

**AMNESTY
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Dear Presidential Candidate,

What will you do to protect the human rights of all Colombians? Open Letter to the Presidential Candidates

With the presidential election scheduled for 30 May, Amnesty International would like to take this opportunity to write to you to underline the organization's sincere hope that the respect for human rights will be placed at the forefront of the election agenda and emerge as a top priority for all the presidential candidates and the future government. Through this letter, which we are today making public, we would like to outline Amnesty International's key human rights concerns. We hope that, in response, and in a spirit of constructive dialogue, you will set out the policies you will pursue and the specific measures you will implement to ensure full respect for human rights in Colombia.

Amnesty International has over the last three decades closely monitored the human rights situation in Colombia. The organization has published numerous reports based on research carried out in the country, especially in conflict areas. In these reports, Amnesty International has made public the many conflict-related abuses of human rights and violations of international humanitarian law (IHL) carried out by the security forces, paramilitaries and guerrilla groups. In the long-standing dialogue that the organization has maintained with successive Colombian governments over more than 30 years, it has emphasized the responsibility of the state to fulfil its national and international obligations with regards to the respect and protection of human rights and IHL. We have also made clear the responsibility of guerrilla groups to respect IHL.

In this open letter, Amnesty International is posing a series of questions covering two broad issues which go to the heart of and which have indelibly marked Colombia's internal armed conflict. First, the abject and repeated failure of all the parties to the conflict to protect civilians from the human rights consequences of the conflict and to respect their right not to be drawn into the hostilities. Second, on the vexed question of impunity, which arguably more than any other factor has been responsible for prolonging the country's 45-year-old internal armed conflict.

Amnesty International hopes that your answers to these fundamental questions will send out a clear message that, if elected, your administration will have the political determination to put an effective end to many decades of human rights abuses and violations of IHL committed by all the parties to the conflict and to overcome the endemic and shameful impunity that has sustained the conflict, and the consequent abuses of human rights, for so long. An important first step you should take as candidate is to outline in your election manifesto the concrete steps you will take to resolve the human rights crisis and to once and for all put an end to impunity.

Protecting Civilians:

Acknowledging the existence of an armed conflict and a still serious human rights situation

The current administration has been marked by a myopic and damaging refusal to acknowledge the existence of an internal armed conflict in Colombia. This denial is at serious odds with the position consistently adopted by such authoritative organizations as the International Committee of the Red Cross and the United Nations High Commissioner for Human Rights, as well as by the international community and national and international human rights organizations. For example, the latest report on the human rights situation in Colombia published by the US State Department in March was categorical and unambiguous in its classification of the situation in Colombia as one of internal armed conflict. In short, the current Colombian administration is blatantly out of step on an issue over which there is overwhelming consensus.

This is far from simply being a semantic debate. It risks undermining the practical application of international humanitarian and human rights law. Regardless of whether or not the government acknowledges the existence of an armed conflict, these international standards, as well as domestic law, continue to apply. But the denial of such a conflict sends out a powerful and dangerous message to combatants that IHL – a set of rules which apply exclusively in situations of armed conflict and which are designed to minimize suffering – does not need to be respected. As the UN Working Group on Enforced or Involuntary Disappearances said in its 2006 report on Colombia, “Denying the condition of an internal armed conflict has important implications. One of which is that it becomes possible to refuse any distinction between combatants and non-combatants.” The persistent and shocking failure of all the parties to the conflict to make such a distinction has, for example, given Colombia the dubious distinction of being one of the world leaders in forced displacement and in landmine deaths and injuries.

