EXECUTIVE SUMMARY AND RECOMMENDATIONS

The Colombian people have suffered the persistence of the internal armed conflict as well as the chronic humanitarian and human rights crisis for more than four decades. In the course of the conflict, the security and armed forces (*Fuerza Pública*) continue to commit serious violations of human rights, including extrajudicial executions, torture and forced disappearances. At the same time, the practice of arbitrary detentions and illegal searches is widespread and systematic. Paramilitary groups that are demobilizing do not respect the cease of hostilities declared in December 2002 and continue to commit many crimes against the civilian population, recruiting new members, including children, and bearing weapons. The armed opposition groups, in particular the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN) continue to commit grave breaches of international humanitarian law, such as taking of hostages, kidnapping, child recruitment and indiscriminate use of arms and methods of war.

Since Álvaro Uribe was proclaimed President in August 2002, the Colombian State has been promoting a new security policy, in the name of the fight against terrorism. This policy, known as the democratic security policy, is strongly inspired by the measures adopted at the end of the administration of former President Andrés Pastrana (1998-2002). President Pastrana's administration promoted an internal security policy that involved the use of the civilian population in the armed conflict and promoted restrictions to the capacity of supervisory bodies[1] and the Judiciary to monitor the Executive's initiatives.

The democratic security policy or the democratization of war

The democratic security policy is premised on the following:

- there is no armed conflict in Colombia, but rather a "war against terrorism", thus allowing for avoidance of the application of the principle of distinction between civilians and combatants;
- all state apparatus and the population have to be at the service of the military and political efforts to combat terrorists; as a consequence, all public authorities and powers are subordinated to the Executive;
- the military forces should be granted wide powers to defeat "the terrorist enemy", which implies they may mobilize the civilian population as well as implement draconian restriction of fundamental rights and liberties;
- the existing judicial remedies as well as the powers of the Constitutional Court and supervisory bodies should be modified so that they do not hinder the action of the Executive in its "fight against terrorism". In the framework of the democratic security policy, a number of legal measures have been adopted and others are in the course of adoption. It is significant that the Constitutional Court declared unconstitutional several of these measures and that, in spite of these rulings, the Government announced on several occasions that it would again present these measures to the Congress.

Colombia has experienced a military confrontation between the State and armed opposition groups for more than forty years, resulting in the internal displacement of more than three million people, the biggest humanitarian crisis after Sudan and the DRC. Yet the Government of President Uribe insists in denying the existence of

[1] Inspector General's Office (*Procuraduría General de la Nación*) and Ombudsman's Office (*Defensoría del Pueblo*).

an internal armed conflict in Colombia as, in his view, Colombia faces not an armed conflict but a "terrorist threat". This categorization leads to a disregard of the application of international humanitarian law in the Colombian territory, specifically the principle of distinction between civilian and combatants, with extremely serious repercussions on the civilian population.

The Government has implemented programmes that involve the whole civilian population: the network of informants and the "peasant soldiers" programme. The information provided by the informants to the intelligence services or to the judicial police in exchange for money is, in many cases, the only basis for arbitrary detentions and searches.

In spite of the recommendations, formulated by international human rights bodies, not to grant judicial police powers to the military, the Government of Álvaro Uribe sought to grant the military such powers by the adoption of several decrees and the promotion of a constitutional reform. On 11 August 2002, three days after he has been proclaimed President, Álvaro Uribe declared a state of emergency (*estado de conmoción interior*). In the framework of this state of emergency declaration, he issued Decree 2002 which established special security zones (*zonas de rehabilitación y consolidación*) and granted the military, in the whole Colombian territory, the power to apprehend individuals, intercept or record communications and search private homes without judicial order. All the articles of Decree 2002 granting judicial police powers to the military were declared unconstitutional by the Constitutional Court. The Government's reaction to this ruling was immediately to promote a constitutional reform that granted the military with similar powers as those contained in Decree 2002.

The constitutional reform (Legislative Act 2 of 2003) adopted in December 2003 gave the military authorities access to records which included private information on the civilian population. This reform was adopted in total disregard of the commitment made by the Colombian Government at the UN Commission on Human Rights.[2] The Constitutional Court declared the reform unconstitutional in August 2004.

Since the beginning of President Uribe's administration, the Government has repeatedly said that it intends to substantially reform the 1991 Constitution, considering it inadequate to the current public order and economic situation of the country and to the implementation of the democratic security policy. The Government announced several reforms aimed at limiting the independence of the Judiciary and its role as guardian of human rights. The Constitutional Court has been regularly attacked because its rulings were seen as an impediment to the implementation of the Government's policies. In this context, the Government promoted a reform in October 2002 that limited the powers of the Court as well as the scope of its rulings and eliminated its control over the constitutionality of state of emergencies' proclamations. This same reform suppressed a constitutional remedy (*acción de tutela*) to protect economic, social and cultural rights and proposed to reform the Supreme Council of the Judiciary by creating a new body composed of representatives of the Executive. Even though the reform did not succeed, the Government has announced its intention to reintroduce it. In February 2004, it reintroduced a similar reform that has also been unsuccessful.

[2] Chairman Statement on the "Situation of human rights in Colombia", 59th session of the Commission on Human Rights, April 2003, para. 13.

Although the democratic security policy is officially presented as a human rights policy, the adoption or promotion of the above-mentioned measures have resulted in the aggravation of the human rights situation over the last two years. While some indicators of violence have decreased (massacres, homicides, kidnappings), the figures are still extremely high. According to information collected by the ICJ while in Colombia, this decrease is due more to changes in the tactics used by armed actors and/or to measures undertaken by civil local authorities, than to the impact of the democratic security policy. New modalities of human rights violations are emerging in the context of the democratic security policy. The systematic practice of massive or individual arbitrary detentions as well as illegal searches (without judicial order) by the security and armed forces is particularly alarming.

