

## The Virtuous Twins: Protecting Human Rights and Improving Security in Colombia

### I. OVERVIEW

Over seven years, the government of President Álvaro Uribe has produced important security gains, but these have been accompanied by serious human rights violations and breaches of international humanitarian law (IHL). Colombia is still not close to the end of its armed conflict. The Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), paramilitary successors and new illegal armed groups (NIAGs) – all responsible for multiple atrocities against civilians – can survive with drug financing and, to a degree, due to the state's inability to extend its legitimate presence into many rural areas. To move toward lasting peace, the Uribe administration must not only maintain its security achievements but also urgently improve its security policy by addressing serious human rights issues and expanding the rule of law and national reach of the state's civilian institutions. Holding to account senior military involved in extrajudicial killings is a first step but insufficient to curb abuses. International cooperation should focus on supporting the fight to end impunity and protect basic rights.

The Uribe government has argued that the best way to protect human rights is by expanding the presence of security forces. But human rights organisations and international observers have long criticised the negligent or openly abusive actions of those forces. Serious violations include extrajudicial executions of civilians by members of the security forces; the growth of paramilitary successors and NIAGs, at times with acquiescence by security personnel and some government officials; failure of early warning mechanisms to reduce threats and violence against human rights defenders, social leaders, trade unionists and members of Afro-Colombian and indigenous minorities; failure to swiftly transfer human rights cases from the military to the ordinary justice system; and the justice system's slowness and, at times, inability to punish human rights violators.

Deep-seated, often ideological mistrust between the government and human rights defenders has hindered dialogue on integrating human rights protection and

IHL observance into security policy. This is counter-productive and must be overcome through concrete actions by government and civil and political society alike, starting with an end to officials' repeated efforts to link human rights organisations with the guerrillas. The priorities of government and of human rights defenders are not mutually exclusive but reinforcing. Ending the internal armed conflict requires improved security with full respect for citizens' fundamental rights. The administration, with international support, should openly engage with human rights organisations on promoting scrupulous defence and protection of human rights. This would increase the credibility and democratic legitimacy of government and state, making security policy more effective and sustainable and enhancing the chance to finally end the lengthy conflict successfully.

Urgent measures by the government, the human rights community and international partners should include:

- committing publicly to Presidential Directive no. 07 of 1999, which instructs public servants to abstain from questioning the legitimacy of the work of human rights organisations and their members as long as they act on the basis of the constitution and the law;
- strengthening security force professionalism, including by (a) rigorously applying the defence ministry's 2007 policy on human rights and IHL; (b) establishing an evaluation system for human rights and IHL training of security forces; (c) appointing legal advisers in every army battalion; (d) giving full support to the military inspectors charged with looking into possible human rights and IHL abuses and immediately transferring appropriate cases to the civilian justice system; (e) punishing human rights and IHL transgressors inside the security forces; and (f) conducting new monitoring committee sessions in all army divisions to address torture, enforced disappearance, illegal detention and occupation of civilian property and sexual violence committed by military personnel;
- continued conditioning of international aid to the armed forces on full respect for human rights;

- strengthening the investigative ability of the human rights and justice and peace units of the attorney general's office; training judges and regional attorneys specialised in humanitarian issues; and improving protection programs so as to encourage victims and witnesses to participate in investigations and prosecutions;
- improving coordination between the ombudsman office's early warning system unit (SAT) and the government's interagency early warning committee (CIAT) so the SAT can fully participate in decisions on early alerts, which should clearly determine the responsibilities of local authorities, police and the military, and publishing SAT risk reports under appropriate procedures so as to improve government accountability;
- formally establishing a cooperation protocol pursuant to which the U.S. Department of Justice assists the justice and peace and human rights units of the attorney general's office to ensure that all extradited former AUC paramilitary chiefs continue to complete their confessions and testimony under the Justice and Peace Law about human rights violations in Colombia via video conferencing and are sent back to Colombia once their U.S. sentences are served; and
- reopening constructive dialogue to achieve consensus on and finalise the National Action Plan for Human Rights and IHL. Within the framework of the G-24, Sweden, Spain and the U.S. should take the lead in encouraging a rapprochement between the government and human rights defenders.

## II. HUMAN RIGHTS AND SECURITY

Since taking office in 2002, President Uribe has given priority to implementation of his flagship "democratic security policy", focusing on the military struggle against illegal armed groups, particularly the FARC, and the demobilisation and reintegration of the paramilitary AUC.<sup>1</sup> The government claims that its policy, renamed in 2007 the "democratic security consolidation policy", is essentially designed to combat, control and demobilise illegal armed groups as well as protect human rights through the presence of the security forces across the country.<sup>2</sup>

Uribe insists that Colombia's human rights record has improved during this period. Officials maintain that the best way to consolidate security and the rule of law and protect fundamental rights is to continue prioritising efforts to achieve the military defeat and/or surrender and demobilisation of the FARC and ELN and to enforce the law rigorously against new illegal armed groups (NIAGs).<sup>3</sup> The defence ministry issued a comprehensive human rights and IHL policy in 2007 pursuant to which resources have been allocated to train security forces in the concepts; revised rules of engagement have been developed; army legal advisers have been appointed to help plan operations in conformity with international standards; "complaints desks" have been created in army battalions; and military inspectors charged with documenting and investigating possible violations have been appointed.<sup>4</sup> But serious violations and breaches, involving in particular vulnerable sectors of the population, have not ended.

Human rights and peace advocates point out that successive governments have failed to win the armed conflict and end pervasive, often drug trafficking-related violence. Uribe's strong focus on military security is perceived as incompatible with the protection of fundamental rights. Grave human rights abuses and breaches of IHL committed by state agents, including extrajudicial killings of innocent citizens, torture and forced disappearance perpetrated by members of the security forces, still occur, victimising especially the rural and urban poor.

The political opposition as well as trade unionists, journalists and human rights defenders have denounced persistent illegal surveillance of their activities by government intelligence agencies, persecution by judicial authorities and threats – at times allegedly in collusion with local authorities and members of the security forces – by paramilitary groups and/or NIAGs. The ongoing judicial investigations of the "para-politics" scandal, involving the infiltration of local public institutions by and involvement of legislators with the AUC

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fence Ministry, 2007. Crisis Group Latin America Report N° 6, *Colombia: President Uribe's Democratic Security Policy*, 13 November 2003.

<sup>3</sup> Crisis Group interviews, senior government official and military officer, Bogotá, 26 February and 11 March 2009. The NIAGs emerged after the 2003-2006 demobilisation of the United Self-Defence Forces of Colombia (AUC). They include rearmed former paramilitaries and paramilitary groups that never demobilised. The government labels them "criminal bands" (*bandas criminales*, or BACRIMS).

<sup>4</sup> See Section III.A below.

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<sup>1</sup> Crisis Group Latin America Report N° 30, *Ending Colombia's FARC Conflict: Dealing the Right Card*, 26 March 2009.

<sup>2</sup> Democratic Security Policy, National Defence Ministry, 2003 and Democratic Security Consolidation Policy, National De-

paramilitaries,<sup>5</sup> continue to fuel distrust in the government's commitment to uphold human rights.<sup>6</sup>

There is growing concern in and outside Colombia over continued paramilitary activity and the spread of NIAGs across northern, south-western and eastern Colombia.<sup>7</sup> These groups engage in criminal activities, notably drug trafficking,<sup>8</sup> and recruit, often by force, increasing numbers of ex-paramilitaries who abandoned the government's disarmament, demobilisation and reintegration (DDR) process, as well as other young men and minors.<sup>9</sup>

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<sup>5</sup> 77 congressmen and senators from the 2002-2006 and 2006-2010 legislatures are under investigation for collusion with the AUC by the Supreme Court and the attorney general's office; almost half are in prison. Between late April and mid-May 2009, the Supreme Court moved against nine congressmen, including Zulema Jattin, Julio Manzur, Edgar Ulises Torres and Odín Sánchez of the Uribista coalition. "La última ola de la parapolítica", *VerdadAbierta.com*, 13 May 2009.

<sup>6</sup> Crisis Group interviews, international humanitarian cooperation officer, international trade union representative, international organisation official, trade union representatives, human rights advocates, humanitarian NGO officials, Bogotá, 2, 3, 5, 13, 18 February and 5 March 2009.

<sup>7</sup> The Organisation of American States' (OAS) Peace Support Mission in Colombia (MAPP/OEA) is in charge of verifying and monitoring the DDR process of the AUC paramilitaries. "Twelfth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OAS)", MAPP/OAS, 9 February 2009. On 8 March 2009, President Uribe ordered security forces to step up the fight against the NIAGs and offered a \$2.2 million reward for information leading to the arrest of the leaders of the fastest-growing ones, including Gaitanista Self-Defence Forces of Colombia (AGC) leader Mario Rendón (alias "Don Mario"), Popular Revolutionary Anticommunist Army (ERPAC) leader Pedro Olivero (alias "Cuchillo"), Daniel Barrera (alias "Loco") and the Rastrojos leader, Luis Calle (alias "Comba"). "Ofrecen 5.000 millones de pesos por cada gran capo", *El Tiempo*, 10 March 2009. Despite Rendón's 15 April capture, NIAG violence and threats persist.

