

# COLOMBIA

## Amnesty International's briefing to the UN Committee against Torture on the Republic of Colombia

November 2003

### Preface

Colombia ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 7 January 1988. The Committee against Torture is scheduled to examine Colombia's third periodic report on 11 and 12 November 2003.<sup>1</sup>

Amnesty International has documented and continues to receive information indicating the widespread practice of torture carried out by the Colombian security forces and their paramilitary allies. The organization has also received information indicating that the armed opposition groups are also responsible for torture. Amnesty International is concerned that the failure of successive administrations, including the present government, to tackle impunity in cases of human rights violations, despite repeated recommendations made by the United Nations and the Inter-American Commission on Human Rights, has contributed to the continued practice of torture. Furthermore, several policies the present government is promoting threaten to facilitate continued torture and are in direct contravention of several CAT articles.

This document focuses on the failure of the Colombian government to ensure that Articles 2, 4, 5, 6, 7, 12, 13, 14 and 15 of the CAT are upheld and its promotion of policies which are in contravention of these articles. The document is divided into three sections:

- 1 - Background
- 2 - Concerns over compliance with specific Articles of the CAT
- 3 - Conclusions and Amnesty International's recommendations

Shaded boxes in the document provide specific examples of cases of torture, impunity in cases of torture and cases of arbitrary detentions of members of human rights and other social organizations who have denounced human rights violations, including torture.

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<sup>1</sup> UN Doc. CAT/C/39/Add.4, 17 January 2002. The initial report was considered by the CAT in 1989, the second report was considered by the CAT in 1995 - conclusions available on <http://www.unhchr.ch/tbs/doc.nsf/5038ebdcb712174dc1256a2a002796da/80256404004ff315c125638c005c71a0?OpenDocument>

## **1. Background**

The long-running armed conflict in Colombia has deepened significantly since peace talks between the government and the main armed opposition group, the *Fuerzas Armadas Revolucionarias de Colombia*, (FARC), Revolutionary Armed Forces of Colombia, broke down in February 2002. Contrary to repeated claims by the Colombian government, the security policies pursued by the administration of President Álvaro Uribe have only served to exacerbate the already severe human rights and humanitarian crises. All parties to the internal conflict – the armed forces, acting in conjunction with paramilitary groups, and the guerrillas – are responsible for serious and systematic abuses of human rights and international humanitarian law. In 2002 more than 4,000 civilians were killed for political motives, over 1,000 people “disappeared”, over 400,000 were displaced – a record high – and at least 2,700 people were kidnapped, some 1,500 of whom were kidnapped by guerrilla groups and paramilitaries. In short, some 20 people per day are victims of politically-motivated killings and forced disappearances. The vast majority of these killings take place *hors de combat*. Both the army and its paramilitary allies and guerrilla forces carry out killings of people they label as enemy sympathisers as an integral part of their military strategies. Most non-combat politically-related killings are committed by paramilitaries operating with the acquiescence of and in collusion with the security forces. This increases to over 90% in the case of “disappearances”. Recent data relating to torture indicate that around 55% is committed by army-backed paramilitaries, 11% directly by the security forces and almost 7% by armed opposition groups. In the remaining cases responsibility is not known. The majority of victims of torture are subsequently killed. Between July 1996 and June 2001 over 1,200 people were reportedly tortured, of these over 88% of victims were subsequently killed.

Since the breakdown of peace talks, the FARC have escalated attacks on civilians, among them hundreds of mayors, city council members, and other local officials. On 5 May 2003, the FARC allegedly killed the Governor of Antioquia, Dr Guillermo Gaviria Correa and former Minister of Defence, Dr Gilberto Echeverri Mejía, together with eight members of the armed forces, all of whom were being held captive by the guerrilla organisation.

### **Responsibility of armed opposition groups in acts of torture**

As this briefing examines the failure of the Colombian State to uphold its responsibilities under the CAT it will not focus on guerrilla responsibility for acts of torture. It is important to make clear that guerrilla forces have been responsible for such abuses. Information received by Amnesty International indicates that FARC guerrillas have been responsible for rape and other forms of sexual abuse. In November 2002, Amnesty International wrote to the FARC expressing concern over several cases of violations of international humanitarian law. The letter included details of the case of a young woman who joined the FARC and was raped by her commander when she was 19 years old. The commander also beat her. Amnesty International has still not received a reply to this letter.

Guerrilla forces have also been responsible for the torture of captured members of the security forces or civilians they accuse of collaborating with their enemies. Those tortured are frequently killed:

- On 17 January 2002, ELN guerrillas reportedly tortured Luis Eduardo Angulo Castillo, a policeman in the municipality of EL Tarra, department of Norte de Santander, before killing him.
- On 20 January 2003, FARC guerrillas reportedly captured Juan Diego López Durango a soldier attached to the *Battallón General Francisco de Paula Vélez*, General Francisco de Paula Vélez in the community of Currulao, municipality of Turbo, department of Antioquia. Juan Diego López was reportedly tortured before being killed.
- On 1 March 2003, FARC guerrillas tortured and killed José Isidoro Matiz in the municipality of Sasaima, department of Cundinamarca.

Despite calling a ceasefire in December 2002, the umbrella paramilitary organisation, the *Autodefensas Unidas de Colombia*, (AUC), United Self-Defence Forces of Colombia, operating with the tolerance and support of the security forces, is still responsible for numerous massacres, selective killings and threats throughout the country. Amnesty International also has evidence that the security forces have been directly responsible for violations of human rights, including arbitrary arrests, torture, “disappearances” and killings. Amnesty International has recently received information on a spate of cases of human rights violations committed directly by the security forces. The latest report of the Office of the United Nations High Commissioner on Human Rights in Colombia, presented to the 59<sup>th</sup> session of the UN Commission on Human Rights in Geneva, observed that in 2002: there was an increase in reported violations of the right to life, including extrajudicial executions and massacres, attributed directly to public officials and more particularly to members of the security forces...”.<sup>2</sup>

Rather than shielding civilians from hostilities, government measures risk dragging them further into the conflict. The creation of a network of paid civilian informants and “peasant soldiers” required to collaborate with the security forces puts civilians in danger of attacks by the other side in the conflict. Together with proposed legislation to enable civilians to bear assault weaponry and measures to grant pardons to members of illegal armed groups, these policies could lead to a strengthening of paramilitarism and to continued human rights violations, including torture, by these groups.

The government’s use of emergency legislation has also proved a cause for serious concern. Colombia has spent most of the last 50 years under various states of emergency through

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<sup>2</sup> E/CN.4/2003/13, p. 48, 24 February 2003

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which constitutional guarantees have been side-stepped, governments have ruled by executive decree, and the military have been granted broad powers to deal with public order issues. This has led to widespread, flagrant human rights violations. The government of President Uribe declared a State of Internal Commotion on 11 August 2002 and issued Decree 2002 – which established two special security areas, Rehabilitation and Consolidation Zones – on 9 September 2002. The *Procuraduría General de la Nación*, Office of the Procurator General, and the *Defensoría del Pueblo*, Office of the Human Rights Ombudsman, have issued reports in recent months indicating that right to life violations in these zones increased during the period of their existence. On 25 November 2002, the Constitutional Court declared that parts of Decree 2002 were unconstitutional, notably those granting judicial police powers to the military. On 29 April 2003, the Court ruled against the renewal of the state of emergency and all related decrees.

The government's repeated failure to obtain approval from the Court to implement emergency measures has led it to seek to reform the constitution to legalise several security measures, including those granting judicial police powers to the armed forces. Although the state of emergency is no longer in force, the security forces continue exercising *de facto* judicial police powers by undertaking joint operations with the Office of the Attorney General. In these operations agents of the Office of the Attorney General have been called upon to sign on the spot arrest or search warrants which are based not on the basis of impartial judicial investigations but on the basis of military suspicions often based on information provided by paid military informants. On other occasions arrests and searches have been carried out without judicial warrants despite the fact that those affected had not been *in flagrante delicto*. These arbitrary judicial practices together with the possible granting of judicial police powers to the armed forces risks strengthening impunity and exposing human rights defenders and other civilians to arbitrary criminal investigations. These practices risk tarnishing them as subversive and expose them to heightened risk of violent attack, regardless of whether or not these investigations uncover evidence of criminal wrongdoing. New amendments to the proposed legislation to grant the armed forces judicial police powers include the suspension of *habeas corpus* rights. If approved this suspension could facilitate acts of torture of those detained by the security forces.

