

EXTERNAL (for general distribution)

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Further information on EXTRA 34/94 (AMR 23/53/94, 7 July 1994) & follow-up: AMR 23/55/94, 8 July 1994 - "Disappearances"

COLOMBIA: President must promulgate draft law against "disappearances".

Amnesty International continues to be concerned that the draft law against forced "disappearances" which was approved by the Colombian Congressional House of Deputies and Senate on 7 and 8 June 1994, will be rendered ineffective if presidential objections to the law are upheld.

On 8 July 1994 outgoing President César Gaviria Trujillo opposed the law on the basis that certain articles were "unconstitutional" and "inconvenient". The articles the President opposed would have ensured that members of the security forces involved in cases of forced "disappearance" could not be tried in military courts, a practice which has consistently ensured that members of the Colombian security forces involved in human rights violations have not been convicted. The President argued that this provision in the law negated constitutional norms under which crimes committed by members of the security forces in active service, and in connection with their service, should be handled by martial courts and military tribunals. He argued that it was the role of a judge to determine what constituted an act of service as opposed to a crime.

Leading Colombian human rights officials have publicly rejected the President's veto of the law in the strongest terms. In a letter to the President of the House of Deputies and the President of the Senate dated 12 July 1994, the Procurator Delegate for Human Rights, Hernando Valencia Villa, pointed out that Congress had not modified or limited military jurisdiction, but taken a step to define what constitutes an act of service. He indicated that forced "disappearance" is outlawed under Article 12 of the Constitution and that therefore forced "disappearance" cannot ever be considered as part or as a result of service, in order to submit such cases to military courts.

In a statement issued on the 25 July 1994, the Office of the People's Advocate took a similar stance. "Common crimes, committed by military and police agents, are acts which are related to the official function carried out by the armed forces. As a result, such crimes must be handled by civil jurisdiction. There is, therefore, no reason why forced disappearance - a common crime, a punishable act which cannot be undertaken within the mandate of the armed forces - should be judged in martial courts or military tribunals." The Procurator-General's Office condemned the President's position by pointing out that his objection blatantly contradicted the Inter-American Convention against Forced Disappearance of Persons, which was recently adopted by the Organization of American States in June 1994. The Colombian Government voted in support of the Convention.

President Gaviria also objected to the draft law on the basis that it violated constitutional norms on the issue of "due obedience", under which armed forces personnel are not responsible for orders given by their superiors. The Office of the People's Advocate condemned the President's position by arguing that the Government was denying Colombian soldiers their basic right to conscientious objection when faced with illegal orders. They added that with this objection "the Government admits being party to the idea of blind, automatic and irrational obedience amongst members of the Army, the Navy, and the Air Force, and accepts

that such obedience should be invoked to order the commission of crimes."

The Procurator General's office also condemned the President's position on the issue of "due obedience" by referring to the Inter-American Convention against the Forced Disappearance of Persons which expressly prohibits the concept of "due obedience" being invoked as a defence. The Procurator General's office also argued that due obedience cannot be converted into a generic and indiscriminate alibi for the a posteriori legitimization of abuses and omissions which have nothing to do with the activities of the armed forces as strictly understood and practised.

In a statement issued on 21 July 1994, President Gaviria failed to withdraw his objections to the draft law and instead made clear his intention to ratify the Inter-American Convention with reservations which coincide with the objections he has made to the draft law. At present the Colombian Congress is examining the law once more and on the 27 July 1994 a congressional commission was set up to examine the President's objections. It has just under three weeks in which to present its conclusions.

FURTHER RECOMMENDED ACTION: Please send telegrams/telexes/faxes/express and airmail letters:

Letters to President Gaviria/President-Elect Samper:

- expressing dismay and concern at President Gaviria's continued failure to withdraw his objections on the draft law against "disappearances". (**Please note:** President-Elect Ernesto Samper Pizano takes office on 7 August 1994); - expressing concern at President Gaviria's stated intention to ratify the Inter-American Convention against Forced Disappearance of Persons with reservations, despite the Colombian Government's initial vote in support of the Convention and urging that the Convention should be ratified without reservations;

Letters to President of House of Representatives and members of Congressional Commission:

- urging members of the Colombian Congress and the recently created Commission established to examine President Gaviria's objections to the law, to endorse the arguments of the Office of People's Advocate and the Procurator Delegate for Human Rights, and reject President Gaviria's objections to the draft law; - reiterating that failure to bring the law into force, or the introduction of modifications which undermine its effectiveness, will result in further "disappearances" and strengthen the impunity of those members of the armed forces who carry out "disappearances".

APPEALS TO:

President of Colombia:

Señor Presidente César Gaviria Trujillo
 Presidente de la República
 Palacio de Nariño, Santa Fé de Bogotá, Colombia

Telegrams: President Gaviria, Bogotá, Colombia

Tx: 44281 PALP CO

Fax: + 57 1 286 7434/287 7939

Salutation:Excelentísimo Sr. Presidente/Dear President Gaviria

Incoming President (takes office 7 August)

Dr. Ernesto Samper Pizano
 Calle 72, no. 7-64, Piso 12
 Santa Fé de Bogotá, Colombia (**same fax & telex as above, after 7 August**)

Telegrams: Dr Samper, Calle 72, 7-64, Bogotá, Colombia

Salutation:Presidente Electo Samper/Dear President-Elect Samper

Members of Special Senate Commission on Forced "Disappearance" Law:

H. Senado de la República
Santafé de Bogotá, Colombia

Fax: + 57 1 284 5560

President of the House of Senate:

Dr Luis Guillermo Angel
Presidente H. Senado de la República
Santafé de Bogotá, Colombia

Fax: + 57 1 284 5560

Telegrams: Presidente Senado Guillermo Angel, Bogotá, Colombia

Telexes: SENINCO 45582

Salutation: Dr. Guillermo Angel/Dear Dr.

President of the House of Representatives:

Dr Armando Benedetti
Presidente H. Cámara de Representantes del Congreso Nacional
Calle 10, Carrera 7 y 8
Santafé de Bogotá, Colombia

Telegrams: Presidente Cámara de Representantes, Bogotá, Colombia

Fax: +57 1 281 43 23

Salutation: Dr. Benedetti /Dear Dr Benedetti

COPIES OF YOUR APPEALS TO:

Association for Relatives of the "Disappeared"

Señores
ASFADDES
AA 011446
Santa Fé de Bogotá
Colombia

Advocate for the People:

Dr. Jaime Córdoba Triviño
Defensor del Pueblo
Defensoría del Pueblo
Calle 35, No.7-25, P.5
Santafé de Bogotá, Colombia

Procurator General:

Dr. Carlos Gustavo Arrieta Padilla
Procurador General de la Nación
Procuraduría General
Edificio Banco Ganadero
Carrera 5, No. 15-80
Santafé de Bogotá, Colombia

and to diplomatic representatives of COLOMBIA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 29 August 1994.