reliable information which appears to show that detentions without the use of arrest warrants were relatively common even before the introduction of Decree 2002.[12]

Rehabilitation and Consolidation Zones

Decree 2002 also gives the military special powers and restricts certain rights in designated security zones, so-called Rehabilitation and Consolidation zones (*Zonas de Rehabilitación y Consolidación*), which are defined as geographical areas "affected by the actions of criminal groups in which, in order to guarantee institutional stability, re-establish the constitutional

[9] An arrest is "*in flagrante delicto*" when a suspect is caught in the act of committing a crime, is identified and immediately detained after committing an illegal act, or found with items which could be used to commit a crime.
[10] Human Rights Committee, Concluding Observations (CCPR/C/79/Add.76): 05/05/97, para. 19.
[11] Article 17, International Covenant on Civil and Political Rights.
[12] For example, see Amnesty International, *San Vicente del Caguán after the Breakdown of the Peace Talks: A Community Abandoned*, AI-index: AMR 23/098/2002, 16/10/2002.

order, the integrity of national territory and protection of the civilian population, makes it necessary to apply one or more of the exceptional measures outlined in the following articles, without this affecting the application of the other measures under [the state of] internal commotion".[13] Two Rehabilitation and Consolidation Zones were set up on 21 September 2002 – in the departments of Sucre and Bolívar, and in the department of Arauca. These two areas cover 29 municipalities (16 in Sucre, 10 in Bolívar, and three in Arauca).[14]

Within these zones, a military commander has control over all the security forces, including the police. Some of the measures contained in the articles on the Rehabilitation and Consolidation Zones are similar to those in the Theatres of Military Operations (*Teatros de Operaciones Militares*) created by the Defence and National Security Law, and which came into effect on 20 February 2002. The Law was declared unconstitutional by the Constitutional Court on 11 April 2002. Restrictions in the Rehabilitation and Consolidation Zones include:

- "Specific persons" (*personas determinadas*) leaving a rehabilitation zone must inform the authorities two days prior to doing so (Article 15). Anyone breaching this requirement will be detained for up to 24 hours (Article 16). Since Article 15 does not specify who these "specific persons" are (the decision is left to the discretion of the Departmental Governor) it could facilitate the violation of the principle of non-discrimination. Articles 15 and 16 could also be open to serious abuse since they do not specify the exact criteria for identifying these "specific persons".

- Individuals in the Rehabilitation and Consolidation Zones must report cases of others carrying or using weapons, explosives, munitions or telecommunications equipment (Article 18). Failure to do so can result in preventative detention by the security forces. Individuals can be held for up to 36 hours before being handed over to the judicial authorities. Since the article does not specify the sanction to be applied to those found guilty, it violates the principle of legality. It should also be noted that Article 27 of the American Convention on Human Rights states that Article 9 of the Convention (freedom from ex post facto laws), which affirms the principle of legality and retroactivity, cannot be derogated, even under a state of emergency

- Individuals not carrying identity papers will be detained for up 24 hours (Article 20). The right to freedom of movement is not violated when police seek the identification of an individual through their temporary "immobilization. But Article 20 does not simply involve the "immobilization" of an individual but his or her detention, for up to 24 hours. Amnesty International therefore considers that Article 20 could facilitate arbitrary detention and other serious human rights violations.

Decree 2002 also includes specific restrictions for foreigners visiting the Rehabilitation and Consolidation Zones (Article 22). The government's intention in this respect is made clear in the eighth preambular paragraph of the decree which states that "it is necessary to avoid the

[13] Article 11, Decree 2002 of 2002.
[14] Two new municipalities, one in the department of Bolívar and the other in the department of Sucre, were included in the Rehabilitation and Consolidation Zone on 24 November 2002.

presence of foreign criminals who enter [the country], give training, or participate in the activities of criminal organizations that exist in the country, a situation that justifies the appearance of foreigners before the authorities". Foreigners wishing to enter such zones need authorization from the departmental governor eight working days prior to a visit. If a zone covers more than one department authorization is required from the interior ministry. Those who fail to comply can be expelled. Article 10 (which covers the whole of the country) also states that foreigners have to present themselves to the authorities (it does not specify which ones) if requested to do so. Failure to do so can also lead to expulsion. It appears that Articles 10 and 22 violate the principle of non-discrimination. According to Article 14 of Law 137 measures introduced under states of emergency cannot discriminate according to "national origin". Amnesty International is concerned that these measures may be used to restrict access to the Rehabilitation and Consolidation Zones of humanitarian and human rights monitors.

The lack of clarity and precision of Decrees 1837 and 2002, as well as the poor human rights record of the security forces charged with their implementation, suggest that the system is open to serious abuse. The principal victims of this abuse will not be the armed parties to the conflict but the civilian population.

Amnesty International views with concern the government assertion that it wishes to make permanent some of the provisions contained in Decrees 1837 and 2002. On 30 October 2002, Defence Minister Marta Lucía Ramírez stated to the press that the government is "planning to transform some of the measures adopted under the State of Internal Commotion into permanent legislation."[15] This would facilitate human rights violations by removing judicial and legislative oversight and by disregarding international safeguards on states of exception.