Under the government of President Uribe, human rights and social activists continue to be killed, “disappeared”, detained, threatened and harassed. Moreover, while expressing an interest in maintaining dialogue with non-governmental organizations (NGOs), in practice government, security force and other state officials are frequently and increasingly treating human rights defenders and social activists as subversives, labelling them as such in public statements and targeting them during intelligence and counter-insurgency operations. Numerous activists, trade unionists, journalists and humanitarian workers have been interrogated or arbitrarily detained during attempts to reach people in conflict zones cut off from the rest of the country. During raids carried out in so-called intelligence and counter-insurgency operations, individual personal details and information regarding the involvement of security force personnel in human rights violations has been seized from social organizations. These attacks against the human rights movement risk undermining its work

by ensuring that human rights violations committed by the security forces and their paramilitary allies can continue unobserved.

Amnesty International is concerned that the government's policies are designed to strengthen impunity in cases of human rights violations, including torture, to cover up human rights violations from the view of national and international public opinion and to silence those sectors which denounce and investigate human rights violations. In this context, the government is creating the conditions under which the practice of torture may continue unabated, and could even increase. The numerous reports received and documented by Amnesty International (the box below provides some examples) is evidence of the failure of successive Colombian governments to take decisive measures to end torture.

#### **The practice of torture, cruel, degrading and inhuman treatment by State agents**

Over the years the armed forces have implemented a counterinsurgency strategy characterized by the systematic and widespread violation of human rights. Human rights violations, including torture, are employed as a means to ensure civilian communities desist from providing any real or imagined support to guerrilla forces through terror. Human rights violations are also used as a means to undermine and destroy organizations campaigning for the respect for human rights, peace and socio-economic alternatives. Those detained by the security forces accused of subversion and then imprisoned are frequently subject to cruel, inhuman and degrading treatment both during their detention and once in prison. The failure of successive governments, to take decisive action to ensure an end to human rights violations within the context of the counterinsurgency strategy and to guarantee that those detained and imprisoned are protected from cruel, inhuman and degrading treatment, is in breach of the Colombian State's obligations under the CAT.

Amnesty International has documented numerous cases of torture preceding extrajudicial executions committed by the army or their paramilitary allies over many years. The continued practice of torture, as illustrated by the examples given below, is a measure of the failure of successive Colombian governments to take decisive action to end human rights violations:

- On 30 January 2003, troops belonging to the *Batallón Manosalva Florez*, Manosalva Florez Battalion, forced José Amancio Niasa Arce, a 15-year-old student, from the bus in which he was travelling in the municipality of Bagadó, department of Chocó. His body, which reportedly bore signs of torture, was found several days later in a military-style uniform.
- A witness account described how Wilson Duarte, a peasant farmer abducted by army-backed paramilitaries operating in the municipality of Viotá, department of Cundinamarca, was killed on 28 May 2003: "... *Siguieron la tortura, cortando un brazo. Cuando el campesino no pasó la información que los asesinos pedían, le cortaron el otro brazo, y después la pierna, y después la otra pierna, para terminar por cortarle a Wilson Duarte su cabeza. La misma terrible muerte le pasó a Hernando Micán, 30 metros más*

*abajo*”. “... They continued the torture, cutting an arm off. When the peasant farmer failed to provide the information the killers demanded, they cut his other arm off, and then the leg and then the other leg, and finally cut Wilson Duarte’s head off. The same terrible death happened to Hernando Micán, 30 metres further down ... .”

Torture, including rape, is used as a tactic to terrorize communities and provoke mass displacement and to ensure military control over a region:

- Between 1-7 May 2003 soldiers of the XVIII Brigade, reportedly wearing AUC armbands, entered the indigenous communities of Julieros, Velasqueros, Roqueros, Genareros and Parreros, hamlets of the indigenous reserve of Betoyes, municipality of Tame, Arauca Department. In Parreros, these gunmen reportedly raped and killed a pregnant 16-year-old girl, Omaira Fernández. Her stomach was cut open and the foetus pulled out. Omaira Fernández’s body was placed into a bag, which was then reportedly thrown into the River Cravo. In the hamlet of Velasqueros the gunmen reportedly raped three indigenous girls, aged 11, 12 and 15. These human rights violations contributed to the mass displacement of hundreds of indigenous people and peasant farmers living in the area.
- In June 2002, the *Organización Femenina Popular* (OFP), Popular Women’s Organization, denounced cases of torture and inhuman, degrading and cruel treatment in Barrancabermeja, Santander Department, and surrounding communities by army-backed paramilitary groups against youths and women. Paramilitaries have been responsible for meting out punishments on civilians accused of breaking “rules” they have imposed in areas they control. These punishments included beatings, the shaving of people’s heads and exposing people to the sun whilst tied up. Youths who still failed to abide by the “rules” have been killed. The OFP also denounced cases in which paramilitaries forced women to kneel and beg for forgiveness, in which they forced objects into their vaginas, amputated women’s breasts and gouged out women’s eyes. Nelsy Gabriela Cuesta Córdoba was reportedly abducted by paramilitaries in Yondó Municipality, Antioquia Department on 4 April 2002. She was tortured and her body found on 6 April in the Magdalena River.

Despite the fact that according to Article 15 of the CAT statements made as a result of torture should not be used as evidence in judicial proceedings, torture is used as a means to force social activists and other civilians to incriminate themselves or to extract information:

- On 16 May 2003, four members of the *Asociación Campesina de Arauca* (ACA), Peasant Farmer Association of Arauca, were reportedly detained by members of the XVIII Brigade and the police in Tame Municipality, department of Arauca. Amongst those detained were Eduardo Peña Chacón and Ronald Peña Chacón, who were reportedly accused by the police of being members of guerrilla militias operating in the department of Arauca. The police agents reportedly beat them, put plastic bags over the heads and forced them under water. They were subsequently released without charge.

- On 11 December 2002, members of the police forced their way into the home of Juan Carlos Celis González, a human rights defender with the *Corporación Movimiento por la Vida*, an organization linked to the *Red de Iniciativas por la paz y contra la guerra* (REDEPAZ), Network of Initiatives for Peace and Against the War. The police agents handcuffed him, forced him to the ground, pointed a gun at him and covered his head with a jacket and shouted at him to admit that he was “El Ingeniero”, someone supposedly responsible for planting car bombs in Bogotá. When Juan Carlos Celis refused to incriminate himself he was subjected to electric shocks all over his body, whilst one of the police agents shouted at him to admit that he was “El Ingeniero”. After his detention the police told the media that Juan Carlos Celis was “*el cerebro de la oleada terrorista que se adelanta en la ciudad*”, “the mastermind behind the wave of terrorist attacks which has hit the city”. Although he denounced his ill-treatment by the police to the Office of the Attorney General, no judicial investigation has reportedly been opened into his torture. Juan Carlos Celis remains detained in Cómbita prison in the department of Boyacá on charges of rebellion and terrorism.

Torture is also used as a means to force civilians to inform on others:

- On 13 May 2003, army soldiers reportedly beat José Maximiliano González Suárez, from the Prado Municipality, Tolima Department, with a stick and stood on his chest. José Maximiliano is a member of the *Unión Patriótica* (UP), Patriotic Union. Since the party’s formation in 1985, over 3,000 of its members have been killed, most by army-backed paramilitaries who accuse them of being guerrilla collaborators. On 13 May, José Maximiliano was seen dressed in military uniform with a rifle patrolling with the army. Witnesses stated that the army had forced him to wear a hood and walk in front of the army column. José Maximiliano’s wife, Hercilia Romero, another UP member, has reportedly been threatened by the army telling her that it would be best if she left the area. No further information has been received regarding the whereabouts of José Maximiliano.