<sup>8</sup> Most NIAG violence is related to disputes with other NIAGs, the FARC and ELN over territory and drug-trafficking corridors. "Acabar guerra entre 'don Mario' y 'los Paisas' es política prioritaria de seguridad para la Policía", *El Tiempo*, 28 July 2008.

<sup>9</sup> The DDR process is dealt with by the high counsellor for reinsertion's office (ACR), which covers over 50,000 former combatants demobilised since 2003, including about 32,000 paramilitaries and growing numbers of guerrillas. The high counsellor (and peace commissioner), Frank Pearl, acknowledged that about 8.5 per cent of demobilised combatants have rearmed or joined criminal organisations. "Alto Comisionado para la Paz de Colombia defiende tradiciones de narcos", *El Frente*, 21 April 2009. Pearl also said drug trafficking continues to be a main threat for ACR

NIAGs are also intimidating and killing social leaders, victims' representatives (especially those pursuing reparations for paramilitary atrocities and illegal land grabs), women's rights leaders, trade unionists and human rights defenders and attorneys. They are forcibly displacing populations and abusing the most vulnerable groups among the urban and rural poor, including indigenous peoples, Afro-Colombians and women.<sup>10</sup> Threatening leaflets have been appearing in the slums of several towns and villages on the Atlantic coast and in the Urabá region, as well as several departmental capitals and Bogotá.<sup>11</sup> Lack of effective counter-action, along with cases such as the current Supreme Court investigation of the former director of the attorney general's office in Antioquia department, Guillermo Valencia (accused of pressuring police to falsify files so as to protect members of "Don Mario's" NIAG),<sup>12</sup> reinforces communities' concerns that local

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success; most ex-combatants with jobs (about 70 per cent) working in the informal sector. "Acabar la guerra tomará de 15 a 20 años": Frank Pearl", *El Tiempo*, 3 May 2009. At first, NIAG leaders recruited individual demobilised AUC fighters who had abandoned the DDR program. Now they recruit collectively or force demobilised combatants to join. Crisis Group interviews, humanitarian NGO official and international humanitarian NGO officials, Bogotá, 13 February and 5 March 2009. Fernando Cárdenas, "La guardia de 'Don Mario'", *El Espectador*, 8 February 2009; Fernando Cárdenas, "Los anillos del patrón", *El Espectador*, 15 February 2009.

<sup>10</sup> Crisis Group interviews, trade union representative, human rights advocates and conflict analysts, Bogotá, 5, 6 and 17 February 2009; "2008 Human Rights Reports: Colombia", U.S. State Department, 25 February 2009; "2009 World Report", Human Rights Watch, January 2009. "Indigenous and Afro-Colombian communities are particularly vulnerable, mainly because they occupy territories of strategic importance to parties to the internal armed conflict and networks of drug traffickers. These territories are also of strategic value to Colombian and international companies. The rights of these communities to life, to not be forcibly displaced, to prior, free and informed consultation on decisions affecting their communities, and to freedom of movement are violated". "Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia", 31 December 2008, p. 20.

<sup>11</sup> "En Maicao, las 'Águilas Negras' han asesinado a 45 personas y desplazado a 200", *Cambio*, 18 March 2009; "Letter to Brownfield on Social Cleansing Pamphlets, subsequent attacks and massacre of 7 fishermen in the Choco", U.S. Office on Colombia, Washington Office on Latin America (WOLA), 20 March 2009.

<sup>12</sup> Guillermo Valencia, who is the brother of Interior and Justice Minister Fabio Valencia, is accused of receiving gifts from John Freddy Manco (alias "El Indio") after Valencia put pressure on the departmental police authorities to remove El Indio from the files on Don Mario's NIAG. Former police Antioquia department commander Marco Antonio Pedreros

authorities and security force members continue to be allied with paramilitaries or their successors.<sup>13</sup>

## A. THE NUMBERS DEBATE

According to official sources, homicides fell from 28,775 in 2002 to 16,140 in 2008. In those same two years massacres (defined by the police as the killing of four or more individuals in the same place, at the same time) fell from 115 to 37 and the number of victims from 680 to 169 in the same years; murders of indigenous persons from 197 to 66; of trade unionists from 99 to eighteen; of unionised teachers from 97 to twenty; and of journalists from eleven to zero. Kidnappings dropped from 2,882 to 437. The Uribe administration holds that new internal displacement, though still high, has also improved, dropping from 442,095 in 2002 to 349,030 in 2008.<sup>14</sup> Officials also emphasise successes in curbing FARC and ELN terrorist attacks against villages and sabotage of infrastructure, including roads, bridges, communication towers and the national electric grid and oil pipelines.<sup>15</sup>

Many human rights defenders question the official figures, claiming that a closer reading of the data reveals that, though there was an improvement in the administration's early years, violations have increased alarmingly since 2007. Many violations, they say, stem from the negligent or openly abusive actions of government forces.<sup>16</sup> Independent organisations say that official figures of the vice presidency's Human Rights and IHL Observatory document an increase from 2007 to 2008 in massacres from 26 to 37 (and victims from 128 to 169) and killings of indigenous persons from 40 to 66.<sup>17</sup>

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admitted to have yielded to Valencia's pressure. "Contra la pared", *Semana*, 7 March 2009; "En una fiesta en Pereira a la que asistió 'el Indio', estuvo ex fiscal Valencia Cossio, asegura CTI", *El Tiempo*, 7 May 2009.

<sup>13</sup> Crisis Group interview, international humanitarian NGO officials, Bogotá, 5 March 2009; opinions aired by grassroots activists, discussion panel, Bogotá, 29 January 2009; Leonardo González, "Nuevos grupos paramilitares: una realidad", Instituto de Estudios para el Desarrollo y la Paz (INDEPAZ), Bogotá, 2008.

<sup>14</sup> Statistics provided by vice-presidential human rights office during Crisis Group interview, 26 February 2009.

<sup>15</sup> "Logros de la Política de Consolidación de la Seguridad Democrática PCSD", National Defence Ministry, March 2008.

<sup>16</sup> Crisis Group interview, human rights advocates, Bogotá, 5 February 2009.

<sup>17</sup> "Indicadores sobre derechos humanos y DIH Colombia: año 2008", Observatorio del Programa Presidencial de De-

According to Consultoría para los Derechos Humanos y el Desplazamiento (CODHES), forced displacement rose from 221,638 newly displaced in 2006 to 305,638 in 2007 and 380,863 in 2008.<sup>18</sup> The Uribe administration is accused of failing to ensure the safe return of internally displaced persons (IDPs) to the land they had been forced to leave at paramilitary gunpoint. In many cases, government-organised returns or attempts by IDPs to reclaim their land have been unsuccessful, because farmers and communities are displaced again. Analysts have called this an ongoing "agrarian counter-reform" process, in which NIAG attacks have produced new displacement, including the killing of at least four representatives of displaced communities in Antioquia department alone over a seven-month period through February 2009.<sup>19</sup>

Notwithstanding the official rhetoric, some officials recognise that serious problems persist, though they dispute the human rights groups' statistics. They say that many recent massacres involve the settling of accounts between members of criminal organisations but that innocent civilians are not being targeted by such organi-

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chos Humanos y DIH, 30 March 2009, at [www.derechoshumanos.gov.co](http://www.derechoshumanos.gov.co).

<sup>18</sup> "Víctimas emergentes: desplazamiento, derechos humanos y conflicto armado en 2008", Consultoría para los Derechos Humanos y el Desplazamiento (CODHES), Bogotá, 22 April 2009. The government acknowledges IDPs exceeded 2.8 million between 2000 and 2008. Statistics from vice-presidential human rights office during Crisis Group interview, 26 February 2009. Most IDPs flee individually or in small groups after receiving a direct threat (known as "drop-by-drop" – "gota a gota" – displacement). Crisis Group interviews, Colombian humanitarian NGO and international humanitarian NGO officials, Bogotá, 13 February and 5 March 2009.