Government must abide by Constitutional Court ruling: On 25 November, the Court declared that key parts of Decree 2002 are unconstitutional, most importantly those granting judicial police powers to the armed forces (including the right of the military to detain suspects or carry out house arrests without judicial warrants, and to intercept communications). In its ruling the Court also declared unconstitutional:

- the restrictions imposed on journalists wishing to enter the Rehabilitation and Consolidation Zones;
- the right of the authorities to carry out censuses in these zones;
- the president's right to declare Rehabilitation and Consolidation Zones without the formal approval of his ministers; and
- the authority of the interior minister over the departmental governors in Rehabilitation and Consolidation Zones that cover more than one department.

Previous administrations have also sought to give judicial police powers to the armed forces. These efforts have been repeatedly declared unconstitutional by the Constitutional Court. Attempts by then President Andrés Pastrana to give judicial police powers to the military, a measure included in the Defence and National Security Law, was declared unconstitutional on

[15] *El Espectador*, 30 October 2002.

11 April 2002. On 25 November, on the same day as the latest Constitutional Court ruling, a Senate committee approved measures giving judicial police powers to the military if authorized by the *Fiscalía General de la Nación*. The aim of this measure is to make permanent the judicial police powers contained in Decree 2002. The government of President Uribe must now take immediate steps to abide fully by the Court's ruling on Decree 2002.

Strengthening Impunity

Despite ample evidence of military culpability in case after case of the gravest human rights violations, few members of the security forces have ever been brought to justice. Successive administrations have shown themselves to be unable or unwilling to impose the necessary controls on the military or to introduce effective measures to ensure that those responsible are held accountable before the law. The fact that those responsible for widespread political killings and "disappearances" are seldom punished has undermined public confidence in the administration of justice and the rule of law. The knowledge that crimes will go unpunished, and may even be rewarded, has contributed to the escalation of human rights violations.

The Human Rights role of the Fiscalía

The ability or willingness of the *Fiscalía General de la Nación* – which is responsible for investigating and prosecuting all crimes – to advance investigations into human rights violations has increasingly been called into question. In its 2002 Report, the Office in Colombia of the UN High Commissioner on Human Rights expressed its concern "about the changes that have occurred since the appointment of the new Attorney-General (*Fiscal General*, Luis Camilo Osorio Isaza, appointed in July 2001] – affecting the orientation of his Office and involving the dismissal of certain officials, among other things – which have raised serious fears about the prospects for strengthening the institution and its commitment to combating impunity. Several events have called into question the independence and autonomy of prosecutors in their investigations into human rights violations, particularly those involving paramilitary groups and public officials."[16]

Amnesty International has received reports that the *Fiscalía* is apparently seeking to block or hinder investigations into human rights violations in which senior military officers are implicated. Prosecutors working on such cases have frequently been removed from cases or unjustifiably dismissed from their posts while also facing death threats. Witnesses and colleagues working on these investigations have also been killed. This raises concerns that the *Fiscalía* has failed to guarantee the safety of its public prosecutors and witnesses:

- Prosecutor Mónica Gaitán, who was heading the investigation into the 17 January 2001 massacre in Chengue, department of Sucre, was dismissed from the case on 6 February 2002. Her removal followed the formal initiation, on 5 June 2001, of

[16] E/CN.4/2002/17, 28 February 2002.

criminal investigations against General Rodrigo Quiñónez Cárdenas for possible dereliction of duty in preventing the massacre. On 27 May 2001, two investigators from the *Fiscalía*'s Technical Investigations Unit, *Cuerpo Técnico de Investigación* (CTI), working on the case were detained by paramilitaries and are now presumed dead. On 29 August 2001, Yolanda Paternina, a prosecutor working on the case was killed in Sincelejo, department of Sucre.

- In July 2001, CTI agents arrested former general Rito Alejo del Río, under investigation since 1998 for supporting paramilitary activity in the Urabá region in 1996-1997 while he was commander of the XVII Brigade. Hours after taking office, the *Fiscal General*, Luis Camilo Osorio, objected to a prosecutor's decision to order Del Rio's arrest. The *Fiscal General* claimed that he should have been consulted, although prosecutors are under no legal requirement to do so. On 5 August, a judge accepted an *habeas corpus* petition filed on behalf of Del Rio and ordered his release. Several officials working on the case have since been forced to resign while others have had to leave the country because of threats. On 2 September 2001, José de Jesús Gemán, a witness in the case, was killed in Bogotá. In a statement issued on 13 August the IACHR expressed concern at the resignation of several prosecutors and called on the government to guarantee the safety of those responsible for the investigation. The case is now being handled directly by *Fiscal General* Osorio but no information has been received to suggest that any progress is being made.