Torture is used as a means to intimidate and threaten human rights defenders, trade unionists and other activists and to undermine their work:

- On 10 September 2003, at approximately 1:00pm, four hooded gunmen reportedly abducted 15-year-old David José Carranza Calle, in Barranquilla. The gunmen forced him into a van and drove him away. The gunmen reportedly tortured him to reveal the whereabouts of his father Limberto Carranza. Limberto Carranza is a national leader of the SINALTRAINAL trade union. At 4:30pm David José was released. At the same time a telephone death threat was received in the house of Limberto Carranza from an anonymous caller: “*sindicalista hijueputa, te vamos a quebrar, sino te quebramos a ti, haremos un atentado contra la vivienda*”, “son-of-a-bitch trade unionist, we are going to break you, if we don’t break you we will attack your home”.

- On 21 July 2003, Nora Cecilia Velásquez, leader of the *Asociación Nacional de Mujeres Campesinas, Negras e Indígenas de Colombia* (ANMUCIC), National Association of Peasant, Black and Indigenous Women of Colombia in Cundinamarca Department, was allegedly abducted by armed-backed paramilitaries. She was held for three days before being released. While being held, she was reportedly physically and psychologically tortured by the paramilitaries. According to her testimony, the paramilitaries repeatedly asked her about the leaders of the organization, particularly Leonora Castaño. Nora Cecilia Velásquez also stated that she had heard one of the paramilitaries saying “*esa no era la mujer que queríamos*” (“this isn’t the woman we wanted”).

Amnesty International has received information on the cruel, inhuman and degrading treatment of prisoners in violation of Article 16 of the CAT:

- Juan Carlos Celis, as well as other prisoners in Cómbita prison, in the department of Boyacá, have been left exposed for long periods of time to the sun and rain. Prisoners are forced to rise at dawn and shower in the open air and left outside for periods of about an hour without being able to dry themselves or dress. Cómbita prison is located in an area where the temperature falls to 10 degrees celsius. Together with other prisoners he has reportedly been given rotten food or food which appears to have been contaminated. The fact that he has been imprisoned in Boyacá department has made it difficult for him to see his nine-year-old daughter and made communication with his defence lawyer difficult, both of whom are in Bogotá. Correspondence with his lawyer is reportedly read by prison staff. Not only is his detention in a prison far from his lawyer a possible infringement of due process rights but may also violate the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principles 18 and 19.<sup>3</sup> Appeals to the authorities for his transfer to a prison in Bogotá have been denied.

<sup>3</sup> “Principle 18:

1. A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.
2. A detained or imprisoned person shall be allowed adequate time and facilities for consultations with his legal counsel.
3. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or order authority in order to maintain security and good order.
4. Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official ...”.

Principle 19: A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations”.

- According to the Office of the Human Rights Ombudsman, on 6 March 2002 Luis Fernando Preciado Osorio, who was imprisoned in Valledupar National Penitentiary, asked a prison guard to make a telephone call to his family. The guard replied that he would allow him to make the call later in the day. After midday, the prisoner once again asked the prison guard permission to make the call. At 2pm Luis Fernando reminded the guard of the promise he had made and complained that he had not been allowed to telephone his family. At around 5pm, five prison guards and two prison officials entered Luis Fernando's cell, handcuffed and chained his legs and beat him. At 7pm Luis Fernando was taken to the prison clinic after he had complained of being in pain. He was then returned to his cell. On 7 March at about 9am he was taken back to the clinic and was brought back to his cell an hour later. Luis Fernando subsequently died.

“Disappearance” is a form of torture<sup>4</sup> which despite legislation passed to outlaw the practice (see below) has increased in recent years. Recent cases received by Amnesty International includes:

- The “disappearance” of at least 12 people in August 2003 by AUC paramilitaries in Barrancabermeja, department of Santander. On 18 August, Jhon Jairo and another man known as “Cocho” were reported to have been abducted from their homes in the El Chico district of Barrancabermeja by the AUC. Muccyney Jair España's whereabouts has been unknown since 21 August. José Cicero López was reportedly abducted from his home in the La Paz district by the AUC on 22 August. On 24 August, María Yaneth Mosquera

<sup>4</sup> Forced disappearance has been recognized as a form of torture by the UN and the IACHR. In the UN Declaration on the Protection of all Persons from Enforced Disappearance. General Assembly resolution 47/133 of 18 December 1992 (A/RES/47/133):

*Article 1*<sup>o</sup> - Any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field.

<sup>o</sup> Any act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, inter alia, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life”.

In the Annual Report of the IACHR to the General Assembly for 1977, Part II, Areas in which further steps are needed to give effect to the human rights set forth in the American Declaration of the Rights and Duties of Man, the IACHR defines “disappearance” as a form of torture: “... As experience shows, a “disappearance” not only constitutes an arbitrary deprivation of freedom but also a serious danger to the personal integrity and safety and to even the very life of the victim. It is, moreover, a true form of torture for the victims' family and friends, because of the uncertainty they experience as to the fate of the victim and because they feel powerless to provide legal, moral and material assistance”. OEA/Ser.L/V/II.43, doc. 21, 20 April 1978.

Guerra and Erasmo Pedraza Alvarez were reportedly abducted and “disappeared” by paramilitaries. On 25 August 2003, the AUC reportedly abducted Alvaro Enrique Vergara Muñoz. On 27 August 2003, bread salesman and community activist José Armando Garzón Rueda was at his home with his family in the La Esperanza neighbourhood of Barrancabermeja, when at 9.30am two members of the AUC reportedly knocked on his door and forced him out of his home. One of the men reportedly threatened José Armando Garzón Rueda’s wife, Julia Sierra, at gunpoint. The two men then forced José Armando Garzón Rueda into a taxi and drove away. His whereabouts remain unknown. Julia Sierra is a member of the OFP which has been systematically targeted by paramilitaries operating in the area in recent years. The whereabouts of all these people remain unknown.

- A security forces’ operation, codenamed *Operación Orión*, to target guerrilla militia (and supposedly paramilitary forces) in the Comuna 13 district of Medellín was initiated on 16 October 2002. Several people were reported to have been “disappeared” by members of the security forces during the military offensive. On 29 October, at 4:00pm security force members reportedly entered the El Salado area of Comuna 13. Blanca Lilia Ruiz Marín and her husband John Fredy Sánchez were forced out of their homes by members of the army and of the Office of the Attorney General’s Technical Investigations Unit, *Cuerpo Técnico de Investigación* (CTI). Dany Ferney Quiroz Benitez was forced out of his house by a member of a joint CTI – GAULA anti-kidnapping unit. They forced him to lie on the ground and stood on his hands. They then forced him into an armoured vehicle and reportedly beat him. He was also reportedly filmed. Blanca Cecilia, John Fredy and Dany Ferney were forced onto an armoured vehicle where they were told they were going to be taken to the police’s *Servicio de Investigación Judicial e Inteligencia*, (SIJIN), Judicial Investigation and Intelligence Service. A youth who had been detained during *Operación Orión* claimed he had seen the three detained people in the IV Brigade army base; they had been beaten. The families of the three “disappeared” people have not been able to establish their whereabouts and there is reportedly no register of their arrest in security force records. *Operación Orión* is one of several large-scale military offensives launched against militia units in the Comuna 13. Between the launch of the *Operación Mariscal*, Mariscal Operation, on 21 May, and 17 October 2002, at least 32 civilians have been killed in cross-fire between the security forces and guerrilla units.

## **2. Concerns over compliance with specific Articles of the CAT**

### **Failure to uphold Article 2, 4, 5, 6, 7, 12, 13 and 14 of the CAT**

Successive Colombian governments have sought to avoid responsibility for tackling the human rights crisis by pointing to the violations of international humanitarian law committed by guerrilla forces as a justification for violations of human rights. However, precisely because of its duties and obligations under domestic and international law, and its role in

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upholding the law, maintaining order and dispensing justice, the state must assume responsibility for resolving this human tragedy.

Amnesty International believes that the full implementation of UN human rights recommendations would make a decisive contribution to resolving some of Colombia's human rights problems. The government, however, has not implemented these recommendations nor elaborated an action plan to put an end to violations of human rights and international humanitarian law. Amnesty International has made recommendations to the government to address four main areas of concern: action to end impunity; breaking the links between the security forces and the paramilitaries and combating and dismantling the latter; protecting vulnerable sectors, such as human rights defenders; and shielding the civilian population from the conflict. The organization has also called on armed opposition groups to respect international humanitarian law. Decisive action to fully implement these UN recommendations would help put an end to the practice of torture. However, not only has the government taken no action to comply with these recommendations, many of its policies run counter to them.