The current government’s stubborn and illogical refusal to acknowledge the existence of an armed conflict tragically extends to a denial that Colombia continues to suffer from serious human rights and humanitarian problems. While acknowledging that problems persist, the government claims that the worst excesses of the conflict have now been overcome. There has arguably been an improvement in some conflict-related human rights indicators, such as a decrease in the numbers of civilians killed or taken hostage, and many Colombians, particularly those living in urban areas, now feel safer than they did a decade ago. But this is only a part of the picture. The stark truth is that the conflict is still destroying the lives of millions of Colombians, especially members of vulnerable communities living in rural areas. Their voices are being silenced because their stories would vividly undermine the official account that this is a country that has largely overcome its bloody past. This reality is shockingly exemplified by, for example, the as many as 286,000 people forced to flee their homes in 2009 alone, the deteriorating human rights situation faced by Indigenous Peoples and the rise in threats against human rights defenders.

The undeniable truth is that all the parties to the conflict, be they soldiers, police, paramilitaries, or guerrillas, continue to commit repeated and widespread human rights abuses and violations of IHL. Unlawful killings, enforced disappearances, torture and other cruel, inhuman and degrading treatment, death threats, forced displacement, sexual violence against women and girls, and indiscriminate attacks continue to be the order of the day.

Questions for the Candidates on the Human Rights Crisis

- A failure to acknowledge the existence of an internal armed conflict not only undermines efforts to apply IHL, but also gives ammunition to guerrilla groups in their efforts to escape censure for their attacks against civilians. Do you therefore agree with the International Committee of the Red Cross and the UN High Commissioner for Human Rights that such a conflict continues to exist and that, by extension, the parties to the conflict have an obligation to comply with IHL? Do you accept that the government has legally binding obligations,

stemming from both IHL and human rights law, to protect civilians and ensure that the human rights of all are respected and protected?

- While there have been improvements in some human rights indicators, the human rights and humanitarian situation remains extremely serious, and has even deteriorated in some respects. Failure to acknowledge this reality threatens to make invisible the plight of the millions of victims of the conflict. Do you therefore acknowledge that Colombia is still experiencing serious human rights and humanitarian problems? And what concrete measures are you planning to take to resolve these problems?
- The situation faced by communities at particular risk from the effects of the armed conflict, such as Indigenous Peoples and Afro-descendant and peasant farmer (campesino) communities, is particularly acute, and is deteriorating in certain respects. The stubbornly high rates of forced displacement are a painful testament to the severe hardship which continues to affect many of these communities. What specific steps are you planning to take to address the particular difficulties faced by these vulnerable communities?
- Human rights defenders, who play a pivotal role in defending human rights and the rule of law, continue to be threatened, unlawfully killed and arbitrarily detained. They have also been the target of smear campaigns by the authorities, which have sought to link their work with support for the guerrilla in order to undermine their legitimacy. This has compromised their individual safety and weakened their capacity to defend human rights. How do you propose to ensure that human rights defenders can exercise their constitutional right to defend human rights free from fear, stigmatization and attack?
- Even though finding a lasting solution to this conflict may not be immediate, a crucial blueprint to address the human rights of those affected by Colombia's armed conflict has been in existence for more than a decade. The recommendations repeatedly put forward by the UN High Commissioner for Human Rights, and which have been accepted by the current government, describe in detail the steps that the authorities and guerrilla groups should take to put an effective end to human rights abuses and violations of IHL. What concrete steps will you take to ensure that these recommendations, as well as those put forward by all the UN Special Procedures and treaty monitoring bodies, as well as by the Inter-American Human Rights System, are implemented promptly and in full?

Impunity and the Rule of Law:

Ensuring truth, justice and reparation for the victims of the conflict

Impunity remains one of the central causes behind the continuing and persistent abuse of human rights and violations of IHL and the most tangible threat to the rule of law. The fact that the vast majority of those responsible for such abuses are yet to be brought to justice, while most victims are yet to receive reparations, has seriously undermined public confidence in the administration of justice and the rule of law.