The situation of human rights defenders is also seriously deteriorating. The ICJ has witnessed the constant harassment, persecution and stigmatization of human rights defenders in reaction to their work carried out to denounce human rights violations. They are also subject to a defamation campaign by the most high level state authorities, which exposes them to further attacks.

All armed groups in Colombia continue to commit abuses. However, an overwhelming majority of these abuses are committed by paramilitary groups. According to the Colombian Commission of Jurists, between August 2002 and June 2004, at least 6148 people were killed out of combat or forcibly disappeared. Seventy-five percent of these crimes have been committed by paramilitary groups and state actors and twenty-five percent by guerrilla groups. The trend in 2004 was the increasing number of violations perpetrated by the armed and security forces.

The demobilization of AUC or the consolidation of paramilitarism

At the end of 2002, the Colombian Government started negotiating with the Colombian United Self-Defence Groups (*Autodefensas Unidas de Colombia*) for their demobilization. Four months before signing the *Santafé de Ralito* Agreement on demobilization of paramilitaries (15 July 2003) with the AUC, the Government issued Decree 128 (January 2003), thus opening the path for impunity. This Decree provides that individuals not already subject to criminal proceedings can be pardoned even if they have committed serious crimes.[3] Given that the majority of crimes committed by the paramilitaries are only at the stage of preliminary investigation, the application of Decree 128 inevitably leads to impunity for crimes against humanity and serious violations of human rights and humanitarian law. It is very significant that in December 2004 the Inspector General's Office (*Procuraduría General de la Nación*) rejected 168 resolutions issued by the Prosecutor General's Office (*Fiscalía General de la Nación*) in the case of the demobilized paramilitaries of the *Bloque Cacique Nutibara* (Medellin).[4]

[3] Decree 128, by referring to other norms, excludes only from the scope of judicial benefits the following offences: kidnappings, torture, forced disappearances, genocide, internal displacement in cases in which individuals are already subject to criminal proceedings or condemned; homicides out of combat and terrorist acts in cases in which individuals are already condemned.

[4] By virtue of Decree 128, these resolutions had granted pardon to paramilitaries from the *Bloque Cacique Nutibara*.

Interestingly, a decade ago, the Colombian State granted a similar treatment to the paramilitary groups active in the Magdalena Medio region. This negotiation, supposed to neutralize paramilitary structures in the Magdalena Medio, resulted in impunity and recycling of paramilitaries within the state security forces. It is ironical to witness that some of the AUC leaders who negotiate with the Government in *Santafé de Ralito* have benefited from the above mentioned treatment more than ten years ago.

The "demobilization" of the AUC groups has not been accompanied by an effective vetting policy of the members of the armed forces involved in paramilitary activities and human rights violations. In addition, the adoption of Decree 2767 in August 2004 legalizes the cooperation of demobilized paramilitaries with the armed forces, in exchange for remuneration.

The lack of a real monitoring mechanism for this demobilization and the application of Decree 128 of 2003, Decree 2767 of 2004 and the recently adopted "Justice and Peace" law will maintain the vicious circle of impunity for serious human rights violations, crimes against humanity and war crimes in Colombia. Such measures are incompatible with Colombia's international obligations, in particular with regard the rights of victims to truth, justice and reparation.

This impunity legislation, coupled with the lack of an effective vetting policy of Colombian security and armed forces, will contribute to the consolidation of paramilitaries' political and economic power in Colombia.

RECOMMENDATIONS

The ICJ calls on **the Colombian authorities** to**:**

- Recognize, with all the inherent juridical consequences, the existence of the armed conflict;
- Withdraw its declaration to the Rome Statute that prevents the International Criminal Court to exercise its jurisdiction over war crimes;
- Review its security policy (democratic security policy) to make it compatible with the basic principles of the rule of law and Colombia's international obligations, especially international human rights law and international humanitarian law;
- Adopt urgent measures to guarantee unconditional respect for the principle of distinction between civilians and combatants and renounce any measure or program that would oppose it;
- Retroactively derogate Decree 128 of 2003 and amend the Justice and Peace law to make it compatible with Colombia's international obligations and guarantee the rights of victims to truth, justice and reparation;
- Guarantee the right to full reparation of internally displaced persons by restoring their lands and the security for their return;
- Take measures towards the effective dismantlement of paramilitary structures in the country and the suspension and prosecution by ordinary courts of police and military personnel involved in paramilitary activities, human rights violations, crimes against humanity and/or war crimes;
- Adopt all necessary measures to guarantee the security and integrity of human rights defenders, prosecutors, lawyers, judges and people's defenders (*defensores del pueblo*).

- Comply with international recommendations on human rights.

The ICJ calls on **armed opposition groups** to:

- Fully respect the norms of international humanitarian law. In particular, they must immediately and unconditionally free all the people held captive, hostage or kidnapped, and refrain from recruiting minors and using arms and war means prohibited under international humanitarian law.

The ICJ calls on the **international community**, within the framework of both multilateral and bilateral cooperation, to:

- Refrain from supporting measures that undermine the rule of law, disregard their obligations under international law and/or promote impunity;
- Strongly insist that the Colombian State complies with the numerous recommendations relating to human rights formulated by international human rights bodies and mechanisms;
- Ensure that every cooperation strategy is conditioned to the adoption by the Colombian authorities of effective measures against impunity, measures guaranteeing the rule of law and human rights and effective compliance of international recommendations on human rights;
- Take every necessary measure so that, should the Colombian Government fail in its duty to investigate, prosecute and punish those responsible for crimes against humanity and war crimes, the alleged responsible be prosecuted before the International Criminal Court.