**A. Failure to end impunity in cases of human rights abuses and to guarantee the rights of victims to truth, justice and integral reparation (Articles 2, 4, 7, 12 and 13 of the CAT):** The government has failed to take decisive measures to dismantle mechanisms of impunity in cases of human rights violations which have permitted the armed forces to continue implementing a counter-insurgency strategy characterized by the systematic and widespread violation of human rights. As Part 1 Article 12.3 of the CAT states: "Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction".

However, despite the August 1997 ruling of the Constitutional Court which stated that all cases involving alleged human rights violations must be heard by civilian courts, the limited restrictions to military jurisdiction in the law against forced disappearances, and the introduction of a new *Código Penal Militar*, Military Criminal Code, which came into effect in 2000<sup>5</sup>, military courts continue to claim investigations into human rights violations in which military personnel are implicated. These courts have routinely failed to bring to justice those responsible for human rights violations.

The new Military Criminal Code specifies that cases of torture and forced "disappearance" are excluded from military courts. The *Código Penal Ordinario*, Civil Criminal Code, approved in 2000<sup>6</sup>, and which came into effect a year later, imposes maximum prison sentences of either 15 (for non-State agents) or 20 years (for State agents) for those responsible for torture. However, whilst the Constitutional Court's August 1997 ruling is clear in excluding all cases of human rights violations from military courts, the Military Criminal

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<sup>5</sup> Law No. 522, 12 August 1999.

<sup>6</sup> *Código Penal Ordinario*, Law 599, 24 July 2000.

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Code did not specifically exclude cases of extrajudicial execution, sexual crimes and collusion with paramilitaries from military courts. To the extent, therefore that the Military Criminal Code is not in tune with the Constitutional Court's August 1997 ruling, the Colombian State risks violating Articles 2, 4.2, 7, 12 and 13 of the CAT. The failure to exclude these criminal activities from military courts means that cases of torture committed by the security forces prior to extrajudicial executions and cases of rape committed by members of the security forces risk not being investigated fully and impartially. Moreover, the failure to exclude collusion with paramilitaries means that the responsibility of security force members in cases of torture, including "disappearances", committed by paramilitaries risks not being investigated fully and impartially.

The failure to exclude all cases of human rights violations from military courts is contrary to the recommendations made by the UN Special Rapporteur on Torture: "... the conflict of interest inherent in having the same institutions responsible for the investigation and prosecution of ordinary law-breaking by members of those very institutions... . Independent entities are essential for investigating and prosecuting crimes committed by those responsible for law enforcement."<sup>7</sup> They are contrary to recommendations made by the Committee against Torture in its inquiry on Egypt to the government of that country to: "... set up an independent investigation machinery, including in its composition judges, lawyers and medical doctors, that should efficiently examine all the allegations of torture, in order to bring them expeditiously before the courts".<sup>8</sup> They are also contrary to recommendations made by the Committee against Torture in its recommendations to Colombia: "The Committee believes that the situation of impunity must be terminated by adopting the necessary legislative and administrative amendments to ensure that military courts judge only violations of military regulations, punishing torture by means of penalties commensurate with its seriousness and dispelling any doubt as to the responsibility of anyone who obeys an illegal order".<sup>9</sup>

Amnesty International has received numerous reports of possible cases of extrajudicial executions committed by the security forces which have been claimed by military courts. In these cases the security forces have frequently presented the victims as guerrillas killed in combat.

The failure to exclude rape from military courts risks contributing to the continued use of sexual crimes as part of the counter-insurgency strategy. Over the last year Amnesty International has documented the continued use of rape in counter-insurgency operations. These include:

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<sup>7</sup> UN Doc. E/CN.4/2001/66, para. 1310.

<sup>8</sup> Activities of the Committee against Torture pursuant to article 20 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: Egypt. 03/05/96. UN Doc. A/51/44, paras. 180-222. (Inquiry under Article 20) para. 221.

<sup>9</sup> Concluding observations of the Committee against Torture : Colombia. 09/07/96. A/51/44, paras.66-83. (Concluding Observations/Comments).

- The rape and killing of a teenage woman and the rape of three children reportedly by army personnel identifying themselves as paramilitaries in Tame, Arauca Department, as outlined above.
- On 2 October 2002, a member of the *Batallón Héroes de Saraguro*, Saraguro Heroes Battalion attached to the XVIII Brigade of the army, forced his way into the home of Inocencia Pineda Pabón in the community of Las Blancas, Arauquita Municipality, at around 11pm. The soldier reportedly shot Inocencia Pineda's husband, Francisco Guerrero Guerrero, and raped her. Although it was reported that the Office of the Attorney General had initiated criminal investigations into the case, Amnesty International was informed in March 2003, that the soldier had been able to escape twice from detention in the headquarters of the XVIII Brigade in Arauca, Arauca Department, raising concerns that the military authorities were not fully collaborating with the justice system.

Although the civilian justice system has initiated investigations in which military personnel are implicated in human rights violations, including torture, committed in collaboration with paramilitary forces, these investigations have been severely hampered by threats made against judicial investigators, human rights defenders and witnesses, and by the removal from their posts of judicial investigators by the Attorney General at critical moments in an investigation. (An example is provided in the box below). Failure to advance judicial proceedings in such cases represents a violation of Article 4.2 of the CAT, whilst failure to guarantee the safety of judicial investigators, human rights defenders and witnesses represents a violation of Article 13 of the CAT. Criminal proceedings implicating high-ranking armed forces officers have been particularly hampered.

#### **Case of Rodrigo Quiñónez Cárdenas**

In February 2000, 200 paramilitary gunmen raided the village of El Salado, Bolívar Department, killing 36 people, including a six-year-old child. Many victims were tied to a table in the village sports field and subjected to torture, including rape, before being stabbed or shot dead. Others were killed in the village church. During the three-day attack, military and police units stationed nearby made no effort to intervene. Instead, a unit belonging to the *Brigada de Infantería de Marina*, 1<sup>st</sup> Brigade of Marine Infantry, reportedly set up a roadblock on the access road to El Salado, thus preventing humanitarian organizations from reaching the village.

Arrest warrants were issued against 11 paramilitaries, including AUC leader Carlos Castaño, in connection with the massacre. Colonel Rodrigo Quiñónez, at the time commander of the 1<sup>st</sup> Brigade of Marine Infantry, was promoted to the rank of general while investigations into the possible criminal responsibility of troops under his command were still under way. Even though the Office of the Procurator General, opened formal investigations on administrative charges for dereliction of duty (*omisión*) against Rodrigo Quiñónez and three other security force officers for failing to prevent the paramilitary incursion in August 2003, no information

has been received with regards to advances in criminal investigations into the possible role of the security forces in the massacre.

General Rodrigo Quiñónez, other members of the security forces and six paramilitaries have also been implicated in the 17 January 2001 massacre in Chengue, Sucre Department. More than 100 armed men from the AUC had attacked the hamlet of Chengue. They picked out 25 people from a list and hacked them to death with machetes, or shot them. Before they left, the paramilitaries set fire to the hamlet and reportedly seized 10 of the villagers, six of them children; according to last information received their whereabouts remain unknown. Humanitarian organizations trying to get into the area to help survivors were reportedly turned back by troops of the 1<sup>st</sup> Brigade of Marine Infantry.

In July 2001, the Office of the Procurator General opened formal disciplinary investigations to determine whether Quiñónez and five other security force members were responsible for failing to take action to prevent the paramilitary massacre. Judicial investigations into the possible involvement of military personnel in the massacre were also under way in 2001. Prosecutor Mónica Gaitán, who was heading the investigation into the massacre was dismissed from the case on 6 February 2002. Her removal followed the formal initiation, on 5 June 2001, of criminal investigations against Rodrigo Quiñónez for possible dereliction of duty. On 27 May 2001, two investigators from the CTI, working on the case were “disappeared” by paramilitaries. On 29 August 2001, Yolanda Paternina, a prosecutor also working on the case was killed in Sincelejo, department of Sucre.

In December 2001, Quiñónez 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 Office of the Attorney General 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 military officers, including Quiñónez. The decoration came days after the Office of the Procurator General confirmed that it was filing disciplinary charges against him in relation to the massacre. In November, the general requested permission to resign following accusations relating to drug-trafficking which appeared in the media. No further information has been received relating to criminal or disciplinary investigations into the officer’s responsibility in these cases.