According to the UN Office, the response of the *Fiscalía* to the dangers faced by officials investigating human rights cases implicating paramilitaries or state officials points to "a refusal at the highest level to prioritize these investigations or to support the officials involved in them". The Report further states that the "coverage of the Attorney General's [*Fiscal General*] Office protection program for victims, witnesses and others involved in criminal proceedings, and for Attorney General's [*Fiscal General*] Office staff is still inadequate to protect officials from threats, and this could lead them to exercise excessive caution or self-censorship in their investigations". Information received by Amnesty International suggests that there has been no improvement in the precarious situation facing these officials since President Uribe assumed office.

The Human Rights Unit: The *Fiscalía*'s Human Rights Unit (*Unidad de Derechos Humanos*) was created in 1995 to investigate serious violations of human rights and IHL. Its aim is to ensure that some capacity is devoted to the investigation of violations implicating members of the armed forces. Many of the prosecutors who have been forced to abandon investigations or who have been threatened, such as those highlighted above, form part of the Unit.

Over the last year, there has been a shift in the focus of the work of the Unit in that it now primarily investigates infractions of IHL committed by guerrilla forces – a change reflected in the renaming of the Unit as the National Human Rights and International Humanitarian Law Unit in October 2001. Amnesty International welcomes efforts to ensure that infractions of IHL by guerrilla forces are fully investigated. However, this should not be at the expense of judicial investigations into human rights violations in which members of the security forces are implicated. This shift in focus is illustrated by statistics of arrests warrants issued by the

Unit.[17] In the period December 1999 - 2 February 2002, there was an increase of 45% in arrest warrants issued against paramilitaries, compared to 237% against members of the guerrilla.

Concern about the reorientation of the Unit's priorities since Luis Camilo Osorio took office is also shared by the UN High Commissioner for Human Rights: "The new administration has reaffirmed its undertaking to rearrange investigation priorities so as to include breaches of international humanitarian law by guerrilla groups. Yet cases against the various armed groups have always fallen within the Unit's jurisdiction. Given that the Ministry of Defence has acknowledged paramilitarism to be the main factor to human rights violations, there was every reason for the Unit to have prioritized and emphasized such investigations in the past."[18] The trend towards re-orientating the work of the Unit to focus primarily on guerrilla abuses is complemented by the decentralization of the Unit with the creation of 11 regional Units. In conflict zones, prosecutors are much more likely to face direct threats and attacks from members of paramilitary, security or guerrilla forces that they may be investigating. This limits their capacity to advance investigations which may implicate local military units on which they ultimately depend on for protection.

The Rome Statute and the International Criminal Court

Colombia ratified the Rome Statute establishing the International Criminal Court (ICC) on 5 August 2002. On the same day, and two days before President Uribe took office, President Andrés Pastrana invoked Article 124 of the Rome Statute. This allows a country not to submit those accused of war crimes to the ICC for seven years. Once this period is over only war crimes committed after the seven-year moratorium can be submitted to the Court. According to the Colombian High Commissioner for Peace (*Alto Comisionado para la Paz*), Luis Carlos Restrepo, this decision was taken with the approval of the future Uribe administration. [19]

Amnesty International believes that the invocation of Article 124 could help extend the mantle of impunity over war crimes and facilitate the granting of pardons and amnesties to the security forces, members of army-backed paramilitary groups, and guerrillas. Article 6(5) of the Protocol Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) does allow, on cessation of hostilities, for a broad amnesty to be granted to "persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained". However, that type of amnesty does not apply to grave breaches of IHL, such as arbitrary killings, torture and disappearances. It does not aim at an amnesty for those having violated international humanitarian law."

On 10 September, Minister Londoño announced that the government was preparing a decree to enable guerrillas and paramilitaries to hand in their weapons and receive pardons or amnesties, as an integral element in an eventual peace process. However, these benefits would

[17] Vice-presidency of the Republic, Presidential Programme for Human Rights and IHL, *Resultados de la Política de Derechos Humanos y DIH.*
[18] E/CN.4/2002/17, 28 February 2002.
[19] *El Tiempo*, 4 September 2002

reportedly not apply to individuals implicated in "terrorist crimes, kidnapping, kidnappings for the purpose of extortion or related crimes, genocide, acts of atrocity or barbarity and out-of-combat killings". Although the proposed decree lists crimes which would disqualify a combatant from receiving a pardon or amnesty, it does not include all war crimes as defined by the Rome Statute.[20] The invocation of Article 124 could therefore send a dangerous message to the judiciary not to prioritize judicial investigations into violations of human rights or IHL. It will also reinforce the view that impunity for these crimes will be guaranteed.