<sup>19</sup> Close to 5.5 million hectares have been abandoned due to threats or violence, illegally seized or transferred with forged titles. In March 2005, the Colombian Institute of Rural Development (INCODER) declared that most palm-oil plantations on the Afro-Colombian collective land of Curvaradó (Chocó department) were illegal; in December 2006, six land titles of palm-oil entrepreneurs were declared void. Former Agriculture Minister Andrés Arias claimed that 37,200 hectares of Afro-Colombian collective land had been illegally seized in Jiguaminadó and Curvaradó (Chocó). See "Los están matando", "Los perseguidos" and "Los usurpados del Chocó", *Semana*, 16 March 2009. Crisis Group interviews, Colombian humanitarian NGO and international humanitarian NGO officials, Bogotá, 13 February and 5 March 2009. Four representatives of Antioquia department IDPs were murdered between July 2008 and February 2009. "Personería de Medellín reclama instalación urgente de la Comisión Regional de Restitución de Bienes para garantía de las víctimas", Medellín municipal ombudsman's office communiqué no. 20, 1 April 2009.

sations. Such targeting was common from the late 1980s until the early 2000s, when paramilitary and extreme right-wing groups – some with ties to military and government officials – and the FARC and ELN guerrillas also were stepping up violent actions against alleged sympathisers of rival groups and factions across the country.<sup>20</sup> Nevertheless, killings of ethnic minorities and massive displacement is said to continue due to clashes between the various illegal armed groups – FARC, ELN and NIAGs alike – for control of territory.<sup>21</sup>

Officials also point out that anti-personnel mines kill and wound more than twice as many military personnel than civilians, reflecting military advances into traditionally FARC-controlled areas. Furthermore, though trade unions denounced the murder of 49 of their activists in 2008,<sup>22</sup> government representatives hold that eleven cases were crimes of passion or muggings, so should not be included in political violence figures.<sup>23</sup> According to the vice presidency's Observatory, murders of journalists dropped to zero in 2008, and the current threats against journalists have to do with their denunciations of local corruption rather than the conflict. On 24 April 2009, a journalist, José Everardo, was murdered in Cauca department after reportedly receiving threats while covering corruption cases in his hometown, El Bordo.<sup>24</sup>

## B. POLITICISATION

The debate surrounding human rights and security policy is all too often mired in ideology. For years, modernisation of the armed forces has focused on increasing troop strength (of both officers and conscripts) and the purchase of high-tech weapon systems for counter-insurgency operations. Insufficient attention has been paid to strengthening civilian oversight and accountability mechanisms and the armed and security forces' full commitment to human rights and IHL. Important sectors in the military still tend to perceive the defence of human rights as a "juridical weapon" used by the insurgents and their supposed supporters in Colombia and abroad to undermine troop morale and discredit the most effective officers and units.<sup>25</sup> Many officers still hold the view that the judiciary is controlled by "left-wing radicals" intent on defeating a victorious army.<sup>26</sup>

Conversely, there is little security policy expertise among Colombian human rights and peace activists, some of whom still treat these important issues with disdain. The artificial disconnect between human rights and security issues results partly from the assumption among human rights activists that security is a topic dominated by right-wing thinking, so they mistakenly avoid engaging on it. They also lack trust in government security institutions, because in the past many activists have been victims of abuses committed by state agents.<sup>27</sup> Colombian human rights defenders have tended to be instinctively critical of the government because of the links between members of the armed

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<sup>20</sup> Crisis Group interview, senior government official, Bogotá, 26 February 2009; Crisis Group Report, *Ending Colombia's FARC Conflict*, op. cit.

<sup>21</sup> Close to 2,000 Emberá indigenous people of the Chocó department were displaced by combat between the ELN and the Rastrojos NIAG for control of drug-trafficking corridors between September 2008 and the first half of March 2009. "Cerca de 2 mil indígenas desplazados en las dos últimas semanas en Chocó", *VerdadAbierta.com*, 19 March 2009. Illegal armed groups are responsible for killing members of the indigenous communities in south-western Colombia, including the Awá, Nasa, Páez, Kankuamo, Sikuani, Pasto, Embera Chamí and Embera Katío. "Indicadores sobre derechos humanos", op. cit.

<sup>22</sup> "Informe de violaciones a la vida, libertad e integridad de sindicalistas en Colombia: periodo 1 de enero a 31 de diciembre de 2008", *Escuela Nacional Sindical*, 19 December 2008; information provided during Crisis Group interview, trade union representative, Bogotá, 18 February 2009.

<sup>23</sup> Crisis Group interview, senior government official, Bogotá, 26 February 2009.

<sup>24</sup> He was the first journalist to be killed since January 2007. "SIP condena asesinato de periodista José Everardo en El Bordo (Cauca)", *El Tiempo*, 29 April 2009.

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<sup>25</sup> Crisis group interview, security adviser, Bogotá, 7 October 2008; Plinio Apuleyo, "Una fiscalía clonada", *El Tiempo*, 20 March 2009. See interview with retired General José Joaquín Cortés in "Fuimos carne de buitre", *El Espectador*, 3 March 2009.

<sup>26</sup> This attitude goes back to the Cold War, when the armed forces saw themselves as the nation's bulwark against Marxist-Leninist guerrillas and their sympathizers in society. Crisis Group interviews, justice sector and political analysts, Bogotá, 5 March and 24 April 2009.

<sup>27</sup> Ongoing violence by the security forces against activists hinders rapprochement between the government and human rights defenders. For example, Edwin Legarda was killed by an army patrol on 16 December 2008; he was the husband of Aida Quilcué, a Regional Indigenous Council of Cauca (CRIC) leader supporting demands that the government fulfil agreements to give land to their communities. She had denounced the security forces' brutality against the protests in Geneva in December 2008. Crisis Group interview, human rights advocates, Bogotá, 5 February 2009. In mid-May 2009, CRIC reported that the twelve-year-old daughter of Quilcué and Legarda was attacked by four unidentified individuals, who pointed guns at her.

forces and paramilitary groups, much as their counterparts in other Latin American countries have been influenced by the history of abuses under dictatorial military regimes during the Cold War. As a result, they have avoided potentially positive engagement on fundamental security issues.<sup>28</sup>

Uribe administration officials insist that, after years of neglect by previous governments, their security policy has protected the rights to life and personal freedom that are necessary preconditions for vigorous political, economic and social activity. These improved conditions, the argument runs, have made it possible for dissenters to criticise the government without having to fear threats or killings, as in the past.<sup>29</sup>

However, the government has been far from tolerant of criticism, dismissing independent human rights assessments as ideologically biased.<sup>30</sup> Senior officials often invoke the language of counter-terrorism to discredit critics, including human rights and peace advocates.<sup>31</sup> Since the early days of his administration, President Uribe has frequently charged that NGOs and human rights organisations are “advocates of terrorism” or “terrorists in dress suits”, a position officials and political allies have tended to share.<sup>32</sup> This

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<sup>28</sup> Alexandra Guáqueta, “El Estado, la seguridad y la gente”, in Miguel Cárdenas (coord.), *La reforma política del Estado en Colombia: una salida integral a la crisis* (Bogotá, 2005), pp. 111-115. The anti-state posture of human rights defenders can be largely explained by the historical fight for fundamental rights and against atrocities committed by military-authoritarian regimes, in particular the dictatorships of the Southern Cone. Crisis Group interview, political analyst, Bogotá, 24 April 2009.

<sup>29</sup> Crisis Group interview, government official, Bogotá, 28 November 2008.

<sup>30</sup> Crisis Group interviews, trade union representatives, human rights advocates, humanitarian NGO official and justice sector analysts, Bogotá, 5, 19 February and 5 March 2009; “HRW y Colombia se critican”, BBC News, 17 October 2008; “Álvaro Uribe molesto por acusaciones de ONG”, *El Comercio*, 1 November 2008.

<sup>31</sup> Gustavo Gallón, “Los riesgos de una desenfocada política antiterrorista en Colombia”, in *La reforma política del Estado en Colombia*, op. cit., p. 125.

<sup>32</sup> Shortly after taking office in 2002, Defence Minister Martha Lucía Ramírez insinuated that some NGOs could be a cover for illegal activities. “Campanazo a las Ong”, *El Tiempo*, 22 September 2002. Tensions deepened in 2003, when Uribe labelled human rights activists “defenders of terrorism”. “Uribe asegura que no le asustan los ‘defensores del terrorismo’”, Agence France-Presse, 11 September 2003. In February 2004, Uribe said the “subject of human rights cannot be used as an excuse to provide cover for terrorists”. “El presidente Álvaro Uribe ataca al poder judicial y a los defensores de derechos humanos”, International Peace Ob-

servatory, 31 October 2007. Uribe’s former adviser, José Obdulio Gaviria, asserted that the 6 March 2008 civil society protest was organised by the FARC. “José Obdulio Gaviria insiste en que las Farc convocaron marcha del 6 de marzo”, *El Tiempo*, 27 March 2008. Uribe recently called Colombians for Peace (Colombianos y Colombianas por la Paz), a civic group promoting a hostages-for-prisoners swap with the FARC, accomplices to terrorism and alluded to the existence of an “intellectual bloc” of the FARC. Crisis Group Report, *Ending Colombia’s FARC Conflict*, op. cit.