Despite the failure of the authorities to bring to justice those responsible for torture, the government is pursuing other measures which threaten to consolidate impunity and are contrary to UN and IACHR human rights recommendations:

**1. Reform of the Office of the Attorney General (Articles 12 and 13 of the CAT).** This will enable the Attorney General to decide which cases should be investigated and to remove investigating attorneys from cases. This could undermine the independence and impartiality

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of investigations. Since July 2001, when Attorney General Luis Camilo Osorio took office, a marked hostility to human rights investigations and an on-going effort to purge the institution of officials willing to pursue these investigations has become the rule. Within 72 hours of Osorio's arrival, he forced the resignations of high ranking and veteran officials, among them the current and former directors of the Human Rights Unit. In December 2001, Attorney General Osorio fired four top CTI officials, all described as outstanding professionals by other prosecutors and former officials in the Attorney General's office and CTI managers. CTI director, General Ismael Trujillo, a retired police officer, later resigned, arguing to an assembly of CTI employees that he could no longer do his job without these trusted professionals. In April 2002, seven prosecutors within the Attorney General's Human Rights Unit and one member of the CTI received credible and serious threats related to their work on investigations into high-profile cases of human rights violations. Attorney General Osorio failed to take any measures to protect the officials. Subsequently, they filed for precautionary measures before the IACHR. Dozens of other prosecutors and investigators have either resigned or fled Colombia since Osorio took office.

**2. Judicial police powers for the military (Articles 2, 12, 13 and 15 of the CAT).** If approved by Congress these powers would allow the military to search homes, detain individuals and intercept communications without judicial warrants. This would run counter to UN recommendations. These powers could contribute to impunity in cases of violations committed by the military with or without their paramilitary allies. Granting judicial police powers to the military could also facilitate the practice of presenting victims of human rights violations as "guerrillas killed in combat". The risk is that investigations into human rights violations committed by the military with or without the collaboration of paramilitaries will not be initiated, in contravention of Articles 12 and 13 of the CAT. The military may also find it easier to initiate investigations based on little if any evidence against human rights and other organizations which denounce violations committed by the military in an attempt to intimidate, silence and discredit these organizations and possibly pave the way for violent attacks against them. In the past, these powers led to numerous human rights violations and to greater impunity.

After visits to Colombia in 1989, 1994 and 1996, the UN Working Group on Forced or Involuntary Disappearances, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions and the Special Rapporteur on the Independence of Judges and Lawyers, respectively, expressed concerns that granting judicial police powers to the security forces was seriously detrimental to the protection of human rights since it would reduce the possibility of full and impartial investigations into human rights violations committed by the security forces with or without their paramilitary allies, and of bringing to justice those responsible. In its Concluding Observations to Colombia in 1997, the Human Rights Committee expressed its concern that the Colombian military "exercise the functions of investigation, arrest, detention and interrogation". It also expressed concern about "recent proposals [...] conceding functions of the judicial police to military authorities [...]". If these

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texts were to be adopted, they would raise serious difficulties with regard to article 4 of the Covenant”.<sup>10</sup>

The UN High Commissioner on Human Rights called on the Colombian Government and Congress “... not to introduce any rules in the Colombian legal system that would enable members of the military forces to exercise police or other functions incompatible with the independence of the justice system.”<sup>11</sup> The legislation currently under debate in the Colombian Congress which grant judicial police powers to the armed forces include proposals which would allow the armed forces to hold detainees for up to six days without judicial warrant. Under these proposals detainees would be denied their right to seek judicial review of their detention and would be denied their right to file *habeas corpus* writs. The suspension of *habeas corpus* would be a violation of international standards as established by the authoritative statement of the Inter-American Court on Human Rights in its Advisory Opinion No.8 of 1987.<sup>12</sup> Amnesty International fears that the possible denial of the right to *habeas corpus* writs may not only facilitate forced disappearances but torture in custody in contravention to Article 2.1 of the CAT. Powers to hold an individual in detention for six days without seeking judicial warrant may enable the armed forces to carry out torture to extract illicit confessions of guilt in contravention of the state’s judicial obligations to uphold Article 15 of the CAT.

The reforms to the Office of the Attorney General and the granting of judicial police powers to the security forces violate the UN Principles on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. These principles set out the obligation of States to ensure the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment through the “Facilitation of prosecution and/or, as appropriate, disciplinary sanctions for those indicated by the investigation as being responsible and demonstration of the need for full reparation and redress from the State, including fair and adequate financial compensation and provision of the means for medical care and rehabilitation”. The principles establish that “States shall ensure that complaints and reports of torture or ill-treatment are promptly and effectively investigated. Even in the absence of an express complaint, an investigation shall be undertaken if there are other indications that torture or ill-treatment might have occurred. The investigators, who shall be independent of the suspected perpetrators and the agency they

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<sup>10</sup> Human Rights Committee, Concluding Observations (CCPR/C/79/Add.76): 05/05/97, paragraph 19.

<sup>11</sup> Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, 59<sup>th</sup> session of the UN Commission on Human Rights, UN Doc: E/CN.4/2003/13, 24 February 2003.

<sup>12</sup> “... given the provisions of Article 27(2) of the American Convention on Human Rights, the legal remedies guaranteed in Articles 7(6) and 25(1) of the Convention may not be suspended because they are judicial guarantees essential for the protection of the rights and freedoms whose suspension Article 27(2) prohibits.”, *Habeas Corpus in Emergency Situations* (Arts. 27(2) and 7(6) of the American Convention on Human Rights), Advisory Opinion OC-8/87, January 30, 1987, Inter-Am. Ct. H.R. (Ser. A) No. 8 (1987).

serve, shall be competent and impartial. They shall have access to, or be empowered to commission investigations by, impartial medical or other experts. The methods used to carry out such investigations shall meet the highest professional standards and the findings shall be made public”.<sup>13</sup>

### **3. Other policies that might strengthen impunity (Articles 2.1, 4, 5, 6, and 7 of the CAT).**

Not only do government policies threaten to consolidate the mechanisms of impunity already in place, but would also ensure that those responsible for acts of torture may escape being brought to justice altogether in violation of Articles 2.1, 4, 5, 6 and 7 of the CAT. In January 2003, the government issued Decree 128 which grants pardons to members of illegal armed groups who surrender to the authorities as long as they are not implicated in ongoing criminal investigations for human rights violations or are not in prison for such crimes. The concern is that the majority of paramilitaries and guerrillas are not under criminal investigation for human rights violations or abuses, as investigations have not been opened into the vast majority of serious human rights abuses or fail to identify suspects. This decree will therefore effectively grant amnesties to many human rights abusers and violators.

The government has also recently presented a bill to Congress that goes beyond Decree 128 by releasing “on licence” incarcerated combatants who renounce membership of an illegal armed group and those associated with armed groups involved in a peace process with the state and who surrender to the authorities, even if they have been found responsible for serious human rights violations or abuses. The proposed bill, if approved, would extend these benefits to individual members of armed groups who voluntarily lay down their weapons. The main beneficiaries of this legislation would be paramilitary groups who are in talks with the government on initiating a negotiated peace agreement with the state. Amnesty International is seriously concerned that if this bill is approved those responsible for human rights violations, including crimes against humanity and war crimes, will benefit from guarantees of impunity. As such this bill sends a dangerous message to the courts not to investigate human rights violations and to the security forces and their paramilitary allies that they can continue to perpetrate human rights violations without fear of being held accountable for such acts.

The Director of the Office in Colombia of the UN High Commissioner for Human Rights, in a speech to the Colombian Senate on 23 September 2003<sup>14</sup>, stated that the bill will not guarantee an end to human rights violations and will increase impunity in these cases: “*Antes de adoptar cualquier medida que favorezca a los autores de delitos cometidos en desarrollo de la contienda armada, debe examinarse ponderadamente el riesgo de que ella pueda fomentar la comisión de nuevos actos atroces por parte de sus potenciales beneficiarios,*

<sup>13</sup> Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, annexed to UN General Assembly resolution 55/89 of 4 December 2000.