Successive Colombian governments have been at pains to convince those at home and abroad that significant progress has been made in bringing human rights abusers to justice. In recent years there have been some advances in this respect, but these have obscured serious deficiencies in the judicial system's ability to combat impunity and have raised doubts about the executive's commitment to address the problem. The sad truth is that impunity remains the norm in most cases of human rights

abuses. Even in those high-profile cases where some advances have been evident, efforts to derail these processes continue to undermine the investigations:

- **The DAS scandal.** The massive, long-standing, illegal “dirty tricks” operation carried out by the civilian intelligence service (Departamento Administrativo de Seguridad, DAS), which operates under the direct authority of the President, against human rights defenders and others led to threats against those subjected to these measures, which included surveillance and campaigns to discredit them, and unlawful killings by paramilitaries. Other activists who were the object of this operation, particularly those involved in bringing human rights cases before the courts, continue to be subjected to unfounded criminal investigations and accusations linking them to guerrilla groups. This has placed them at risk of attack and undermined their work. Although several senior DAS officials have been charged with “conspiracy to commit an aggravated offence” (*concierto para delinquir agravado*) and abuse of authority, serious questions remain over who ordered the “dirty tricks” operation and over whether such illegal methods are still being employed.
- **The “parapolitics” scandal.** Some 80 Members of Congress are under criminal investigation by the Supreme Court of Justice for their alleged illegal links to paramilitaries, and a number of legislators and other elected officials have already been convicted. However, the government has repeatedly sought to undermine the legitimacy of the Court. Several magistrates investigating the case have been threatened, placed under surveillance and have had their communications intercepted by state institutions.
- **Extrajudicial executions.** Although the Office of the Attorney General is investigating more than 2,000 extrajudicial executions carried out by the security forces over the last six years, most of the alleged perpetrators have yet to be identified, let alone investigated. Those cases where a criminal investigation has been opened have made little progress. Resistance by the military justice system to accept civilian jurisdiction in such cases is threatening to further undermine the fight against impunity, as are the threats against and unlawful killings of lawyers and witnesses associated with these criminal cases.

Impunity persists for a myriad of complex, yet inter-related reasons. A lack of political will by the authorities and the obstruction of justice have all played a part in ensuring that the perpetrators are not brought to justice. Of particular concern has been the rise in threats against and unlawful killings of individuals associated with key human rights cases, including lawyers, human rights defenders, public prosecutors, judges, magistrates, witnesses, community leaders, and victims and their families. This cannot but seriously undermine efforts to combat impunity.

The collusion of sectors of the state apparatus, and some of those in business and politics, with paramilitary groups, and to a lesser extent with guerrilla groups and drugs-related organized crime, continue to pose a serious threat to the rule of law. The most glaring missed opportunity in this respect has been the failure to effectively deal with the noxious phenomenon of paramilitarism. International human rights standards make it clear that the rights of victims to truth, justice and reparation cannot be compromised. But the paramilitary demobilization process, and the Justice and Peace Law – via which fighters who laid down their arms could benefit from reduced prison sentences in return for confessions about human rights violations and reparations for their victims – has abjectly failed to ensure that such fighters are genuinely removed from the conflict, that the paramilitaries and their backers are properly held to account for serious violations of human rights and humanitarian law, and to offer full reparation to the victims and their families.

Supporters of the paramilitary demobilization process, both in Colombia and abroad, have said that forgoing justice for the sake of peace is a price worth paying. But the demobilization and its

accompanying legal framework have brought neither peace nor justice. Amnesty International believes that justice is essential to guarantee a meaningful and lasting peace.

Although some paramilitaries have confessed to having committed human rights-related crimes and implicated others in politics, business and the military, the demobilization process still falls short of international standards on the rights of victims to truth, justice and reparation. Some 90% of those who demobilized escaped effective investigation. Most of the 18 paramilitary leaders extradited to the USA on drugs-trafficking charges have refused to collaborate with the Colombian justice system in its investigations into human rights violations. Moreover, victims or their families participating in the process, their lawyers and those supporting their campaigns for justice, as well as prosecutors and judges involved in the process, have been threatened or unlawfully killed.