Domestic and international human rights organisations link government criticism of their activists with Colombia’s continuing bleak record with respect to human rights defenders murdered in recent years, arguing that there is an inevitable, if unintended, link between the two. The government has used aggressive rhetoric to rally its political and social support base, using the flawed argument that if the security policy critics gain the upper hand, the whole Uribe political project could be endangered.<sup>34</sup> According to trade unionists, many sectors of society, particularly in the cities, have grown complacent about atrocities and are willing to accept human rights violations as unavoidable “collateral damage”.<sup>35</sup>

While there have been isolated cases of social activists and leaders involved in subversive activities,<sup>36</sup> almost all observers concur with human rights and peace advocates that the repeated stigmatisation of them and of NGOs as terrorism supporters has increased threats and abuses.<sup>37</sup> The government’s hostility has been most

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servatory, 31 October 2007. Uribe’s former adviser, José Obdulio Gaviria, asserted that the 6 March 2008 civil society protest was organised by the FARC. “José Obdulio Gaviria insiste en que las Farc convocaron marcha del 6 de marzo”, *El Tiempo*, 27 March 2008. Uribe recently called Colombians for Peace (Colombianos y Colombianas por la Paz), a civic group promoting a hostages-for-prisoners swap with the FARC, accomplices to terrorism and alluded to the existence of an “intellectual bloc” of the FARC. Crisis Group Report, *Ending Colombia’s FARC Conflict*, op. cit.

<sup>33</sup> “La importancia de la protección y defensa de los defensores de los derechos humanos”, OHCHR press communiqué, Bogotá, 17 September 2003.

<sup>34</sup> Crisis Group interview, political analyst, Bogotá, 17 February 2009.

<sup>35</sup> Trade union representatives claim that many core government supporters are middle management and entrepreneurs who associate social activism with Communist pro-guerrilla advocacy. Crisis Group interviews, trade union representatives and political analyst, Bogotá, 5 February and 19 March 2009.

<sup>36</sup> See Crisis Group Latin America Briefing N°16, *Colombia: Moving Forward with the ELN?*, 11 October 2007, pp. 6-7; Crisis Group Report, *Ending Colombia’s FARC Conflict*, op. cit., pp. 15-17.

<sup>37</sup> Crisis Group interview, human rights advocates, Bogotá, 5 February 2009.

clearly illustrated by repeated scandals involving the Administrative Security Department (DAS), the secret police subordinate to the president's office that has illegally followed and tapped the phones of journalists, high court judges, opposition politicians, NGO workers, social activists and even government officials.

While recently appointed DAS Director Felipe Muñoz claimed that the wire-tapping scandal that broke in February 2009 was due to breaches in counter-intelligence procedures meant to discover rogue agents, it was the third such scandal of Uribe's presidency<sup>38</sup> and similar to those in 2000, in which the police and DAS intelligence resources were also used to illegally listen in on politicians, journalists, and trade unionists.<sup>39</sup> With such surveillance of government critics, as

well as dubious investigations against, and prosecutions of human rights activists,<sup>40</sup> NGO workers and human rights advocates told Crisis Group they engage in self-censorship to avoid being targeted.<sup>41</sup>

Government officials often assert that human rights defenders have been unable or unwilling to acknowledge improvements produced by the Uribe security policy or propose a constructive discussion. This attitude is perceived as politically motivated, because many activists are linked to left-wing political circles where anti-Uribe sentiment runs high.<sup>42</sup> Pushing human rights complaints to the top of the domestic agenda is seen as a political tactic to undermine Uribe's still solid popularity with a view to the 2010 legislative and presidential elections. Officials believe it is intended to prevent the U.S. and EU from deepening cooperation with Uribe's administration in trade and security matters.

Government representatives also charge that human rights organisations have been selective in their criticism, noting, for example, that they accused the government of contributing to the impunity problem by extraditing sixteen former AUC commanders to the U.S. on drug-trafficking charges in May 2008 and early 2009. The organisations argued that this violated victims' rights to truth, justice and reparations, even though most of the commanders were reluctant to confess all their crimes or return all their assets while in Colombia. But, officials note, there was no similar criticism when, in March 2009, the government released former FARC commanders "Karina" and "Olivo Saldaña" and made them "peace advocates".<sup>43</sup>

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<sup>38</sup> DAS Director Felipe Muñoz accepted the resignations of the intelligence and counter-intelligence chiefs and of two other senior officials in late February 2009. Since then, another 33 DAS officials have been fired, and the special unit in charge of tapping activities was closed. "En menos de dos semanas han sido 'purgados' 33 funcionarios del DAS por escándalos en la entidad", *El Tiempo*, 28 April 2009. President Uribe claimed his government was the victim of a plot and transferred tapping activities to the police. Critics have claimed the reforms are not enough to curb the illegal use of intelligence resources, and those politically responsible were untouched. "Juristas cuestionan la modificación de funciones del DAS, ordenada por el presidente", *Caracol*, 26 February 2009. Targets included human rights NGO officials of the Colectivo de Abogados José Alvear Restrepo, REDEPAZ, Colombian Commission of Jurists (CCJ), CODHES and CINEP. "Los de siempre", *Semana*, 26 April 2009. In October 2005, Director Jorge Noguera resigned due to accusations of ties with AUC paramilitaries. In his tenure, classified DAS information was leaked to the paramilitaries, while files related to their crimes were erased; a witness said the paramilitaries used classified information to kill activists. "El expediente de Jorge Noguera", *Semana*, 25 November 2006. "No paran escándalos en el DAS", *El Espectador*, 23 October 2008. Noguera was arrested in February 2007 but released by the Supreme Court in June 2008 due to procedural errors. He was rearrested six months later. "'Jorge Noguera busca anular cargos por muerte de sindicalistas': CUT", *El Espectador*, 23 February 2009. In October 2008, DAS Director María del Pilar Hurtado stepped down after allegations the agency spied on Polo Democrático Alternativo (PDA) Senator Gustavo Petro and other left-wing political opponents. "Colombia: renuncia la directora del DAS Colombia por el espionaje a Petro", *Noticias24.com*, 23 October 2008. Juan Forero, "Scandals surround Colombian leaders," *The Washington Post*, 17 May 2009.

<sup>39</sup> In 2000, the national police illegally tapped over 1,200 telephones in Medellín, and the DAS illegally tapped and tracked opponents and detractors of President Andrés Pastrana (1998-2002). "Chuzada a políticos y líderes sindicalis-

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tas", *El Tiempo*, 29 June 2000. "El DAS-gate y las 'chuzadas', vuelve y juega", *El Espectador*, 21 February 2009.

<sup>40</sup> In many of the cases against activists, witnesses have proved to be unreliable; security forces' intelligence reports are illegally used as evidence; preliminary investigations are carried out without informing the defendant; and activists are illegally detained. Crisis Group interview, human rights advocates, Bogotá, 5 February 2009. For detailed discussion of the subject, see "Baseless Prosecutions of Human Rights Defenders in Colombia: In the Dock and Under the Gun", Human Rights First, February 2009.

<sup>41</sup> Crisis Group interview, humanitarian NGO and NGO representatives and justice sector analysts, Bogotá, 13, 19 February and 5 March 2009. A new intelligence and counter-intelligence law was recently passed in an attempt to regulate activities with respect to human rights, privacy guarantees and congressional oversight. "Ley de inteligencia y contrainteligencia", 27 March 2009.

<sup>42</sup> Crisis Group interview, senior government official, Bogotá, 26 February 2009.

<sup>43</sup> Crisis Group Report, *Ending Colombia's FARC Conflict*, op. cit.

### III. INADEQUATE HUMAN RIGHTS PROTECTION

#### A. PERSISTING PROBLEMS

Public opinion was jubilant when military intelligence's Operation Jaque on 2 July 2008 duped the FARC insurgents into handing over fifteen hostages, including former presidential candidate Ingrid Betancourt and three U.S. contractors, without a shot being fired.<sup>44</sup> In late September 2008, however, Colombians were horrified when the army in Norte de Santander department appeared to be involved in the extrajudicial executions of eleven young men from Soacha, a destitute municipality near Bogotá, and one from Bucaramanga, Santander department's capital.<sup>45</sup> The killings turned out to follow the pattern of "false positives"<sup>46</sup> – murders of innocent citizens presented by security forces as deaths of members of illegal armed groups in order to increase body counts and obtain commendations.<sup>47</sup>

The security forces have countered criticism by highlighting that only a small percentage of the 75,000 tactical actions they carried out in 2002-2008 have been questioned.<sup>48</sup> But human rights defenders believe the extrajudicial executions of the Soacha youths were not isolated cases involving army "bad apples". More than 1,100 victims of "false positives" have been recorded between 2002 and 2007,<sup>49</sup> and there were at

least 175 more victims in 2008.<sup>50</sup> In April 2009, the attorney general's office was investigating at least 1,296 members of the security forces, including fifteen senior military officers. 1,009 cases involved extrajudicial killings (some also involved torture and forced disappearance), including 216 military justice investigations that were transferred to the ordinary courts; 195 persons have been indicted for murder; and 83 have been sentenced and are in prison.<sup>51</sup>

Mounting pressure from the UN Office of the High Commissioner for Human Rights (OHCHR), the Inter-American Commission on Human Rights (IACHR) and international non-governmental human rights organisations, as well as human rights conditionality on U.S. military aid,<sup>52</sup> prompted the government to strengthen the security forces' capacity and willingness to protect human rights. But despite the 2007 comprehensive policy referred to above and a series of subsequent ministerial directives and measures,<sup>53</sup> abuses

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and human rights advocates, Bogotá, 3 and 5 February 2009. The Human rights NGO Coordinación Colombia, Europa, EEUU recorded 955 extrajudicial executions between 2002 and 2007. "Informe preliminar de la Misión Internacional de observación sobre ejecuciones extrajudiciales e impunidad en Colombia", Coordinación Colombia, Europa, EEUU, October 2007.

