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## **Colombia**

### **Submission to the UN Universal Periodic Review**

**Third session of the UPR Working Group of the  
UN Human Rights Council**

**December 2008**



### **Executive summary**

In this submission, Amnesty International provides information under sections B, C and D, as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*:<sup>1</sup>

In **section B**, Amnesty International raises issues related to the legal framework for the demobilization of paramilitary groups; reparation for victims of human rights abuses; implementation of the **Rome Statue of the International Criminal Court; and children and armed conflict.**

**Section C** highlights Amnesty International's concerns in relation to human rights violations by paramilitary groups; extrajudicial executions; enforced disappearances; forced displacement of civilians; **attacks on human rights defenders and trade unionists; and human rights abuses and violations of international humanitarian law by guerrilla groups.**

In **section D**, Amnesty International makes a number of recommendations for action by the government and by **guerrilla groups.**

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<sup>1</sup> Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007.

# Colombia

## Amnesty International submission to the UN Universal Periodic Review

Third session of the UPR Working Group, December 2008

### Introduction

All the parties to the internal armed conflict in Colombia – which for more than 40 years has pitted the security forces and paramilitaries against a variety of guerrilla groups – continue to be responsible for widespread abuses of international human rights and humanitarian law, mostly committed against civilians. However, in recent years there have been reductions in some types of human rights abuses. The number of kidnappings has fallen as has the number of killings of civilians. Amnesty International welcomes the fact that several high-profile hostages, including former presidential candidate Ingrid Betancourt, have now gained their freedom after years of captivity at the hands of the Revolutionary Armed Forces of Colombia (FARC). The security situation has improved in some urban centres in Colombia, as well as in many of its principal highways. However, the human rights and humanitarian situation remains critical and has even deteriorated in some regions. Amnesty International is particularly concerned about increases in extrajudicial executions committed by the security forces and in civilians forcibly displaced by the armed conflict.

### B. Normative and institutional framework of the State

#### The legal framework for the demobilization of paramilitary groups

Decree 128 of 2003 and Law 975 of 2005 (Justice and Peace Law) – the legal framework under which the government has encouraged members of paramilitary groups to lay down their arms in a demobilization process initiated in 2003 – have failed to conform to international standards on the rights of victims to truth, justice and reparation. This legal framework has also failed to ensure that paramilitaries are effectively dismantled and held to account for any human rights abuses; in fact it has consolidated the *de facto* impunity enjoyed by many perpetrators of human rights abuses, whether paramilitaries or those who have supported them, or members of the guerrilla.

Only about ten percent of the more than 31,000 paramilitaries that are said to have demobilized have been included within the scope of the Justice and Peace process, under which they will benefit from significantly reduced sentences in return for “full” disclosure of their involvement in human rights violations. The remaining 90 percent have so far escaped prosecution because Decree 128 grants *de facto* amnesties to those who are not under criminal investigation for human rights abuses or have not been convicted of such crimes.

The Justice and Peace Unit of the Office of the Attorney General is charged with investigating abuses committed by members of illegal armed groups supposedly demobilized under Law 975, whereas investigation of human rights violations involving the security forces remains under the jurisdiction of the Human Rights Unit. However, many cases involve collusion between paramilitaries and the security forces, and separate criminal investigations dealt with by different investigating bodies may weaken investigations into the responsibility of the security forces for abuses committed by paramilitary groups.

The relatively small number of units in the Justice and Peace Unit also means that their ability to investigate cases will be limited to individual responsibility, rather than focus on the structure of paramilitary groups and the role played in them by the security forces and others.

Amnesty International is particularly concerned about continuing threats against and killings of victims, and persons representing them, in the Justice and Peace process. On 30 June 2007, a group of victims presented a writ of protection of fundamental rights (*tutela*) to the courts to force the state to adopt measures to stop such threats and killings. In response, in September 2007 the government created a protection programme for victims and witnesses participating in the Justice and Peace process. However, in May 2008 the Constitutional Court ruled on a *tutela* presented on behalf of women victims of paramilitary violence stating that the government's strategy for protecting victims was in breach of the state's constitutional and international obligation to prevent discrimination and violence against women. The Court gave the authorities six months to revise the witness protection programme.

### **Reparation for victims of human rights abuses**

At the root of Colombia's internal armed conflict is the vexed issue of land. Much of the wealth accumulated over the past decades by the paramilitaries and their backers in politics and business has been based on the illegal appropriation, often through violence or the threat of violence, of 4-6 million hectares of land previously owned by hundreds of thousands of *campesinos* and Indigenous and Afro-descendant communities.