<sup>14</sup> *Observaciones sobre el proyecto de ley “Por el cual se dictan disposiciones en procura de la reincorporación de miembros de grupos armadas que contribuyan de manera efectiva a la paz nacional”*, Bogotá, 23 September 2003.

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*degradando aún más el conflicto y promoviendo el aumento de la impunidad. Debe siempre evitarse que tales medidas transmitan la percepción de que se puede seguir delinquir con la seguridad de que sus atrocidades no serán debidamente sancionados*”, “Before adopting any measure that favours those responsible for crimes committed within the context of the armed conflict, the risk that this measure might promote the perpetration of new acts of atrocity by the potential beneficiaries, leading to a degradation of the conflict and promoting increased impunity, must be carefully examined. It is essential that such measures should not transmit the perception that crimes can continue to be committed with the knowledge that atrocities committed by any individual will not be sanctioned”.<sup>15</sup>[Unofficial translation].

The UN Office also expressed its concern that the language of the bill is ambiguous and if approved could also benefit State agents directly. The UN Office states that the bill does not give sufficient importance to the fact that Colombia as a State Party to human rights treaties including the CAT “*se ha obligado a sancionar adecuadamente las violaciones e infracciones a esos ordenamientos*”, “has committed itself to sanction adequately the violations and infractions of those principles”.<sup>16</sup>[Unofficial translation]. The UN Office underlines its concern that the bill violates concepts of proportionality as defined in international jurisprudence: “*Las obligaciones del Estado en materia de justicia y de lucha contra la impunidad, como respuesta al derecho de las víctimas a una protección judicial efectiva, se incumplen cuando se prevén disposiciones que, aun cuanto plantean la realización de un proceso judicial y la intervención de los tribunales, éstas no incorporan adecuadamente el concepto de proporcionalidad ... . El concepto de penas apropiadas está vinculado con la noción de proporcionalidad, que exige que las sanciones previstas en las normas y aplicadas por los tribunales no sean arbitrarias ni desproporcionadas con las gravedad de los delitos que sancionan*”. “The obligations of the State as regards justice and efforts to end impunity, as a response to the right of victims to effective judicial protection, are not met when laws are proposed which, even though they call for judicial proceedings to be carried out and for the courts to intervene, do not incorporate adequately the concept of proportionality ... . The concept of adequate sentences is linked to the notion of proportionality which demands that the sanctions envisaged in the norms and applied by the courts are not arbitrary or disproportionate to the gravity of the crimes they are sanctioning”.<sup>17</sup> [Unofficial translation].

The UN Office also condemns the bill on the basis that “*las normas y los principios internacionales en materia de derechos humanos y DIH prohíben la concesión de indultos, amnistías y de otras medidas excluyentes de responsabilidad penal o de la pena a autores de graves violaciones de derechos humanos y crímenes de guerra, como parte del compromiso de los Estados en materia de lucha contra la impunidad*”, “that the norms and international principles in what concern human rights and IHL prohibit the concession of pardons or amnesties and other measures which exclude establishing criminal responsibility or

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<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

sanctioning those responsible for serious violations of human rights and war crimes, as part of the commitment of States in what regards the fight against impunity”.<sup>18</sup> [Unofficial translation]. The UN Office also asserts that the bill contradicts international standards including Article 18 of the UN Declaration on the Protection of all Persons from Enforced Disappearance and the international jurisprudence of international bodies.<sup>19</sup>

**B. Failure to confront and dismantle paramilitary groups (Articles 2 and 5 of the CAT):** the government has consistently failed to take decisive action to confront paramilitaries, which are responsible for most non-combat related killings.-The persistence of links between paramilitaries and the security forces was acknowledged by the UN Chairperson’s statement issued during the 59<sup>th</sup> session of the UN Commission on Human Rights: “...The Commission strongly deplores the persistence of links between paramilitary groups and members of State forces who collaborate with and consent to or acquiescence in criminal acts carried out by the former. It urges the Government of Colombia to implement fully the measures adopted to combat, repress and dismantle paramilitary groups, as well as to investigate and bring the links between military forces and the paramilitaries to an end.”<sup>20</sup>

To the extent that successive governments, including the current administration, have failed to take decisive action to combat and dismantle paramilitary groups, the Colombian State is in breach of its obligations to prevent torture and to establish its jurisdiction over the offence of torture in accordance with Articles 2 and 5 of the CAT. They have also failed to comply with the recommendations made by the Committee against Torture to Colombia: “79. The Committee recommends that the practice of torture should be ended forthwith and to this end suggests that the State party should act with great firmness to restore the State’s monopoly over the use of force, disbanding all armed civilian or paramilitary groups, and ensure that swift and impartial investigations into allegations of torture are conducted immediately and that informers and witnesses are protected”.<sup>21</sup>

The principal reason that paramilitary groups have been able to continue their military offensive, characterized by widespread human rights violations, is that they benefit from the support and acquiescence of the security forces and frequently operate in coordination with them. Successive governments have and continue to argue that the links between the security forces and the paramilitaries represent isolated incidents. However, evidence pointing to continued coordination between these two groups is compelling.

<sup>18</sup> Ibid.

<sup>19</sup> “Article 18° Persons who have or are alleged to have committed offences referred to in article 4, paragraph 1, above, shall not benefit from any special amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanction. In the exercise of the right of pardon, the extreme seriousness of acts of enforced disappearance shall be taken into account.”

<sup>20</sup> Chairperson’s statement, Situation of human rights in Colombia. 59<sup>th</sup> session of the UN Commission on Human Rights.

<sup>21</sup> Concluding observations of the Committee against Torture : Colombia. 09/07/96. A/51/44, paras.66-83. (Concluding Observations/Comments).

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Amnesty International continues to receive credible information which points to the on-going consolidation of paramilitary forces in heavily-militarized areas and indicating strong collusion between paramilitaries and the security forces. Over recent years, the security forces have reportedly captured and killed an increasing number of paramilitaries. Whilst there is evidence of increased action against some paramilitary groups (particularly those not engaged in dialogue with the government) there is also evidence that official statistics of action against paramilitaries are being artificially inflated. On several occasions Amnesty International has been informed that paramilitaries killed in combat with guerrillas have been presented as having been killed by the military. The organization has also received information on simulated attacks between paramilitaries and the army. The media often reports raids on alleged paramilitary bases during which no or few paramilitaries are captured, while paramilitaries have also reportedly been killed in the course of mistaken attacks against them by the army. Paramilitaries who are captured are often released without charge or at most charged with activities other than paramilitarism. According to media reports, the army also allegedly ambushed and then massacred 24 paramilitaries in Segovia, Antioquia Department, on 9 August 2002, although it claimed they had been killed in combat, in an apparent effort to show results in combating paramilitarism in advance of a US Congressional debate on certification of military aid to Colombia.

The increased captures have 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 often over the course of several years. The case of Arauca Department is revealing in this respect. Information received by Amnesty International during a September 2002 visit to Arauca indicated that a large number of paramilitaries entered the community of El Rosario and surrounding areas in Arauca Municipality 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 paramilitaries, these were not decisive and paramilitary forces subsequently transferred to the area around El Caracol, Arauca Municipality. In August-March 2003, Amnesty International received information of the continued presence of paramilitaries in El Caracol. Despite the fact that the area is heavily militarised and the whereabouts of the paramilitaries known by the authorities, no action to confront the paramilitaries appears to have been taken. Instead, paramilitaries have been able to consolidate their military control around the departmental capital, Arauca.

Not only are paramilitaries able to consolidate their military presence in heavily-militarised areas but numerous reports from different parts of the country indicate continued joint military-paramilitary operations. According to reports, on 13 March 2003 a group of 300 men claiming to be from the group *Centro Norte Medio Salaquí*, of the *Bloque Elmer Cárdenas*, Elmer Cárdenas Block, of the AUC entered the Nueva Vida community in Cacarica. The commander of the armed men was, according to eye witnesses, wearing the camouflage uniform and insignia of the XVII Brigade of the army. The paramilitaries reportedly accused

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the civilian population of being drug traffickers and guerrillas. Several other members of the armed group were also wearing military uniforms bearing the XVII Brigade insignia. During the paramilitary incursion, reports received by Amnesty International indicate that riverine units belonging to the *Batallón Fluvial de Infantería de Marina No.20*, Marine Infantry Fluvial Battalion No.20, were patrolling in the area of the access to the Cacarica River Basin on the Atrato River. Over the last six years Amnesty International has repeatedly documented joint military-paramilitary operations during which members of the Cacarica River Basin communities have been killed, “disappeared” or threatened. This latest examples comes shortly after joint paramilitary-military operations (involving XVII Brigade troops) during which members of the community of Puerto Lleras, a community in the Jiguiamiandó River Basin, Carmen del Darién Municipality, Chocó Department, were threatened and at least one community member “disappeared”.