<sup>44</sup> "Falsos positivos: Balance del Segundo Semestre de 2008. Informe especial", Centro de Investigación y Educación Popular (CINEP), April 2009. The modus operandi is similar in most cases: the victims' region of origin is far from the regions where the killings occurred; victims tend to be young men from poor, rural origins, while others are drug addicts or dealers, marginal or even mentally retarded individuals. The killings normally occurred one or two days after a victim was reported missing by family, and judicial and forensic procedures regarding the body were not rigorous. Crisis Group interviews, international humanitarian cooperation officer and human rights advocates, Bogotá, 2 and 5 February 2009.

<sup>45</sup> Crisis Group interviews, senior government official and officials, attorney general office's human rights and international affairs units, Bogotá, 26 February and 21 April 2009. Crisis Group email communication, official, attorney general office human rights unit, 7 May 2009. The 1,296 figure was published by *Cambio*, 23 April 2009, p. 42.

<sup>46</sup> Crisis Group interview, senior Colombian government official, Washington DC, March 2009.

<sup>47</sup> Previously, Defence Ministry Directive 009 of 2003 established the basis for protection of trade unionists and human rights activists. Directive 009 of 2005 established preventive and protective measures and humanitarian assistance as well as measures to guarantee IDPs' socio-economic wellbeing. Since 2007, several measures were taken. The army command clarified the rules of engagement in February 2007, establishing the types of missions in which IHL applies (possible combat situations against an identified enemy force involving the use of lethal firepower) or not (where

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<sup>44</sup> However, the military was questioned for violating international law, because it misleadingly used the emblem of the International Committee of the Red Cross (ICRC).

<sup>45</sup> Crisis Group interview, official, municipal ombudsman's office, Soacha, 2 February 2009.

<sup>46</sup> Ibid. "Positive" ("*positivo*") is the euphemism used by the Colombian police to describe the killing of guerrilla and paramilitary combatants. The press uses the term "false positives" in reference to unlawful killings involving the military.

<sup>47</sup> Critics believe that the frequent presidential calls on the high command and battalion commanders to permanently show success in the fight against the FARC were interpreted as instigation to take all-out war to the insurgents. Carlos Velásquez, "La subcultura de las bajas enemigas", *El Tiempo*, 27 November 2008.

<sup>48</sup> A tactical military manoeuvre involves deployment of military units in a specific combat area where they might clash with the enemy or encounter civilians. Crisis Group interview, human rights military official, defence ministry, Bogotá, 11 March 2009.

<sup>49</sup> Human rights advocates claim that the difference between their statistics and the official ones stems from the fear of victims' families to report crimes to the authorities. Crisis Group interviews, international trade union representative



were not significantly reduced. On 26 September 2008, then Defence Minister Juan Manuel Santos publicly reminded the military of Directive 300 of 2007, calling on army units to stop using body counts to measure results and to prioritise instead capture and demobilisation of members of illegal armed groups.

Amid widespread repudiation of the killings and the need to produce quick results, the defence minister and armed forces commander General Freddy Padilla established a provisional special commission (*comisión transitoria*) of senior army inspectors on 3 October 2008 to investigate several alleged extrajudicial executions in Antioquia department and the killings of the young men from Soacha. The commission found failures by commanders in intelligence gathering, elaboration and execution of operational orders and internal control.<sup>54</sup>

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lethal force is only authorised in legitimate defence), and the defence ministry and the vice-presidential human rights office invited OHCHR to participate in the monitoring committee that paid fourteen visits to all seven army divisions to discuss investigations on extrajudicial executions. The government also issued a series of directives: a) 010 (June 2007), calling for prevention of extrajudicial executions and creating an extrajudicial-execution monitoring committee with OHCHR and ICRC participation; b) 019 (2007), calling for removal of dead bodies by forensic authorities to prevent the alteration of a combat/crime scene; and c) 300 (November 2007) and secret Directive 142 (2008), both of which modify the evaluation criteria for unit and officer performance, giving more weight to demobilisation and capture of enemy fighters. The attorney general's office established an extrajudicial executions sub-unit under the human rights unit – it currently has twenty prosecutors. In 2008, each of the army's 35 human rights practical training facilities (“*pistas de derechos humanos*”) implemented a “single training methodology” (“*modelo único pedagógico*”) to teach soldiers how to act in accordance with international human rights and IHL standards. The defence ministry issued the Integral Policy on Human Rights in February 2008. Vice presidency's human rights office internal document, Bogotá (unknown date), given to Crisis Group in February 2009. Crisis Group interviews, international analyst, senior government official and military official, Bogotá, 10 October 2008, 26 February and 11 March 2009. “Protecting Rights: Actions and Outcomes of the National Security Forces in the Protection of Human Rights 2002-2008”, defence ministry, 2009.

<sup>54</sup>The commission carried out an administrative investigation of the 15th brigade of Ocaña (Norte de Santander department), the 2nd division (based in Cúcuta, Norte de Santander) and the 7th division (based in Medellín, Antioquia department). While some cases involve criminal associations and personal greed to collect rewards, others involve deficient intelligence, or soldiers or commanders trying to falsify combat reports to “legalise” accidental shootings and

As a result, on 29 October 2008 the government retired 27 army officers, including three generals and four colonels. This was followed by Army Commander General Mario Montoya's resignation on 4 November 2008.<sup>55</sup> Two of the relieved colonels, as well as seventeen other military personnel, have recently been charged with murder, forced disappearance and false testimony; there have been eleven additional separations from service of officers and non-commissioned officers who served in the La Popa battalion in Cesar department; the virtual dismantling of the army's anti-kidnapping unit (GAULA) in Casanare department;<sup>56</sup> and the arrest of a colonel on the army academy's general staff after being charged with the killing of four young men of Sucre department while commanding a battalion in Chocó department in February 2004. (Another eleven army personnel whose whereabouts are unknown have been charged with the same crime and are wanted by the authorities.)<sup>57</sup>

Other steps included the establishment of a standing Immediate Inspection Commission (*comisión de inspección inmediata*, CII) of military inspectors that reports to the inspector general of the armed forces on inquiries into specific complaints or accusations of serious human rights violations and IHL breaches. Seven army, two navy and one air force “delegated inspectors” (*inspectores delegados*) charged exclusively with working on human rights and IHL issues have been placed under the command of the inspector general of the armed forces to ensure their independence. More than 30 “operational legal advisers” (*asesores jurídicos operacionales*) now work in army units to advise commanders on human rights and IHL aspects.<sup>58</sup> A “complaints desk” (*sistema de recepción de quejas*) has also been established in every tactical military unit (at the battalion level) to encourage civilians to

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excessive use of force outside the rules of engagement. Some command disciplinary responsibility lay in not thoroughly investigating the events. Crisis Group interviews, senior government official and military official, Bogotá, 26 February and 11 March 2009.

<sup>55</sup>General Montoya allegedly resigned because he was not consulted in a decision involving senior officers in his command.

<sup>56</sup>Crisis Group interview, SAT analysts, Bogotá, 12 March 2009.

<sup>57</sup>“Van tres coroneles capturados en una semana por casos de ‘falsos positivos’”, *El Tiempo*, 7 May 2009.

<sup>58</sup>Two years after the 1998 bombing of the hamlet of Santo Domingo (Arauca department) that killed seventeen civilians, the air force implemented strict protocols and rules of engagement, including that each operation be approved by operational legal advisers expert in humanitarian law. These legal advisers began to work for the army and navy. Crisis Group interview, military official, Bogotá, 11 March 2009.

report violations, and a periodic televised accountability mechanism has been put in place for the commanders of army divisions and regional police.<sup>59</sup>

A military source called the decision to retire the senior officers painful but necessary to make commanders understand the government's commitment to protecting human rights is not just lip service.<sup>60</sup> International sources see General Montoya's retirement as positive.<sup>61</sup> However, tension remains high within the military, as the firing of honoured officers and ongoing judicial investigations and prosecutions are perceived by many as related to Minister Santos's political interests. They believe his resignation in mid-May points to likely presidential ambitions in 2010 and that he has attempted to create tough security and human rights credentials at the expense of good officers' careers.<sup>62</sup> As investigations are increasingly transferred from the military to the civilian justice system (31 cases in 2005, 167 in 2008),<sup>63</sup> pro-Uribe hardliners have also accused Vice Minister of Defence Sergio Jaramillo and the vice-presidential human rights office of

trying to dismantle the military justice system and undermining security force morale.<sup>64</sup>

Though the defence ministry asserted that it had not received any accusations of extrajudicial executions since October 2008,<sup>65</sup> Minister Santos acknowledged in a 4 May 2009 televised accountability session a new "false positive" in Córdoba department the previous December.<sup>66</sup> This case had been reported by the Popular Education and Investigation Centre (Centro de Investigación y Educación Popular, CINEP) along with two other probable extrajudicial executions by army members in Casanare and Putumayo departments.<sup>67</sup> While President Uribe claimed two days later that at least 85 accusations of human rights violations by members of the security forces had been returned to the military justice system as unfounded,<sup>68</sup> new extrajudicial executions may well emerge in the future.