As part of the Justice and Peace process, the paramilitaries committed to return land and other assets to their rightful owners; however, so far they have failed to hand over any significant tracts of land. Much of the land has been signed over to third parties – so-called *testaferros*, often close family members and friends – in order to shield it from scrutiny. There appears to be little political will to pursue the *testaferros* with the full vigour of the law.

On 22 April 2008, the government issued Decree 1290, which creates a programme for victims of abuses by illegal armed groups to receive modest individual monetary reparations from the state. However, the Decree fails to address the issue of land ownership, as well as reparation for victims of violations by the security forces and other state agents, and collective reparations for organizations and collectives that have been affected by the conflict, such as trade unions, human rights NGOs, and civilian Indigenous and Afro-descendant communities.

### **The Rome Statute of the International Criminal Court**

On ratification of the Rome Statute in 2002, Colombia made eight interpretative declarations and a declaration invoking Article 124, declaring that it did not accept the jurisdiction of the Court over war crimes committed by its nationals or on its territory for a seven-year period. Among these declarations, one in particular appears to be a prohibited reservation. According to this declaration "[n]one of the provisions of the Rome Statute concerning the exercise of jurisdiction by the International Criminal Court prevent the Colombian State from granting amnesties, reprieves or judicial pardons for political crimes (...)". Amnesty International considers such a unilateral declaration as amounting to a disguised reservation.

### **Children and armed conflict**

On 6 March 2007, the Ministry of Defence issued Directive 30743 which prohibits the use of children by the security forces for intelligence purposes, especially children rescued from the ranks of illegal armed groups. However, according to the 2007 UN Secretary-General's report on children and armed conflict, the security forces continue to employ children in intelligence and other similar activities. On 12 February 2008, the government finally accepted the reporting and monitoring mechanisms under UN Security Council Resolution 1612 (2005) on children and armed conflict, but expressed reservations about extending the reporting and monitoring mechanism to cover acts of sexual violence. Colombia had been one of the last countries in Annex II to express a willingness to formally accept the mechanism.

## **C. Promotion and protection of human rights on the ground**

### **Human rights violations by paramilitary groups**

Despite government claims to the contrary, paramilitaries continue to operate and to use violence to further their economic and political objectives. Many paramilitary groups operate on two distinct, but inter-related levels: they pursue criminal activities linked to the drugs trade while at the same time supporting the security forces' counter-insurgency strategy. Amnesty International has also received strong evidence of continued collusion between paramilitary groups and members of the security forces in many areas of the country.

### **Extrajudicial executions**

Over the years, the conflict has been marked by the killing of tens of thousands of civilians by all the parties to the conflict; however, recently the number killed has fallen – from more than 5,000 in 2000-2001 to around 1,348 in 2006-2007. The paramilitary groups – acting in coordination with, or with the acquiescence of the security forces – have been responsible for the largest number of such killings. However, in recent years there have been reports of an increase in extrajudicial executions carried out directly by the security forces; more than 287 such killings were reported in 2006-2007.

Most of the victims are *campesinos* or community leaders who the security forces falsely claimed were guerrillas killed in combat. In most cases of suspected extrajudicial killings, the military justice system claims jurisdiction over the investigation – in defiance of the Constitutional Court and international standards – and as a result such cases are often closed prematurely and those responsible are rarely brought to justice.

The government has issued a number of directives designed to tackle the increase in extrajudicial executions, including by strengthening oversight and accountability mechanisms and creating a special unit to investigate extrajudicial executions in the Office of the Attorney General. However, these measures are yet to yield concrete results.

### **Enforced disappearances**

The conflict has also been marked by widespread enforced disappearances. Thousands of civilians have been subjected to enforced disappearance by the security forces and paramilitaries. Enforced disappearance – followed by mutilation and burial in unmarked mass graves – has long been a cornerstone of the security forces' counter-insurgency strategy. In most cases no one has been held accountable.

Although some of the paramilitary leaders participating in the Justice and Peace process have revealed information about persons they have killed, information about the identity of their victims and the whereabouts of their bodies remains sketchy. More than 1,525 bodies of people thought to have been subjected to enforced disappearance by paramilitaries were exhumed from some 1,261 graves between January 2006 and June 2008. Only 193 bodies have been identified and 160 of these have been returned to their families. The Attorney General's Office is reportedly investigating more than 15,000 cases of enforced disappearance.