The failure by successive governments to capture national paramilitary leaders, despite the existence of numerous arrest warrants against them, has facilitated the continued spread of paramilitarism. While journalists have been able to interview paramilitary leaders including Carlos Castaño, and the Catholic Church has recently established contacts with the paramilitary leadership, the military has been unable, or unwilling, to secure their capture. The authorities have also failed to ensure that high-ranking military officers implicated in human rights violations committed with the support of paramilitaries are brought to justice. The case of General Rodrigo Quiñónez Cárdenas is illustrative (see above).

Amnesty International is also concerned that some of the security measures being introduced by President Uribe, threaten to further consolidate paramilitarism and to allow it to re-emerge under a new legal guise. The negotiations which are ongoing between paramilitaries and the government, together with Decree 128 which grants amnesties to illegal armed combatants and the bill currently being debated in the Colombian Congress, which could lead to the granting of *de facto* amnesties to members of illegal armed groups sentenced (including *in absentia*) for human rights violations, will allow paramilitaries to demobilize without fear of prosecution. These same individuals could be rearmed legally through a proposed arms law which grants civilians access to assault weaponry, and could then join the network of civilian informers and the “peasant soldiers” being created by the government.

On 15 July 2003, the government and paramilitaries grouped under the AUC signed an agreement which could lead to their demobilization by the end of December 2005. The proposed demobilization would commence by the end of 2003. Amnesty International welcomes long overdue efforts to dismantle paramilitary groups, which have their origins in the 1960s and were created under the auspices of the Colombian armed forces. The UN has repeatedly recommended that the government take action to combat and dismantle paramilitary groups and Amnesty International has consistently supported and campaigned for such action to be taken. However, the organization has serious concerns that the current demobilization process does not address the serious problem of impunity and threatens to revive paramilitarism under a new, legal guise. In effect the danger is that combatants are not being taken out of the conflict but reintegrated into the conflict. A September 2003 press

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report suggested that the government was studying the possibility of creating an armed forces unit which would be made up of demobilized paramilitaries who accept joining the Colombian Army.<sup>22</sup>

**C. Failure to protect human rights defenders (Articles 2, 5, 12 and 13 of the CAT):**

despite measures taken by President Uribe's predecessor, Andrés Pastrana, to protect the invaluable work carried out by human rights defenders, the threats against those at the forefront of human rights work in Colombia have continued unabated. Defenders have been internationally recognized as playing a crucial role in promoting and defending human rights and ensuring that grave human rights violations committed by the State against its citizens are exposed and those responsible held to account. Failure to guarantee the safety of defenders and to guarantee the security they require to undertake their work means that the State is in breach of its obligations to prevent torture under Article 2 of the CAT, to ensure that it exercise jurisdiction over these offences as stipulated by Article 5 and to guarantee that conditions which will ensure prompt and impartial investigations into cases of torture and guarantee the safety of witnesses and complainants as stipulated under Articles 12 and 13 of the CAT.

The importance of this work has been recognized by the UN and the Organization of American States as essential. However, senior members of the government have called into question the work of many human rights organizations, often equating their work with collaboration with the insurgency. On 8 September 2003, President Uribe, while stating that he respected some human rights NGOs, attacked others (without specifying which) describing them as "political manoeuvrers in the service of terrorism, who cowardly wave the human rights banner". These statements have only served to reinforce the view that the government is engaged in a dangerous game of "double-speak" – praising defenders to appease the international community, while simultaneously undermining their work at home by stigmatising them as guerrilla collaborators or sympathisers, thus placing them at increased risk of revenge attacks by the security forces and their paramilitary allies.

Amnesty International is concerned that the Colombian government, by seeking to provide the security forces with judicial police powers, is providing the security forces and in particular military intelligence forces with strengthened mechanisms to pursue their long-running systematic campaign to discredit and delegitimize the work of human rights and other activists and thereby expose these sectors to arbitrary judicial proceedings and paramilitary attack.

In recent months Amnesty International has received information on how the security forces, while still awaiting judicial police powers have, as in the past, relied on the participation of agents of the Offices of the Attorney General and Procurator General, some of them based in military barracks, in their operations to legalize arbitrary raids and captures. On some occasions judicial investigators from the Office of the Attorney General have signed search

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<sup>22</sup> "Batallón especial" in *Semana*, 15-22 September 2003.

and arrest warrants on the spot or *post facto*. On other occasions arrests have been carried out with no judicial warrant. Either way they appear to be military coordinated arbitrary proceedings which are not based on judicial investigations but on the basis of military suspicion. Frequently raids and searches result from information provided by anonymous military informers or paid informers. Among those particularly affected by arbitrary proceedings are members of organisations which have denounced human rights violations, campaigned for peace or socio-economic rights, and which have frequently been labelled as subversive by the security forces and their paramilitary allies. Raids of the offices of these organisations and arbitrary arrests of their members have frequently coincided with paramilitary death threats and attacks raising concerns that these raids and arrests are part of a coordinated military-paramilitary strategy to undermine these organisations. Among those arrested are members of organizations which have denounced human rights violations implicating paramilitaries operating with the acquiescence of the security forces. (Some examples are provided in the box below).

- On 12 November 2002, María del Socorro Mosquera and Mery del Socorro Naranjo, members of the *Asociación de Mujeres de Las Independencias* (AMI), Women's Association of Las Independencias, and Teresa Yarce, a leader of the district Junta de Acción Comunal de Las Independencias III, were reportedly detained arbitrarily in the Comuna 13 district of Medellín. According to information received, the detention was carried out by the security forces operating with hooded informants, including a child dressed in military uniform. Four days before their detention, Mery del Socorro Naranjo and Teresa Yarce had denounced to the municipal authorities several cases of human rights violation in the Comuna 13 which had taken place since 16 October when members of the security forces launched *Operación Orión* against guerrilla urban militia forces and supposedly also against paramilitary units operating in the area. The women denounced several killings carried out by paramilitaries in areas under the control of the army. The women were accused of being guerrillas. The three women were subsequently released on 21 November. On 24 November members of the army went to the house of Socorro Mosquera. She was not at home at the time and the soldiers reportedly asked her 14-year-old son whether his mother realized that they did not want to see her in the area any more. They also claimed that they had found enough weapons in her house to secure a 20-year prison sentence against her.
- On 21 August 2003, around 42 social activists and human rights defenders in Saravena, department of Arauca, were detained by the security forces, 28 of whom remain under arrest. Amongst those detained in the joint operation undertaken by members of the XVIII Brigade and agents of the Office of the Attorney General on 21 August 2003, were José Murillo Tobo, president of the *Comité Regional de Derechos Humanos "Joel Sierra"*, "Joel Sierra" Regional Human Rights Committee, and Alonso Campiño Bedoya, leader of the regional branch of the CUT Trade Union Congress and member of the Regional Human Rights Committee. The houses of Samuel Morales, president of the regional CUT, Alberto Paez, another trade union leader, and Ismael Pabón Mora, a leader of the Regional Human Rights Committee were searched during the raids. Arrest warrants

against these three people were not carried out because they were not at home at the time of the raids. The arrest of José Murillo and Alonso Campiño come after the Regional Human Rights Committee had denounced the presence of paramilitary groups operating in collusion with the security forces in Saravena. The arrests also follow a spate of accusations against the Committee made by the security forces in recent months that they were subversive collaborators and paramilitary attacks and threats against the Committee. Amnesty International has recently denounced human rights violations committed by paramilitary forces operating in Arauca in collusion with the XVIII Brigade. The Committee is one of the regional organizations which has denounced these violations at the international level. According to information received, two hooded informers participated in the arrests raising concerns that evidence is based on military intelligence and information provided by paid informers.