Despite the criticism and the obvious lack of success in protecting human rights, the government has been reluctant to review its use of confidential intelligence agency rewards (*gastos reservados de inteligencia*), claiming that paying informants has been effective in fighting both illegal armed groups and criminal organisations.<sup>69</sup> Such incentives, however, may fuel greed among troops and informants, while leading to new "false positives".<sup>70</sup> Other cases could be motivated by

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<sup>59</sup> "Protecting Rights", op. cit.; Crisis Group interview, military official, Bogotá, 11 March 2009. Every Monday, in televised regional security council sessions, military and police commanders are responsible for reporting on their investigations into citizen complaints. "Durante todo el 2009 se realizarán rendiciones de cuentas sobre DD.HH.", defence ministry press communiqué, 19 January 2009. While the periodic accountability mechanism aims to foster transparency in the security forces, there are questions about the possible filtering out of citizens' complaints to avoid embarrassing criticism on live television. Crisis Group interview, international analyst, Bogotá, 27 April 2009.

<sup>60</sup> Crisis Group interview, military official, Bogotá, 11 March 2009.

<sup>61</sup> General Montoya was believed to resist some institutional change in the army, including more stringent implementation of the human rights policy. His successor, General Óscar González, is perceived to be less well-connected, thus less likely to be an obstacle to institutional change, but human rights activists are critical because he previously replaced Montoya as 4th brigade and then 7th division commander (both units accused of human rights violations). Crisis Group interviews, U.S. embassy officials and international analyst, Bogotá, 5 February and 27 April 2009.

<sup>62</sup> An official must leave public office at least one year before an election in which he or she wishes to stand. Crisis Group interviews, political analyst and international analyst, Bogotá, 24 and 27 April 2009. For a defence of those dismissed from the October 2008 investigation, see the interview with retired General José Joaquín Cortés, former 2nd army division commander, "Fuimos carne de buitre", op. cit.

<sup>63</sup> "Protecting Rights", op. cit.

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<sup>64</sup> Crisis Group interview, senior government official, Bogotá, 26 February 2009. "Una fiscalía clonada", op. cit. "Colombia en llamas", *El Diario de América*, 19 February 2009.

<sup>65</sup> Crisis Group interviews, senior government official and military official, Bogotá, 26 February and 11 March 2009.

<sup>66</sup> "Nuevo falso positivo en Soacha", *El Espectador*, 5 May 2009.

<sup>67</sup> "Falsos positivos: Balance del Segundo Semestre de 2008", op. cit. CINEP has developed one of the most thorough databases on Colombia's violence and the internal armed conflict. See [www.nocheyniebla.org](http://www.nocheyniebla.org).

<sup>68</sup> On 6 May 2009, Uribe claimed there is "a group of lawyers paid by ideologically-biased international organisations" intent on bringing false charges against the armed forces. The president also mentioned the need to assume the cost of the legal defence of the military against such false accusations. "¿Falsos positivos o falsas denuncias?", *El Espectador*, 9 May 2009.

<sup>69</sup> "Colombia rechaza recomendación de suspender las recompensas", *El Tiempo*, 21 March 2009.

<sup>70</sup> A member of the network that prepared the "false positives" in Ocaña (Norte de Santander department) and is now a key investigation witness told the press he was regularly paid by his contact, a former soldier and informant, for each young man he transported on his motorcycle to where army units would execute him. "Entregué a más de 30 jóvenes para 'falsos positivos'", *Semana*, 23 March 2009. Crisis Group interview, justice sector analysts, Bogotá, 5 March 2009.

corruption among the security forces – in which military or police might act as hit men for drug traffickers or other criminal organisations – as well as deficient intelligence gathering and attempts to cover up errors or excesses committed by units that fail to follow the rules of engagement on use of lethal force.<sup>71</sup>

Structural changes will likely require more time until their effects are felt. Sources said the risk of human rights and IHL abuse will persist if perpetrators inside the security forces are not prosecuted or punished (for example, by demotion and forfeiture of medals obtained from questionable operations); drill instructors continue to mistreat soldiers in basic training; soldiers are not instructed about available mechanisms for confidentially reporting orders that appear to conflict with human rights or IHL; and low-intensity abuse and harassment of civilians continue to be tolerated.<sup>72</sup> Military units also need to engage more generally with civilians and ethnic minorities, including women and women's groups, as they can provide valuable analysis of the needs of the community.<sup>73</sup> While the government and the military consider such measures necessary to build trust between state institutions and communities, critics fear they could also increase the prospect that illegal armed groups will target civilians.<sup>74</sup>

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<sup>71</sup> Crisis Group interview, international analyst, Bogotá, 27 April 2009.

<sup>72</sup> Many drill instructors still believe mistreatment of recruits hardens fighting spirit and teaches unquestioning obedience to orders. Other human rights violations that go vastly underreported but damage security force legitimacy include: illegal and arbitrary detentions, pillage of animals and food from peasants, theft of personal belongings while carrying out searches and grave abuses such as rape and threats. Crisis Group interviews, international organisation, humanitarian NGO and international humanitarian NGO officials, SAT and international analysts, Bogotá, 3 and 13 February, 5 and 12 March, 27 April 2009.

<sup>73</sup> In an effort to engage ethnic minorities, the defence ministry issued Directive 016 (2006), establishing measures to promote and protect the human rights of indigenous peoples, including collective rights to autonomy and territory. The directive also calls for security force liaison officers to engage with indigenous communities. Such liaison officers were initially introduced in the Santa Marta High Mountain Ranges with positive results, and a new pilot project is intended to operate in Cauca and Nariño departments. Crisis Group interviews, senior government and military officials, Bogotá, 26 February and 11 March 2009. "Protecting Rights", *op. cit.*, p. 13.

<sup>74</sup> There is concern liaison officers might try to make communities part of the informant network, thus a target for illegal armed groups. Crisis Group interview, SAT analysts, Bogotá, 12 March 2009. On 7 December 2008, a medical convoy participating in a civic-military mission in the rural

According to government critics, the massacre of at least eight Awá indigenous people committed by the FARC in Barbacoas and Ricaurte (Nariño department) in February 2009<sup>75</sup> and several other serious abuses by illegal armed groups, could have been avoided had government bodies paid attention to the risk reports (*informes de riesgo*) of the Early-Warning System (Sistema de Alertas Tempranas, SAT) of the ombudsman's office.<sup>76</sup> Reportedly, there is almost no coordination between the SAT and the Interagency Early Warning Committee (Comité Interinstitucional de Alertas Tempranas, CIAT),<sup>77</sup> which evaluates those reports and coordinates responses to threats by government institutions, including the security forces, and local authorities.<sup>78</sup> Communication problems between the SAT and CIAT, as well as the need to make risk reports and early warnings public so as to increase

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area of San Vicente del Caguán (Cauca department) was hit by FARC roadside bombs. Crisis Group interview, international organisation official, Bogotá, 3 February 2009. The FARC issued a communiqué regretting the incident and claiming its troops believed they had attacked a military convoy. FARC's southern bloc communiqué, 23 December 2008 at [www.farc-ejercitodelpueblo.org](http://www.farc-ejercitodelpueblo.org).

<sup>75</sup> In early 2009, the Awá indigenous community in Nariño department denounced the FARC massacre of 27 of its members. The FARC admitted to killing only eight. Indigenous peoples from the south entered the region and recovered eight bodies in April.

<sup>76</sup> The SAT is the unit in the ombudsman's office dedicated to analysing the risks posed by the armed conflict to vulnerable populations. In October 2007, it released Risk Report 029-07 to warn of increasing threats against the Awá. Government authorities did little to protect the targeted population. There have been similar cases in which the authorities did not respond: the FARC massacre of 119 civilians in Bojayá (Chocó department) in 2002; the FARC attack on Toribío (Cauca department) in 2005; the selective killings of unionists in Barranquilla (Atlántico department) in 2006; the FARC assassination of a councilman in Campoalegre (Huila department) in 2006; the FARC massacre of seventeen police and three civilians in Montelíbano (Córdoba department) in 2007; and the murders of several young men by NIAGs in Pereira (Risaralda department) in 2008. Carlos Guevara, "¿Qué está pasando con las alertas de la Defensoría?", *Somos Defensores*, 18 February 2009. Crisis Group interview, SAT analysts, Bogotá, 12 March 2009. Based on a SAT risk report, the Constitutional Court questioned the poor response of local authorities and security forces to the threats and assassinations of members of the Displaced Women's League of Cartagena in 2008. Constitutional Court Ruling no. 009 (2009).