### **Forced displacement**

Forced displacement of civilians continues to be one of the most visible expressions of the unlawful conduct by the warring parties in the conflict; in fact, Colombia has one of the most severe incidences of internal displacement in the world. The number of people forcibly displaced by the conflict continues to increase, with some estimates suggesting that more than 305,000 people were displaced in 2007 – the highest figure in five years – compared to 220,000 in 2006. In the last 20 years, 3-4 million people have been forcibly displaced, in particular *campesino* and Indigenous and Afro-descendant communities.

**Attacks on human rights defenders and trade unionists**

The number of killings of human rights defenders and trade unionists had fallen in recent years – 39 trade union members were killed in 2007, compared to 72 in 2006, and 184 in 2002. However, there has been a worrying increase in killings of trade union members in 2008. At least 24 trade unionists were killed in the first four months of 2008, compared to 14 in the same period in 2007.

Threats and attacks against human rights defenders also continue. There was a marked increase in threats, reportedly by paramilitary groups, in the aftermath of mass demonstrations on 6 March 2008 to protest against human rights violations committed by the security forces and the paramilitaries. During 2007 and 2008, the offices of several human rights NGOs were broken into and highly sensitive case information stolen.

The authorities continue to open criminal investigations on unsubstantiated charges against human rights defenders and trade unionists in an attempt to stigmatize and harass them. Many of such proceedings have been initiated on the basis of spurious information from military intelligence files or accusations by often paid military informers. There is concern that military intelligence files – which often contain information that might incriminate or prejudice members of social or human rights organizations – have yet to be revised, as stipulated in recommendations of the UN High Commissioner for Human Rights, and the government appears to be promoting legislation that might grant immunity from prosecution to agents of the intelligence services. High-ranking military, state and government officials continue to make hostile public statements against human rights defenders, in some instances equating human rights work with “subversion”. Such accusations place activists at increased risk of attack.

Successive governments have taken action to improve the safety of trade unionists and human rights defenders, including by providing bodyguards, armour-plated vehicles and mobile telephones. However, the continued threats against and killings of activists indicate that, on their own, such measures are not sufficient. Effective action must be taken to bring those responsible to justice.

The security bodies which play an active role in the protection of human rights defenders and trade unionists – such as the civilian intelligence service (DAS) – have still not been fully investigated for their alleged collusion with paramilitaries. There are also plans to transfer the provision of bodyguards for human rights defenders, trade unionists and others in the protection programme to private security firms. However, there are no legal barriers preventing former members of illegal armed groups from joining private security companies, where they can legally be armed, and thus be in position to continue to commit abuses.

The government has taken some action to address the almost total impunity for human rights abuses against trade unionists, partly as a result of international condemnation about the high incidence of killings of trade unionists. During the 95<sup>th</sup> International Labour Conference, in 2006, an agreement was reached with the government to establish a permanent ILO presence in Colombia. Its mandate is to promote and defend the rights of trade unionists, as well as monitor investigations by a special unit of the Attorney General’s Office into killings of trade unionists. The unit has resolved some high-profile cases, but the perpetrators of most of the more than 2,200 killings of trade unionists since 1991 have still not been brought to justice.

**Human rights abuses and violations of international humanitarian law by guerrilla groups**

Guerrilla groups continue to commit human rights abuses and to violate international humanitarian law, including deliberate killings of civilians, abductions and hostage-taking. The FARC is believed to hold around 700 hostages, often in appalling conditions. Amnesty International is also concerned about the dispute between the FARC and the National Liberation Army (ELN) in Arauca Department, which has resulted in the killing of hundreds of civilians over the past few years, and about the continued use of anti-personnel mines by guerrilla groups which has resulted in numerous casualties, including civilians. The FARC were also allegedly responsible for many of the around 29 killings of candidates in the run-up to the local elections in October 2007. Amnesty International continues to receive numerous testimonies about forced recruitment of children by both guerrilla and paramilitary groups. Amnesty

International is also concerned about the indiscriminate bomb attacks that have taken place in several urban areas, some of which the authorities attribute to the FARC.