The United States Demands Immunity from the ICC: In August 2002, the US Government called on the Colombian government (and many other states) to sign an immunity agreement to ensure that US security force personnel in Colombia would not be submitted to the authority of the ICC. However, Colombian Foreign Minister Carolina Barco stated that a new agreement was unnecessary since US security force personnel and US citizens providing technical assistance would continue to benefit from a 1962 agreement with the United States. The agreement commits Colombia to hand over to the US authorities US personnel implicated in crimes. In a September 2002 meeting with President Uribe, US President George Bush reportedly insisted that a new agreement was necessary. The Colombian government's assurances that the 1962 agreement would protect US security forces from the jurisdiction of the ICC sends a dangerous message to US security forces in Colombia that their impunity will be guaranteed even if they are implicated in serious human rights violations which can also be categorized as war crimes.

This is of particular concern given that the United States is providing military aid – hardware and military trainers – to military units operating in areas where paramilitaries have a strong presence. Amnesty International has received information documenting the collusion of several of these units with paramilitary forces. This includes the XVIII Brigade which operates in Arauca Department. Over the last year Arauca has witnessed a large increase in the presence of paramilitaries and paramilitary incursions in heavily-militarized areas. There is also evidence of threats of paramilitary incursions made by XVIII Brigade units against civilian communities living along the Caño Limón-Coveñas oil-pipeline, which cuts through the department. The organization has also received information of paramilitary checkpoints operating unhindered for prolonged periods of time in close proximity to military units.

There have been several cases in which US military aid has been linked to human rights violations. On 13 December 1998, a Colombian Air Force crew reportedly flying a US-funded combat helicopter rocketed a house where several civilians were sheltering. The incident occurred after a day of combat around the village of Santo Domingo, in the municipality of Tame, department of Arauca, between the armed forces and the FARC. Seven children and 11 adults were killed in the attack. To date nobody has been brought to justice.

Restricting Access to National and International Human Rights NGOs

Amnesty International is concerned that the Rehabilitation and Consolidation Zones are designed to screen off these areas from the observation of national and international human

[20] See Article 8, War Crimes, Rome Statute of the International Criminal Court, 1998.

rights organizations and to silence these groups and the international media making it difficult for them to monitor, document and denounce human rights violations. In this way "dirty war" tactics carried out by paramilitaries in conjunction with the armed forces can continue unhindered. Local human rights workers may now be included in the list of "specific persons" who must report to the authorities their intention to travel outside a municipality. This facilitates surveillance of their legitimate work and exposes them to increased risk of reprisal, particularly if they should try to travel outside a region to denounce human rights violations.

International human rights workers might now be denied access to these areas. The government has insisted that foreign human rights and humanitarian NGO workers seek special NGO visas – which are bureaucratic and expensive to obtain – to travel to the country. Several foreigners have been deported from Colombia prior to and since the creation of the Rehabilitation and Consolidation Zones. Amnesty International is concerned that the government is presenting the work of many international NGOs as illegal. Defence Minister Martha Lucía Ramírez, speaking about two Spanish NGO workers who were subsequently deported, suggested they had been involved in criminal activities.[21] The two NGO workers, belonging to the organization Sol de Paz – PACHAKUTTI, had been observing the 16 September protests in Sucre department which were part of a national rural strike. The Spanish aid workers were subsequently deported from the country although they were not brought before a judge to verify the allegations made against them by the government.

The accusations levelled against international NGO workers by senior government officials, coupled with the arguably xenophobic language used in the preamble of Decree 2002, is placing foreign human rights and humanitarian NGOs under suspicion. Of particular concern is that the detention, deportation and obstacles placed in the way of foreign NGOs to gain access to the country may not only discredit their legitimate work but may also call into question the legitimacy of the work undertaken by national human rights and humanitarian workers. If the government is serious about respecting human rights then it should guarantee access to all areas of the country. Access to conflict zones is particularly important given the increased likelihood of serious violations of human rights and IHL occurring in these areas.

Amnesty International is also concerned about the requirement that international human rights and humanitarian organizations give eight days notice prior to visiting a Rehabilitation and Consolidation Zone. This will hamper emergency human rights and relief work. If human rights violations are suspected of having been committed, or if there are humanitarian needs in certain areas, immediate attention is often required from international NGOs. During those eight days evidence may be destroyed or will deteriorate, witnesses threatened into silence, and lives put at risk given that vital support from civil society will not be available.

Failure to Develop a Strategy to Combat Paramilitaries

The paramilitaries, backed by the army, have sown terror in Colombia for decades. They have tortured, killed and "disappeared" thousands of civilians. And all this with virtual impunity. Many have their origins in legal civilian "self defence" groups which the army created to act

[21] See *El País*, 19 September 2002.

as auxiliaries during counter-insurgency operations. Their legal basis was removed in 1989 but as yet no effective military or political measures have been taken to disband them. Their collaboration with the security forces has been well documented by Amnesty International. Reports from the UN and the Organization of American States have also documented strong ongoing links, while criminal and disciplinary investigations continue to implicate high-ranking military officers in human rights violations committed by paramilitaries.