<sup>77</sup> The CIAT includes the vice president, the high counsellor for the Acción Social cooperation agency, the interior minister, the defence minister and the DAS director (or their designees). SAT Decree no. 2862 (27 July 2007).

<sup>78</sup> Crisis Group interviews, human rights advocates and SAT analysts, Bogotá, 5 February and 12 March 2009.

government accountability (while maintaining confidentiality and security requirements) were identified in a recent audit by the U.S. Agency for International Development (USAID) human rights program in Colombia.<sup>79</sup>

According to SAT analysts and human rights defenders, the CIAT systematically questions the validity of the SAT risk reports, so as to prevent them from being upgraded to the level of early alerts (*alerta temprana*), which would require a military deployment in the relevant area. These sources believe that rather than verifying the warnings, the CIAT uses military intelligence reports to challenge the risk reports, which are based on SAT field visits and information obtained through local networks. This has a twofold objective, they say: to avoid logistical and tactical problems for the military and political liabilities for the government and local authorities.<sup>80</sup> According to a military source, just deploying troops for longer periods does not eliminate risks; and such deployments can give a tactical advantage to the insurgents, who can learn exact positions and strengths.<sup>81</sup> A high number of early alerts would indicate that the conflict in a given region was worsening, and local authorities are concerned this could scare away investors and tourists.<sup>82</sup>

Officials reject this interpretation, insisting that while the number of risk reports dropped sharply, from 84 in 2003 to 28 in 2008, the proportion of early alerts fell much less, from 28 to fourteen in 2008.<sup>83</sup> But coordination problems persist. Because the CIAT often deals with matters of national security, it does not provide an institutional mechanism for openly discussing human rights protection. SAT representatives are invited to the meetings but not allowed to vote on decisions. And though department governors and mayors should be responsible for implementing prevention and protection measures the CIAT recommends, the military are often the only ones with the means to do so – and are thus blamed for what happens. There is concern that the military and many local authorities try to undermine both the SAT and CIAT,<sup>84</sup> while

human rights advocates believe the ombudsman's office intentionally weakens the SAT by keeping it understaffed and filtering out politically sensitive risk reports that should be sent to the CIAT for evaluation.<sup>85</sup>

## B. IMPUNITY UNDERCUTS RULE OF LAW

Attempts are underway to bolster the rule of law,<sup>86</sup> but the judicial system still does not adequately deter criminals and human rights abusers. While security forces may be relatively efficient in fighting NIAGs, criminal investigations are slow to produce indictments and prosecutions. Ex-paramilitaries are not being dissuaded effectively from taking up arms again, and new NIAG recruitment is not being prevented.<sup>87</sup> Victims of paramilitary atrocities are increasingly frustrated by the lack of results of the Justice and Peace Law (JPL); only Wilson Salazar (alias "El Loro") has been sentenced – to less than six years in prison for the voluntary confession of only four crimes – while 2,200 others have yet to deliver their full confessions, and so have not been tried or convicted.<sup>88</sup> Rivalries between attorneys of the justice and peace and human rights units in the attorney general's office reportedly also

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<sup>79</sup> "Audit of USAID/Colombia's Human Rights Program", no. 1-514-09-007-P, Office of Inspector General, 6 March 2009.

<sup>80</sup> Crisis Group interviews, human rights advocates and SAT analysts, Bogotá, 5 February and 12 March 2009.

<sup>81</sup> Crisis Group interview, military source, Bogotá, March 2009.

<sup>82</sup> Crisis Group interview, SAT analysts, Bogotá, 12 March 2009.

<sup>83</sup> Statistics given by vice presidency's human rights office during Crisis Group interview, 26 February 2009.

<sup>84</sup> Crisis Group interview, SAT analysts, Bogotá, 12 March 2009.

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<sup>85</sup> Critics claim that the constitutional role of the ombudsman's office as Colombia's main guarantor of human rights and as mediator between the government and human rights organisations has been undermined over time by the political ambitions of senior ombudsman officials. Crisis Group interview, human rights advocates and justice sector analysts, Bogotá, 5 February and 5 March 2009.

<sup>86</sup> An important portion of international cooperation programs is focused on strengthening the offices of the attorney general, the public prosecutor and the ombudsman to better address human rights abuses. Crisis Group interviews, international cooperation officers and officials, attorney general office's human rights and international affairs units, Bogotá, 20, 21, 23 and 30 April 2009.

<sup>87</sup> Crisis Group interview, senior government official, Bogotá, 26 February 2009.

<sup>88</sup> Based on his own confessions, El Loro was convicted on only four charges – three homicides and a forgery. This implies serious negligence in the two-year trial, as the JPL attorneys and judges did not thoroughly investigate his involvement in other crimes. Crisis Group interview, international justice and peace advisor, Bogotá, 31 March 2008; "El Loro", el primer condenado por Justicia y Paz", *VerdadAbierta.com*, 19 March 2009. For fuller discussion of the JPL judicial process and the problems faced by victims to participate in it, see Crisis Group Latin America Report N°29, *Correcting Course: Victims and the Justice and Peace Law in Colombia*, 30 October 2008, pp. 7-10.

hamper the cooperation needed to investigate and prosecute human rights cases.<sup>89</sup>

Despite the swift investigation and dismissal of 27 army officers involved in the Soacha “false positives” scandal, the criminal investigations transferred to the human rights unit of the attorney general’s office have only produced a handful of prosecutions, further fueling the perception of impunity in the military.<sup>90</sup> Some critics claim the dismissal of army generals was a smoke-screen meant to cover up the scandal.<sup>91</sup> Examples of lethargic judicial processes for human rights violations or crimes against human rights and social activists abound.<sup>92</sup> The fact that 22 attorneys – over one fifth of the human rights unit staff – are investigating extrajudicial executions leads sources in the attorney general’s office to contend that slow prosecution and sentencing depends equally on shortcomings in the justice system as a whole: witness protection program, victims’ fear to cooperate, lack of effective cooperation from parts of the military and judges’ uneven knowledge of the new oral accusatory system.<sup>93</sup>

The government responds that several false charges have been brought against security forces and blames

unscrupulous lawyers working for national and international organisations that it believes want to undermine the democratic security policy. By early May 2009, 85 investigations carried out by the human rights unit of the attorney general’s office had been deemed unfounded and returned for further processing to the military justice system; seven investigations had been closed, and one accused had been acquitted.<sup>94</sup>

Even with the recent spate of menacing leaflets and direct threats to human rights activists, women’s organisations, trade unionists, university students, municipal ombudsmen (*personeros*) and victims participating in the JPL process, police and judicial authorities have not yet produced a single arrest or brought charges against a single suspect.<sup>95</sup> Moreover, NIAGs have threatened the Canadian and several European and Latin American embassies engaged in projects to promote human rights and protect victims and vulnerable communities.<sup>96</sup> A European embassy official questioned the government’s commitment to protect human rights defenders and vulnerable communities when even direct threats to diplomatic representations in Bogotá are not being promptly addressed.<sup>97</sup>

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<sup>89</sup> Crisis Group interview, international cooperation official, Bogotá, 21 April 2009.

<sup>90</sup> Crisis Group interviews, officials, municipal ombudsman’s office, and senior government official, Soacha and Bogotá, 2 and 26 February 2009. Judicial experts believe the public prosecutor’s office should have stepped in earlier, when the mounting denunciations of extrajudicial executions were not being properly addressed by the security forces’ disciplinary mechanisms. Crisis Group interview, justice sector analysts, Bogotá, 5 March 2009.

<sup>91</sup> Crisis Group interview, human rights advocates, Bogotá, 5 February 2009.

<sup>92</sup> For instance, in mid-March 2009, Juan Carlos González (alias “El Colorado”) was sentenced to 40 years in prison for co-responsibility in the murder of two independent CINEP social researchers and human rights activists. The sentence came almost twelve years after the crime. “Confirman condena por crimen de investigadores del Cinep Mario Calderón y Elsa Alvarado”, *El Tiempo*, 19 March 2009. Something similar happened with the murder of left-wing Unión Patriótica (UP) Senator Manuel Cepeda in 1994. Despite the conviction of the two assassins (non-commissioned army officers, one of whom is already on parole), new judicial investigations were opened in August 2008. The Inter-American Human Rights Commission has filed a complaint, asserting the Colombian state’s responsibility in the crime. “Viene condena para el Estado”, *El Espectador*, 24 March 2009.