## D. Recommendations

### Amnesty International calls on the government to:

- Commit to full and prompt implementation of the human rights recommendations of the UN High Commissioner for Human Rights and other UN bodies.
- Withdraw the declaration made under Article 124 of the Rome Statute of the International Criminal Court and the declaration which attempts to limit the Court's jurisdiction in a potential case before it regarding political crimes.
- Publicly condemn violations of human rights and international humanitarian law by the security forces; make clear that such violations will not be tolerated; and adopt effective measures to prevent such violations and to bring those responsible to justice in civilian courts.
- Adopt measures to ensure that the military justice system does not claim jurisdiction in human rights cases involving members of the security forces.
- Ensure that perpetrators of human rights abuses, including paramilitaries and members of the guerrilla, do not benefit from legal measures exempting them from criminal prosecution or conviction. The judicial authorities must thoroughly investigate, and hold to account, those paramilitaries who supposedly demobilized but who were given *de facto* amnesties under Decree 128.
- Ensure that third parties, whether members of the security forces, state or government officials, or politicians, who have engaged in conduct amounting to complicity in the unlawful acts of paramilitary groups, are properly investigated and held to account in a court of law.
- Establish a fair and transparent process to identify and return all lands and other assets stolen by paramilitaries, including those transferred to third parties, and set a deadline by which to return these assets to their rightful owners or their families.
- Ensure that paramilitary groups, which still operate with the complicity or acquiescence of the security forces, are effectively disbanded, disarmed and prosecuted.
- Acknowledge the legitimacy of human rights work, refrain from making public statements questioning the work of human rights defenders, take effective measures to ensure that all public servants, including members of the security forces, respect their work, and ensure that those responsible for making unfounded or unsubstantiated allegations against human rights defenders are subject to appropriate sanctions.
- Ensure that full and impartial criminal investigations are undertaken into human rights abuses committed against human rights defenders and trade unionists and that those responsible are held to account.
- Take effective measures to prevent the displacement of Indigenous, Afro-descendant, *campesino* and other communities in conflict zones and areas of economic importance who have a special dependency on or attachment to their lands.
- Ensure the full participation of NGOs in the special teams set up by UN Security Council Resolution 1612 on children and armed conflict, effective coordination with the UN on the reporting and monitoring mechanism, and the inclusion of sexual violence as a specific category within the mechanism. Also, acknowledge that paramilitaries, as well as guerrilla groups, continue to recruit children and, as such, should not be removed from the UN Secretary General's list of parties that recruit or use children in situations of armed conflict.

**Amnesty International also calls on guerrilla groups to:**

- Publicly acknowledge their obligations to comply fully with international humanitarian law and make a public commitment to respect international human rights law.
- Comply fully and immediately with the recommendations directed to them by the Office of the UN High Commissioner for Human Rights.
- Immediately and unconditionally release all civilians held by their forces and commit to put an immediate end to all kidnapping and hostage-taking.



## Appendix: Amnesty International documents for further reference<sup>2</sup>

Colombia: *Leave us in Peace!*: Targeting Civilians in Colombia's Internal Armed Conflict (to be published in September 2008), AI Index: AMR 23/023/2008.

Colombia: Extradition of paramilitary leaders must not lead to closure of investigations into human rights violations, 13 May, 2008, AI press release.

Colombia: All hostages must be urgently released, 27 February 2008, AI press release.

Colombia: Killing of election candidates must stop, 17 October 2007, AI Index: AMR 23/037/2007.

Colombia: Killings, arbitrary detentions, and death threats: the reality of trade unionism in Colombia, 3 July 2007, AI Index: AMR 23/001/2007.

Colombia: Fear and Intimidation: The dangers of human rights work, 7 September 2006, AI Index: AMR 23/033/2006.

Colombia: Open Letter to the Presidential Candidates, 27 April 2006, AI Index: AMR 23/013/2006.

Colombia: Reporting, Campaigning and Serving Without Fear: The Rights of Journalists, Election Candidates and Elected Officials, 9 February 2006, AI Index: AMR 23/001/2006

Colombia: The Paramilitaries in Medellín: Demobilization or Legalization?, 1 September 2005, AI Index: AMR 23/019/2005.

Colombia: "Scarred bodies, hidden crimes": Sexual Violence against women in the armed conflict, 13 October 2004, AI Index: AMR 23/040/2004.

Colombia: Laboratory of war - Repression and violence in Arauca, 20 April 2004, AI Index: AMR 23/004/2004.

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<sup>2</sup> All of these documents are available on Amnesty International's website: <http://www.amnesty.org/en/region/americas/south-america/colombia>