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House of Representatives and Senate
National Congress
Carrera 7a, No. 8-68,
Santafé de Bogotá,
COLOMBIA

12 May 2003

Dear Representatives and Senators,

Amnesty International notes with concern government efforts to reform the 1991 Constitution in order to restore, *inter alia*, judicial police powers to the armed forces. The proposal before Congress (Proyecto de Acto Legislativo No.223-2003, "Por medio del cual se modifican los artículos 15, 24,28, y 250 de la Constitución Política de Colombia), is simply the latest effort by successive administrations to give the security forces powers which violate the spirit of international human rights treaties to which Colombia is signatory, such as the International Covenant on Civil and Political Rights and the American Convention on Human Rights, and repeated human rights recommendations made by the UN Commission on Human Rights and the Inter-American Commission of Human Rights of the Organization of American States.

According to the Inter-American Democratic Charter, signed on 11 September 2001, "Essential elements of representative democracy include[s] [...] the separation of powers and independence of the branches of government" (Article 3). Granting judicial police powers to the armed forces would therefore represent a possible breach of Article 3 since these powers would depend in large measure on the executive rather than the judicial branch of government.

If such measures were to become law the state would therefore be in breach of its international obligations to carry out independent and impartial investigations into human rights violations in which military personnel are implicated, to guarantee the right to a fair trial with full legal guarantees before an independent and impartial tribunal, and to ensure the existence and effectiveness of an independent and impartial judiciary. Fulfilling these international obligations is crucial in tackling the Colombian human rights crisis.

Over the years, Amnesty International has documented numerous cases in which the armed forces have carried out serious human rights violations. The armed forces have frequently sought to prevent criminal investigations into human rights violations in which they are implicated by presenting the killings as occurring in combat with guerrillas. In many cases, the armed forces have maintained jurisdiction of criminal investigations and have persistently failed to bring those

responsible to justice. In the last decade, Amnesty and other human rights organizations have documented scores of examples of this practice:

- In October 1993, troops claimed that 13 peasant farmers killed in El Bosque, Riofrío Municipality, Department of Valle del Cauca, had been killed in combat. The bodies had been dressed in guerrilla uniforms. Judicial investigators soon established that the victims were unarmed peasant farmers, and that several of the women who were killed had been raped before being executed.
- In August 2000, army units opened fire on a school excursion in Pueblorrico killing six children. The army alleged they had opened fire in the belief that the children were guerrillas. The case was handed over to the military justice system for investigation, although a ruling is still pending.
- In September 2002, 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 *Batallón Nueva Granada*, Nueva Granada Battalion, forced their way into her house in Brisas de Yanacué, municipality of Cantagallo, department of Bolívar. The army claimed that Florentino and Nilson were FARC guerrillas killed in combat. The Regional Ombudsman, however, reportedly stated that the victims were unarmed. The military justice system has also initiated criminal investigations into this case.
- On 24 February 2003, bombing by the Colombian Air Force and FUDRA reportedly placed the homes and lives of inhabitants of the community of Culebritas, in the Barí Corronkaya Indigenous Reserve, Carmen Municipality, department of Norte de Santander, in serious danger. During the bombing 8-year-old Kelly Quintero, a member of the Galvis family, was killed, and Janeyri Galvis and Angel Quintero were wounded. The Air Force reportedly argued that the death of the child and the injuring of civilians was the result of a tactical error since they were attacking an ELN camp. The military justice system has also initiated criminal investigations into this case.

The granting of judicial police powers to the security forces could 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 security forces with or without the collaboration of paramilitaries will not be initiated. Reform of the Criminal Code and the Military Justice System has meant that some cases of human rights violations – including forced “disappearances” – are now excluded from military courts. However, collusion with paramilitary forces, extrajudicial executions and sexual crimes are not excluded. Amnesty International therefore fears that the granting of judicial police powers to the security forces will seal the mechanisms of impunity which exist in Colombia by ensuring that the security forces can stifle full and impartial investigations into human rights violations. The military may also find it easier to initiate investigations based on little if any evidence against human rights and other organizations who denounce human rights violations committed by the security forces, in an attempt to intimidate, silence and discredit these organizations and possibly pave the way for violent attacks against them.

Efforts to grant judicial police powers to the military have been repeatedly declared unconstitutional by the Constitutional Court. Attempts by then President Andrés Pastrana to give such powers to the armed forces, a measure included in the now defunct Defence and National Security

Law, were declared unconstitutional on 11 April 2002. In a ruling, made public on 25 November 2002, the Court also threw out similar measures contained in Decree 2002, issued by the government of President Alvaro Uribe Vélez on 9 September 2002.

In a 1993 ruling, the Court also stated that “given their constitutional objectives – defending the sovereignty, independence and integrity of the territory and the constitutional order – the military do not have competence to serve as judicial police. In truth, giving the military judicial police functions would pervert their nature [...] To give the military forces a dual role – a military role and a judicial police role – and to introduce the corresponding dual hierarchy of authority (the highest ranking military officer and the Prosecutor General of the Nation – would break the backbone of the military’s structure, destroy the single command chain and in some sense guarantee that in the event of a conflict between the two roles – a possibility that cannot be discounted given the climate of armed conflict in several parts of the national territory [...] – the function of judicial police would take precedence”.¹

A number of inter-governmental organizations have also criticized the granting of judicial police powers to the military. In its Concluding Observations to Colombia in 1997, the United Nations Human Rights Committee of the International Covenant on Civil and Political Rights, 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 texts were to be adopted, they would raise serious difficulties with regard to article 4 of the Covenant”.²

In its latest report on human rights in Colombia in 1999, the Inter-American Commission of Human Rights also expressed concern about “provisions which allow the military to carry out investigations and arrests, even in emergency situations. These functions should properly belong to regular or special judicial police forces acting under the supervision of the judiciary. The mobilization of the armed forces to combat crime implies placing troops trained for combat against an armed enemy in situations which require specialized training in law enforcement and interaction with civilians. In addition, this situation creates serious confusion regarding the balance of powers and the independence of the judiciary. The authority usually granted to the judicial bodies to order or deny searches, to order and carry out arrests or to release individuals in detention is transferred to authorities which form part of the executive branch”.³

Successive governments have argued that the military cannot protect human rights unless they are strengthened through increased judicial powers, including the right to investigate civilians, search homes and intercept communications without judicial authorization. In the past, these powers led to numerous human rights violations and to greater impunity. After visits to Colombia in 1988, 1994 and 1996, the UN Working Group on Forced and Involuntary Disappearances, the Special Rapporteur on Extrajudicial 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.

¹ Constitutional Court ruling on the constitutionality of Decree 1810 of 1992 by which judicial police powers are granted to the military, C-034/93, 8 February 1993.

² Human Rights Committee, Concluding Observations (CCPR/C/79/Add.76): 05/05/97, paragraph 19.

³ Inter-American Commission on Human Rights, Third Report on the Situation of Human Rights in Colombia, Chapter 2, paragraph 75, OEA/Ser.L/V/II.102, 26 February 1999.

At a time when the armed conflict is intensifying and the human rights and humanitarian crises are deteriorating the Constitution should be strengthened not weakened. 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*. Congress has a key role to play in upholding Colombia's constitutional system. If Congress approves the restoration of judicial police powers to the military one of the most important tenets of human rights protection in Colombia will be seriously undermined.

Yours,

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Amnesty International