Control over territory and resources lies at the root of the conflict. Much of the wealth accumulated by the paramilitaries and the politicians and businesspeople who support them has come from the misappropriation, often accompanied by violence or the threat of it, of millions of hectares of land belonging to hundreds of thousands of campesinos, and Indigenous and Afro-descendent communities throughout the length and breadth of the country. As part of the deal with the government, the paramilitaries promised to hand over all their ill-gotten lands and to restore them to their legitimate owners or their families. However, other than some property of little worth, they have so far failed to return any significant stretches of land.

The search for truth and justice in any conflict situation is fraught with difficulties and obstacles. But for such a process to succeed, it must have human rights, including the principle of “non-repetition”, at its core. Protection against future human rights abuses and effective measures to address past abuses is not something to be tagged on to a peace or demobilization process to make it more acceptable; it is, or ought to be, the crucial component for achieving a just and lasting peace. It is a constant that should be applied to all peace and demobilization processes, whether they involve the paramilitaries or the guerrillas.

Questions for the Candidates on Impunity and the Rule of Law:

- The failure to effectively tackle impunity is prolonging the human rights crisis and undermining the rule of law and victims’ rights to truth, justice and reparation. What concrete measures will you adopt to ensure effective investigations of all serious human rights abuses, and to ensure that victims’ rights to truth, justice and reparation are fully respected?
- Success in effectively combatting impunity will be partly judged on progress made in four key criminal investigations, including into the DAS, the links between members of Congress and paramilitaries, the more than 2,000 extrajudicial executions carried out by the security forces, and the Justice and Peace process. Although there have been some advances in these cases, the investigations have been plagued by a series of obstacles and obstructions which have repeatedly threatened to derail them. What specific measures will your administration take to ensure that these cases can progress smoothly and effectively?
- The killing of and threats against witnesses, victims’ families, lawyers, prosecutors, judges, and human rights defenders involved in key human rights investigations threatens to undo what limited advances there have been in the fight against impunity. The repeated threats against magistrates from the Supreme Court of Justice pose a particularly serious threat to the rule of law. What specific measures will you implement to ensure that those involved in human rights-related criminal investigations are effectively protected?
- Continuing efforts by the military justice system to claim jurisdiction over cases implicating members of the security forces in human rights violations only serves to undermine efforts to

combat impunity. What measures will you implement to ensure that all such cases are once and for all excluded from the military justice system?

- The long-standing and ongoing links between sectors of the state, as well as in politics and business, with paramilitary groups, and to a lesser extent with guerrilla groups and organized crime, has been a hallmark of the conflict. Such links pose a serious threat to the rule of law, since they threaten to undermine the very foundations of government. What specific measures will you implement to effectively break all such links?
- Resolving the land question remains one of the most intractable challenges facing efforts to ensure the right to reparation of millions of victims of the conflict. The paramilitary demobilization was partly presented to a sceptical society on the basis that those fighters who laid down their arms would receive significant procedural and economic benefits in return for relinquishing the millions of hectares of land they misappropriated by violently displacing those living on the land. Both the paramilitaries and the state have abjectly failed to keep this promise. Meanwhile, millions of Colombians remain dispossessed from the lands, which is often their only means of subsistence. What concrete steps will you take to ensure that misappropriated lands are returned to their rightful owners or their families? And what specific measures will you implement to ensure that paramilitaries or their backers do not once again take control of these lands?

As a presidential candidate, Amnesty International reiterates its hope that you will place human rights at the centre of your campaign and, if successful in the election, will give urgent priority to implementing measures designed to effectively end the human rights and humanitarian crises. Amnesty International sincerely believes that by endorsing a human rights strategy based on resolving the concerns expressed in this letter, as well as by fully and promptly implementing the recommendations presented by the United Nations and by the Inter-American Human Rights System, you will be taking an important and much-needed step towards once and for putting a definitive end to human rights abuses and violations of IHL.

Yours,

Susan Lee
Director, Americas Regional Programme