Over recent years, the security forces have captured and killed an increasing number of paramilitaries. However, on several occasions Amnesty International has been informed that paramilitaries killed in combat with guerrilla forces have been presented as having been killed by the armed forces. Amnesty International has also received information on simulated attacks between paramilitaries and the armed forces. The media frequently reports raids on alleged paramilitary bases during which no or very few paramilitaries are actually captured, while paramilitaries have also reportedly been killed in the course of mistaken attacks against them by the armed forces. According to media reports, the army also allegedly ambushed and then massacred 24 paramilitaries in Segovia, department of Antioquia, on 9 August 2002, although it claimed the paramilitaries had been killed in combat.

However, this has not prevented the continued spread and consolidation of paramilitary forces throughout the country. This is despite heavy military presence and reports of paramilitary bases which have remained operational despite repeated denunciations made to the security forces by local residents and NGOs. Crucially, the Colombian armed forces' counter-insurgency strategy, which relies heavily on paramilitarism, remains intact, and paramilitary forces continue to enjoy the support or acquiescence of the army.

The case of Arauca Department is revealing in this respect. Information received by Amnesty International during a recent visit to Arauca indicated that a large number of paramilitaries entered the community of El Rosario and surrounding areas in the municipality of Arauca on 21 June 2002, despite the close proximity of the army's XVIII Brigade, and were able to operate unhindered until 14 August 2002. Although reports were received of army operations against paramilitary forces, these were not decisive and paramilitary forces subsequently transferred to the area around El Caracol, municipality of Arauca. Between August and 23 October, Amnesty International received information of the continued presence of paramilitary forces in the area of El Caracol. Despite the fact that the area is heavily militarized and the whereabouts of the paramilitaries known by the authorities, no action to confront the paramilitaries appears to have been taken. There is also evidence of paramilitary/army collaboration in other departments, such as Norte de Santander, Cauca, Antioquia, Chocó, and those encompassing the former demilitarized zone (Caquetá and Meta).

The Rehabilitation and Consolidation Zone declared in Arauca covers the municipalities of Arauquita, Saravena and Arauca, where guerrilla forces of the FARC and the National Liberation Army, *Ejército de Liberación Nacional* (ELN) have a strong presence, but does not cover areas dominated by paramilitaries. When asked why only areas with a strong guerrilla presence had been included in the zone, the Governor of Arauca replied that "it was

the government's decision, They undertook a detailed analysis and spoke to many people, and have their reasons for doing so. In terms of security this is what they considered best."[22]

Failure to capture national paramilitary leaders: The failure by successive governments to capture national paramilitary leaders has facilitated the continued spread of paramilitarism. While journalists have been able to interview paramilitary leaders including Carlos Castaño, and the Catholic Church has established contacts with the paramilitary leadership in recent months, the security forces have been unable, or unwilling, to secure their capture. On 24 September 2002, the US government announced its intention to seek the extradition of paramilitary leaders Carlos Castaño, Salvatore Mancuso and Juan Carlos Sierra Ramírez on charges of drug-trafficking. On 26 September, President Bush also stated that Castaño would be tried for "terrorism". However, the extradition request should not distract from the fact that the authorities should take immediate action to arrest Castaño and bring him and other paramilitary leaders to justice in Colombia for grave and systematic human rights violations.

Failure to investigate army collusion with paramilitaries: The fact that paramilitarism remains integral to the army's counter-insurgency strategy is underlined by the failure of the authorities to ensure that high-ranking military officers implicated in human rights violations committed with the support of paramilitaries are brought to justice. The military justice system continues to claim jurisdiction over these cases. It has repeatedly cleared officers of human rights charges brought against them despite strong *prima facie* evidence against them.

The case of General Rodrigo Quiñónez Cárdenas is illustrative. Quiñónez is implicated in the murders of at least 57 trade unionists, human rights workers, and community leaders in 1991 and 1992, when he was head of the Navy Intelligence Network 7 (*Red de Inteligencia de la Armada No.7*) based in Barrancabermeja. A military tribunal decided that there was insufficient evidence against him. A civilian judge who ruled on the case of two civilians involved in the murders expressed his surprise at the military tribunal's decision, since he considered the evidence against Quiñónez to be strong. Quiñónez was subsequently promoted to commander of the First Marine Infantry Brigade (*Brigada de Infantería de Marina No 1*).

On 6 July 2001, the *Procuraduría* initiated formal investigations to determine whether Quiñónez and five other security force members were responsible for failing to take action to prevent the paramilitary massacre of 26 people in Chengue (Sucre Department) in 2001. In December 2001, he was promoted and took up the post of vice-rector of Colombia's War College (*Escuela Superior de Guerra*). In March 2002, he was summoned for questioning by the *Fiscalía* which was reportedly investigating his failure to prevent the Chengue massacre. In the same month his appointment to a diplomatic post in the Colombian Embassy in Israel was announced. On 4 October 2002, the government issued Decree 2223, which announced the award of the *Condecoración Orden de Boyacá* (Order of Boyacá Medal) to several

[22] *El Tiempo*, 4 October 2002

military officers, including Quiñónez. The decoration came days after the *Procuraduría* confirmed that it was filing disciplinary charges against him in relation to the massacre.[23]

Dragging the Civilian Population into the Conflict

The armed forces' counter-insurgency strategy has long consisted of undermining what they perceive to be the civilian population's continued support for the guerrillas. This strategy – based on the concept of "removing the water from the fish" – views civilian victims of the armed conflict, including those who inadvertently come into contact with the armed opposition groups, not as innocent victims but as part of the enemy. Moreover, failure to actively collaborate with the state and the military in their counter-insurgency strategy often leads to the systematic harassment and abuse of the civilian population and to its stigmatization as guerrilla sympathisers.