- On 17 August 2003 army units, police and agents of the Office of the Attorney General arrested 156 people in the municipalities of Chalán, Colosó and Ovejas. Amongst those detained were members of the *Sindicato de Pequeños y Medianos Agricultores de Sucre* (SIDEAGRICULTORES), Sucre Small and Medium Farmers Union. To carry out the arrests the security forces forced their way into the homes of those arrested even though they were reportedly not in possession of search warrants. The arrests came shortly after a human rights delegation, which included the UN Office of the High Commissioner on Human Rights in Colombia, visited the area. Some of those detained had reportedly denounced human rights violations committed by the *Infantería de Marina* in the region to this delegation.

These cases raise concerns that human rights defenders are increasingly facing a coordinated military-paramilitary strategy aimed at tarnishing and undermining them and their organizations through criminal proceedings based on spurious accusations and thereby paving the way for violent paramilitary attack. In this way Amnesty International fears that this is a strategy to build a wall of silence behind which human rights violations including torture may continue unobserved by the Colombian public and the international community. Since 7 August 2002, when the government of President Alvaro Uribe took office, to September 2003, Amnesty International has documented the killing of at least 15 human rights defenders, including State human rights officials.

**D. Failure to shield the civilian population from the conflict (Articles 2 and 5 of the CAT).** The UN has repeatedly called on the parties to the conflict to take action to ensure that the civilian population is not drawn into the conflict. The government is, however, actively pursuing policies which threaten to drag the civilian population further into the conflict.

First, through the recruitment of 150,000 part-time “peasant soldiers”. These peasant soldiers 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

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protection offered to regular forces living in barracks. This will place them and their families 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 and little evidence that effective vetting procedures have been put in place nor information about whether they will be subject to normal disciplinary procedures. During Amnesty International’s visit to Arauca in March 2003, delegates received information indicating that the families of 39 peasant soldiers who have been recruited into such units in the municipality of Saravena, reportedly as part of ordinary compulsory military service, have received threats from the FARC.

Second, by creating a million-strong network of paid civilian informants. This network requires 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 could fuel arguments to equip them with military weaponry, thus facilitating the emergence of new style paramilitary groups and further escalating the conflict. In March 2003, Amnesty International delegates were informed that among those killed in guerrilla attacks in several parts of Colombia were members of civilian informer networks.

Coupled with policies which may lead to a re-emergence of paramilitary groups under a new legal guise as outlined here and section B, government measures that threaten to drag increased numbers of civilians into the conflict could lead to mass, new-style paramilitary structures much larger than present paramilitary structures. The encouragement of such policies may constitute a violation of the State’s obligation to ensure its jurisdiction over offences of torture under Article 5 of the CAT.

Amnesty International is also concerned for the safety of civilian communities, such as indigenous and Afro-Colombian communities, which have repeatedly called on the parties to the conflict not to draw them into the conflict. This stance has repeatedly resulted in these communities being subject to attack by paramilitaries or guerrillas who accuse them of siding with their enemies. If these communities refuse to participate in civilian informer networks or allow their members to be recruited into the peasant soldier structures, they could be increasingly subjected to army-backed paramilitary death threats and attacks. This concern is heightened by the fact that the government appears to have taken a position which blurs the distinction between civilians and combatants. In a letter, dated 16 October 2002, to Amnesty International, President Uribe wrote: “Nobody can be neutral in the state’s fight against criminality.” While a state may urge its citizens to collaborate with its judicial institutions and denounce crimes and human rights violations, in a conflict situation, the state must not promote practices that expose civilian communities as direct targets in the conflict. Amnesty International is concerned, not only that these policies may strengthen paramilitarism but also invite increased human rights violations and abuses, including torture, against those civilians accused of siding with either the enemies of the security forces or their paramilitary allies or

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with the guerrilla. To this extent the government is pursuing policies which fail to prevent torture in accordance with Article 2 of the CAT, but rather expose the civilian population to exposed risk to torture.

**E. Failure to provide adequate compensation to victims of torture (Article 14 of the CAT):** the failure to guarantee the end of impunity in torture cases as outlined above represents a failure of the State to ensure that victims of such cases including their families receive adequate redress in accordance with Article 14 of the CAT. Government policies threaten to undermine the right to adequate redress of victims of torture including their families. Without an end to impunity in cases of human rights violations the State cannot meet its obligations under Article 14 of the CAT.

Amnesty International is concerned that the negotiations with paramilitary groups fails to take into account the right of victims of human rights violations to truth, justice and integral reparation. This will only exacerbate the serious problem of impunity which exists in the country. These negotiations also risk sending a message to criminal courts not to investigate human rights violations committed by security force personnel in coordination with paramilitaries.

The references to possible pardons and amnesties in the above mentioned bills, and the reservations imposed on ratification of the Statute of the International Criminal Court risk becoming contracts of impunity for members of paramilitary groups, the military and the guerrillas responsible for war crimes, crimes against humanity and other crimes under international law. *De facto* amnesties to paramilitaries and other combatants who may be responsible for acts of torture may deny the right of the victims of torture and their family to truth and justice in breach of Article 14 of the CAT.

### **3. Conclusions**

Despite repeated recommendations made by the UN, the OAS, national and international human rights NGOs, Amnesty International is concerned that the government of President Alvaro Uribe is not taking action to dismantle and reform mechanisms which have guaranteed impunity in human rights violations as a first and essential step to improve the human rights crisis.

Furthermore, the government is pursuing policies which are not only contrary to these recommendations but are also contrary to the obligations of the Colombian State under the CAT. These policies threaten increased impunity in cases of human rights violations by preventing full and impartial judicial investigations and by ensuring that perpetrators of human rights violations will be guaranteed *de facto* amnesties. Amnesty International is concerned that the Colombian government is pursuing policies which threaten to allow human rights violations to continue, not only through strengthening mechanisms of impunity, but

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also by promoting policies which may result in the re-emergence of paramilitarism under a new legal guise.

Responsibility for the deterioration of the human rights crisis in recent years lies with guerrilla groups which have failed to adhere to international humanitarian law in line with UN recommendations, and with successive governments, including the present administration, which have not implemented these recommendations<sup>23</sup> to end impunity in cases of human rights violations, to dismantle and combat army-backed paramilitary groups, and to guarantee the safety of vulnerable sectors of society such as human rights defenders, trade unionists and civilian communities, including indigenous and Afro-Colombian communities. Amnesty International believes that the full implementation of these recommendations are essential to resolve the human rights crisis. In line with these recommendations Amnesty International believes that the government and armed opposition groups should:

- Sign a humanitarian agreement that would protect the civilian population and ensure full respect for human rights and international humanitarian law.

Amnesty International believes that the Colombian Government should:

- Draw up a national plan of action for full and prompt implementation of the UN recommendations;
- Take urgent steps to end impunity for human rights violations by undertaking prompt and impartial investigations into all allegations of human rights violations, ensuring that those responsible stand trial in civilian courts in accordance with international standards for fair trial and refraining from introducing legislation which would grant judicial police powers to the security forces;
- Withdraw proposed legislation which may guarantee impunity for paramilitaries and guerrillas through the granting of pardons which do not acknowledge the rights of victims of human rights abuses and their families to justice, truth and integral reparation;
- Take effective and decisive action to combat and dismantle paramilitary groups and to sever the links between the security forces and the paramilitaries; and to cease the implementation of policies which threaten to involve the civilian population in the

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<sup>23</sup> The Office of the UN High Commissioner for Human Rights in Colombia has made detailed human rights human to successive Colombian Governments and recommendations and to the armed opposition groups in recent years. The recommendations contained in last year's report to the 58<sup>th</sup> session of the UN High Commission on Human Rights are contained in UN Doc: E/CN.4/2002/17, 18 February 2002 and to the 59<sup>th</sup> session of the UN High Commission on Human Rights are contained in UN Doc: E/CN.4/2003/13, 24 February 2003.

conflict and which could result in the strengthening and re-legitimization of paramilitarism;

- Take all necessary measures to guarantee the protection of human rights defenders and to implement in full the recommendations of the Special Representative of the UN Secretary-General on human rights defenders.

Amnesty International also believes that the international community should ensure that the implementation of these recommendations is monitored by appropriate UN mechanisms, for example, through the establishment of an implementation timeline and submission to the UN General Assembly of the Report of the Office of the High Commissioner for Human Rights in Colombia.