The government's policies do not appear to respect the right of the civilian population not to be drawn into the conflict. In a letter sent to Amnesty International on 16 October 2002, President Uribe made clear the government's reluctance to accept the right of civilians not to be drawn into the conflict: "Nobody can be neutral in the state's fight against criminality." While a state has the right to urge its citizens to collaborate with its judicial institutions and denounce crimes and human rights violations, in a conflict situation, such as that faced by Colombia, the state must respect the right of civilian communities not to take action which exposes them as direct targets in the conflict. President Uribe's Democratic Security policy is based on the premise that the civilian population must play a pivotal role in guaranteeing its own human rights and security.

The Network of a Million Civilian Informers

During Álvaro Uribe's presidential campaign, the future president announced his intention to create a million-strong network of civilian informers. This network would require civilians to compile and pass on intelligence information on illegal armed groups to the security forces. The creation of this network therefore gives civilians a direct role in the conflict, blurring the distinction between civilians and combatants. Members of these networks are liable to be viewed as targets by armed groups. This, in turn, could fuel arguments to equip them with military weaponry, thus facilitating the emergence of new style paramilitary groups.

The creation of these networks threatens to repeat the history of the CONVIVIR created by President Ernesto Samper in 1994. One of the reasons human rights groups opposed the creation of CONVIVIR groups was that they threatened to complement the paramilitary strategy. These groups were often armed and involved in human rights violations including

[23] For other cases of military officers implicated in human rights violations and collaboration with the paramilitaries see *Colombia: Human Rights and USA Military Aid to Colombia III*, February 2002, AI Index: AMR 23/030/02

massacres, often in coordination with paramilitaries and the armed forces. In November 1997, the Constitutional Court ruled that the CONVIVIR should not be permitted to act as "death squads" and ordered them to hand in weapons reserved for the use of the armed forces.[24]

There is concern that, as with the CONVIVIR, the networks will be armed and subject to insufficient controls. When proposing the creation of the networks at a round-table discussion with the presidential candidates and Amnesty International on 6 May 2002, Álvaro Uribe stated that they would not be armed but that private security guards, who would form part of the networks, would retain their weapons. While government officials have given confusing messages on whether the networks would be armed,[25] Decree 1612 – signed by then President Pastrana on 31 July 2002 – contains provisions permitting the arming of these networks.[26]

Amnesty International has already received information of civilian networks operating in areas with strong paramilitary presence, where there can be no guarantee that the networks will not end up complementing the paramilitary strategy. This risk is particularly serious since paramilitary groups remain an integral part of the armed forces' counter-insurgency strategy and that these networks operate under the auspices of the armed forces and police. One of the first informer networks created was in the department of Cesar where paramilitary forces have reportedly been able to maintain a base a short distance from the military base in the departmental capital, Valledupar, over an extended period of time. Personnel attached to this military base have been implicated in criminal investigations into paramilitary activities in the department. Results of these investigations remain unknown.

Reports indicate that the network of civilian informers providing information has led to human rights violations and that their members may possibly be participating directly in army operations. On 24 September 2002, at around 5:50am, Monguí Jérez Suárez was seriously injured and her husband Florentino Castellanos Zetuián and her nine-year-old son Nilson Hernández were killed when soldiers of the Nueva Granada Battalion (*Batallón Nueva Granada*) forced their way into her house in Brisas de Yanacué, municipality of Cantagallo, department of Bolívar. Reportedly, this military operation was carried out after information was provided to the security forces by civilian informers operating in the region. During the operation four people were also detained allegedly without a judicial warrant. The army claim that Florentino and Nilson were FARC guerrillas killed in combat. Colonel Lucio Javier Latorre Rojas, commander of the Nueva Granada Battalion, reportedly stated that the killings

[24] In August 1998, some 300 CONVIVIR groups renounced their government licences and continued to operate illegally whilst 39 CONVIVIR groups announced their intention to join the paramilitaries. One example of a CONVIVIR member formally joining the paramilitaries is provided by Salvatore Mancuso who had been the legal representative of the CONVIVIR Horizonte which operated in the departments of Córdoba and Sucre. He has subsequently become a national paramilitary leader.

[25] The Minister of Defence was quoted in *El Tiempo* on 9 August 2002 stating that the possibility of arming informants would have to be studied, while President Uribe was quoted stating that the arming of informers had to be studied to avoid situations in which "a peasant farmer is killed to steal his rifle".

[26] The Decree allows for the creation of a community supervisory body which among other duties would "issue recommendations to the Superintendency for Vigilante and Security Groups justifying the bearing and possession of Arms for Community Service.

had taken place during a military operation which followed information from a civilian informer network that a guerrilla unit was advancing toward the community of Yanacué.

The Part-Time Army of Peasant Soldiers

The government has also announced plans to recruit 150,000 part-time "peasant soldiers", 15,000 of which would be recruited within a year. These peasant soldiers would participate in the war against guerrilla forces while continuing to live within their own communities. This initiative raises serious concerns that these soldiers will be absorbed into the paramilitary strategy, if only as a means to protect themselves from guerrilla attack.

Since these soldiers will live in their community, they and their families will not enjoy the protection offered to regular forces living in barracks. This will place them at increased risk of attack by guerrilla forces. Given the precarious economic situation of many communities in Colombia, many individuals may be tempted to join the "peasant army" simply as a way of escaping from abject poverty. There is also a lack of clarity about the degree and quality of training these peasant soldiers will receive, although it is unlikely to be as rigorous as that enjoyed by regular forces. There is also little evidence that effective vetting procedures have been put it place nor information about whether they will be subject to normal disciplinary procedures. This will not only expose these peasant soldiers to increased threat of attack but will also make them more likely to commit human rights violations.

Legitimizing Attacks Against Civil Society

Amnesty International fears that the government's policies will legitimize attacks against and silence those sectors of the civilian population labelled as guerrilla collaborators by the security forces and their allies. These include groups campaigning for socio-economic alternatives, peasant farmers living in conflict zones and witnesses of human rights violations in which the security forces are implicated. The implicit aim of Decree 2002 is to stigmatize and criminalize the civilian population rather than to combat the illegal armed groups. This is suggested in the third preambular paragraph which states that "one of the principal support mechanisms for the criminal activity of such organizations [the illegal armed groups] is […] the infiltration of its members among the civilian population". This assertion clearly blurs the distinction between combatants and non-combatants and risks dragging the population further into the conflict by presuming it is acting as an accomplice or agent of the armed groups.

Since Decree 2002 was implemented Amnesty International has received numerous reports of mass detentions, many undertaken without judicial warrants. Some of those detained have been held without charge for extended periods of time and on occasions detainees may have been kept in conditions which could constitute inhuman and degrading treatment. Others have reportedly suffered ill-treatment:

- In a security forces operation to flush out urban guerrilla and paramilitary forces from the Comuna 13 districts of Medellín, initiated on 16 October 2002, 169 people were arrested and handed over to the *Fiscalía*. Several civilians were reportedly killed in the combat, as well as a number of presumed combatants. By 30 October, the *Fiscalía* had ordered the unconditional release of 88 people who had been held in detention

without charge for 15 days. Another 82 individuals have reportedly been charged on the basis of testimony provided by paid informers.

- Between 30 August and 2 September, troops of the First Marine Infantry Brigade, reportedly accompanied by a hooded informer, arrived in Pijaguay, Ovejas Municipality, department of Sucre and detained 60 people in Don Gabriel, Salitral, Pijaguay, Chengue and Desbarranco. The detainees were reportedly kept in the Corozal Battalion army base and held incommunicado, tied up and without adequate shelter for five days. On 4 September, the detainees were informed by members of the *Fiscalía* that they were being charged with belonging to guerrilla groups. They were taken to La Vega prison, held for a further 45 days and subsequently released after allegedly being ordered to sign a document testifying that they had been well-treated.

Provisions under Decree 2002 are also likely to grant the security forces excessive powers to carry out criminal investigations against civilians. This may encourage the armed forces to continue to carry out surveillance and to initiate bogus investigations against witnesses denouncing human rights violations, as well as against human rights and civil society NGOs. Regardless of whether these investigations – which often consist of raids on NGO offices – uncover evidence of criminal wrong-doing, they threaten to expose these organizations to increased danger of human rights violations, by discrediting them before public opinion and therefore dampening any possible public outcry to further killings and threats.

Amnesty International has documented cases of human rights violations against human rights defenders, trade unionists and other social activists committed by the security forces or their paramilitary allies. These attacks have often followed accusations by the security forces that the victims were guerrilla collaborators. It is also often the case that the victims of these violations have been kept under surveillance by military intelligence, which has maintained files on them alleging links with guerrillas and that this information has been "leaked" to the paramilitaries. Human rights organizations and the Special Representative of the Secretary General on Human Rights Defenders have called on successive Colombian administrations to ensure that military intelligence files are revised and that any evidence of criminal wrongdoing is passed to the *Fiscalía* to determine the veracity of the information. Since the application of Decree 2002 a number of human rights organizations' offices have been raided.

In recent weeks, reports have also been received of individuals involved in organizing legitimate social protests being arbitrarily detained. On 16 October, 12 students were reportedly detained by the police in Pasto, department of Nariño. The students were allegedly planning demonstrations against government plans to cut education funding. No information has been received as to whether they have been released or charged. There are also concerns that measures introduced through the decrees may be used to intimidate and silence witnesses to human rights violations. On 1 September troops from the XVIII Brigade reportedly entered Puerto Triunfo, municipality of Arauquita, where they detained over 100 people. The detainees were reportedly held in cramped conditions in one room. Among those detained were eight witnesses to the La Esmeralda paramilitary massacre of five people on 1 July 2001.

Conclusions and Recommendations

Successive Colombian governments have sought to avoid responsibility for tackling the human rights and humanitarian crises by pointing to the violations of international humanitarian law (IHL) committed by guerrilla forces as a justification for repeated inaction. However, precisely because of its duties and obligations under domestic and international law, and its monopolistic role in upholding the law, maintaining order and dispensing justice, the Colombian state must assume responsibility for resolving this human tragedy.

If the human rights crisis is to be resolved, the armed opposition groups must also assume their responsibility by committing themselves to respecting IHL. Guerrilla forces have specific responsibilities for putting an end to hostage-taking and kidnapping. They must also put an immediate end to killings of civilians they accuse of collaborating with their enemies, and disproportionate attacks against military targets which often result in numerous civilian casualties. Guerrilla groups must also respect international symbols protected under IHL.

The international community also has a pivotal role to play in helping to resolve the crisis by encouraging the Colombian government to respect and implement the human rights recommendations made by the UN. At the time of President Uribe's inauguration many governments argued that the administration should be given a six-month grace period in which to adopt measures to tackle this crisis. This period is now almost over and the international community is yet to see any proof that effective human rights measures are being implemented. Rather, the armed conflict and the human rights crises are intensifying.

Instead of calling the Uribe administration to account for this failure, many governments, especially the United States, are increasing military aid to Colombia's armed forces, which continue to be responsible for human rights violations in collaboration with their paramilitary allies. Foreign governments should instead insist that the Colombian administration implement UN recommendations, particularly on combating and dismantling paramilitary groups and upholding human rights and IHL. Otherwise, military aid – far from strengthening security – will only exacerbate the human rights crisis and send a dangerous message that human rights violations can continue with impunity.

In an open letter to President Uribe, published on 7 August, Amnesty International not only expressed some of its concerns over the security policies being mooted by the then incoming government, but also presented a series of recommendations, many of them based on those elaborated by the UN, that would have made a valuable contribution to resolving some of the problems affecting human rights in Colombia.[27] The government, however, has not only failed to implement these recommendations, but has not even elaborated an action plan to once and for all end the human rights and humanitarian crises. The civilian population, the main victims in this tragedy, will unfortunately pay a heavy price for this failure.

[27] Open letter to the President of the Republic of Colombia, Dr. Álvaro Uribe Vélez, AI-index: AMR 23/084/2002, 07/08/2002.

In the Open Letter to President Uribe, Amnesty International made three recommendations to the government: on action to end impunity; to break the links between the security forces and the paramilitaries; and to protect vulnerable sectors, such as human rights defenders. No action has been taken to comply with these recommendations, which were as follows:

- Exclude cases of human rights violations from the jurisdiction of military courts; suspend from duty all members of the security forces implicated in cases of human rights violations by judicial or disciplinary investigations until such time that their responsibility or innocence has been determined; ensure that the security forces provide full support to the *Fiscalía General de la Nación* in advancing judicial investigations into cases of human rights violations; and put in place the necessary measures to guarantee the safety of judicial investigators.
- Undertake full and impartial investigations into the links between paramilitary groups and the security forces; hold to account those members of the security forces responsible for training, supporting and collaborating with paramilitary groups; and take immediate steps to ensure that paramilitary groups are dismantled and those members responsible for human rights violations brought to justice.
- Initiate an immediate dialogue at the highest level with human rights defenders to revise existing policies for their protection; strengthen the Minister of the Interior's protection program; and implement the recommendations of the Special Representative of the UN Secretary General on Human Rights Defenders.

In addition, Amnesty International calls on the Colombian government to:

- Acknowledge that security can only be guaranteed by implementing the human rights recommendations repeatedly made by the UN and other international organizations.
- Ensure that any state of emergency conforms to the Constitution and to international standards. Granting the military the right to detain and to carry out house searches without judicial warrants clearly runs counter to these obligations. The government must therefore comply fully with the Constitutional Court ruling on Decree 2002.
- Express its support for the 1991 Constitution and strengthen its human rights mechanisms, such as the Constitutional Court and the *Defensoría del Pueblo*, and other human rights mechanisms such as the *Personerías Municipales*.
- Abandon measures that threaten to drag the civilian population further into the conflict and to strengthen paramilitarism, such as the network of a million civilian informers and the part-time army of "peasant soldiers".
- Give access to international human rights and humanitarian organizations to conflict zones so that they can effectively carry out their legitimate work, which has been acknowledged as valuable by the Colombian government. Restrictions on their movement, contained in Decree 2002, must therefore be withdrawn.