<sup>93</sup> Crisis Group interviews, international cooperation officers, international analyst and officials, attorney general office’s human rights and international affairs units, Bogotá, 21, 23, 27 and 30 April 2009.

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<sup>94</sup> “¿Falsos positivos o falsas denuncias?”, op. cit. “Se judicializarán las falsas denuncias: nuevo falso positivo en Soacha”, *El Espectador*, 4 May 2009.

<sup>95</sup> The municipal ombudsmen (*personeros*) at the forefront of official channels to provide attention to victims become targets of death threats or are murdered when they openly denounce human rights violations. After denouncing the extrajudicial executions of the young men from Soacha in September 2008, local municipal ombudsman Fernando Escobar has received several death threats. Segovia (Antioquia department) municipal ombudsman Jairo Alvarez was murdered on 31 October 2008 for denouncing cases of extrajudicial execution, arbitrary detention and forced displacement. Crisis Group interview, Soacha municipal ombudsman’s office and human rights advocates and international humanitarian NGO officials, Soacha and Bogotá, 2 and 5 February and 5 March 2009.

<sup>96</sup> The embassies of Sweden, Spain, Canada, Venezuela, Ecuador, Bolivia and Argentina, as well as Norway’s diplomatic representation received leaflets with threats signed by the Black Eagles Capital Bloc NIAG in March 2008. “Ocho embajadas denuncian amenazas de Águilas Negras”, *El Espectador*, 28 March 2008. Switzerland also reportedly received threats. Though Police Commander General Óscar Naranjo promised immediate investigations, there have been no results. Crisis Group interviews, international cooperation, U.S. embassy, European embassy and senior government officials, Bogotá, 29 January, 5, 11 and 26 February 2009.

<sup>97</sup> Crisis Group interview, European embassy official, Bogotá, 11 February 2009.

## IV. RECONCILING HUMAN RIGHTS AND SECURITY

### A. BUILDING TRUST BETWEEN THE GOVERNMENT AND THE HUMAN RIGHTS MOVEMENT

The face of the armed conflict is changing, and a new strategy is needed to reconcile security and the effective protection of human rights. Little progress has been made in establishing a consensus on a national program to protect and defend human rights.<sup>98</sup> Efforts to create the National Action Plan for Human Rights and IHL (Plan Nacional de Acción en Derechos Humanos y Derecho Internacional Humanitario, PNADH), an ambitious bridge-building initiative between the government and groupings of human rights organisations (also called “human rights platforms”), began in 2006.<sup>99</sup> In October 2008, however, the platforms froze the dialogue, saying they would not continue until the government guaranteed their protection and addressed increasing threats against human rights organisations. They also demanded the government stop all verbal attacks and retract unfounded accusations by officials, including the president, labelling human rights defenders and social movements as collaborators with the insurgents.<sup>100</sup>

Human rights platforms, activists and trade unionists believe the Uribe administration’s interest in PNADH is solely to relieve international pressure. They fear that, without a real change in the government’s attitude

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<sup>98</sup>The only progress was establishment of a central coordination body in 2006-2007. It created working groups in June 2008 for evaluation of regional plans of action and defined the “methodological consultation route” for coordination. See [www.plataforma-colombiana.org](http://www.plataforma-colombiana.org).

<sup>99</sup>The PNADH developed from a commitment made by the government when it signed the Vienna Declaration and Program of Action at the World Conference on Human Rights in 1993. According to UN requirements, the national action plan is a governmental program, but its formulation must involve broad social representation, including human rights platforms, NGOs and civil society, as well as relevant government officials. The government involvement has been led by the vice-presidential human rights office. The human rights platforms are networks of Colombian NGOs and advocacy groups with roughly similar agendas. The platforms that engaged in the PNADH discussions are Alianza de Organizaciones Sociales y Afines, Plataforma Colombiana de Derechos Humanos, Democracia y Desarrollo, Asamblea Permanente de la Sociedad Civil por la Paz and Coordinación Colombia, Europa, Estados Unidos.

<sup>100</sup>Crisis Group interviews, U.S. embassy officials and NGO representative, Bogotá, 5 and 19 February 2009.

and policy, their active participation could legitimise Uribe’s single-minded emphasis on the military strategy. They also worry that the plan could be used to downplay grave conditions of violence against organised labour and social grassroots movements.<sup>101</sup>

Government officials respond that PNADH is not moving because the human rights platforms are unwilling to engage in constructive dialogue and have taken the process hostage by using their denunciations of threats and lack of protection as tactics, not only to press the government to improve its human rights record, but also to attack the government politically. Officials further claim that the platforms want to halt any progress in trade negotiations with the U.S. and the European Union (EU).<sup>102</sup> Human rights organisations and trade unions oppose those negotiations, officials argue, because they believe free trade agreements – unless tied to new laws strengthening unions – would result in Colombian workers being hurt by more efficient U.S. competition.<sup>103</sup>

PNADH talks were to resume in early 2009 but this did not occur, because a member of the Colombian Commission of Jurists (CCJ) received new threats.<sup>104</sup> Contending that the Bogotá-based platforms are more

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<sup>101</sup>Crisis Group interview, international trade union representative, Bogotá, 3 February 2009.

<sup>102</sup>Free trade agreement (FTA) negotiations between Colombia and the U.S. began in late 2003 and finalised in mid-2006. While signature by both presidents and the agreement’s approval by the Colombian Congress in June 2007 went nearly unchallenged, U.S. Congress approval has been subject to acrimonious debate. Though the Colombian government signed a protocol of amendments incorporating labour and environmental protection provisions, U.S. legislators have been reluctant to ratify the FTA due to the killings of trade unionists and the impunity surrounding such crimes. Steven Weisman, “Colombia trade deal is threatened”, *The New York Times*, 13 July 2008. Negotiations for an association agreement between the EU and the Community of Andean Nations (CAN) were launched in June 2007. So far, Bolivia has refused to participate, while Colombia and Peru have been the most interested CAN members. The agreement aims to cover political dialogue, cooperation and trade, including the progressive and reciprocal liberalisation of commerce as well as increased European investment in CAN members. The next round of talks will be in Bogotá in mid-June 2009.

<sup>103</sup>Crisis Group interview, senior government official, Bogotá, 26 February 2009.

<sup>104</sup>Death threats were issued by the Black Eagles AUC Capital Bloc NIAG against CCJ lawyer Lina Paola Malagón, in charge of investigating human rights violations against trade unionists. “Colombia: Juristas Condenan Amenazas contra Comisión Colombiana de Juristas”, International Commission of Jurists press communiqué, 5 March 2009.

interested in opposition politics than in furthering human rights and lack true national representation, the government has continued to advance the plan by reaching out to regional and local human rights NGOs.<sup>105</sup> Such regional consultation could be positive if officials were disposed to listen to the specific concerns of vulnerable communities. However, it appears that the initiative is being used to advance the government's version of the PNADH. It could thus end up driving a wedge between local authorities, grassroots organisations and the Bogotá-based platforms. Attempts to erode links between the human rights platforms and regional and local organisations could further fracture the already poorly coordinated struggle for the promotion and protection of human rights.<sup>106</sup>

## B. INTERNATIONAL SUPPORT

While still acknowledging the need for continued military action against the illegal armed groups, the government is equally engaged in a massive diplomatic effort to portray Colombia as a success story that, owing to the security improvements of the past seven years, has entered a post-conflict stage in many parts of the country. While this may be accurate to some degree in several major cities, it remains a distant reality for many, perhaps most, rural regions. The armed conflict persists and evolves, and human rights violations and IHL breaches continue.

After assisting Colombia to create the SAT unit,<sup>107</sup> the U.S. is gradually phasing out direct support while simultaneously urging the ombudsman's office to take over financing of that early warning body in 2010-2011. Sweden (through its International Development Cooperation Agency, SIDA/ASDI) and Germany (through its international cooperation agency, the Gesellschaft für Technische Zusammenarbeit, GTZ), are supporting the strengthening of the ombudsman's office. Canada has reportedly shown interest in helping

with SAT activities. These countries should encourage the Uribe administration to improve coordination between the SAT and the interagency CIAT.

Such coordination would ensure quicker and more appropriate responses to early alerts. Positive measures might include in particular giving the SAT representative a vote in the CIAT decision process; establishing criteria for when SAT risk reports become early alerts; giving more weight to the early alerts so that, depending on the risk level, they are binding on local authorities, police and the military; and improving the accountability of government institutions by publishing risk reports, under specific conditions to avoid endangering sources.<sup>108</sup>

After years of UK cooperation with the Colombian authorities on security issues, including human rights training for security forces, landmine clearance and counter-narcotics operations, Foreign Secretary David Miliband announced in late March 2009 his government would cease all direct cooperation in this area.<sup>109</sup> The policy shift of the only European country working that closely with the military was prompted by both political pressure from domestic and international human rights and humanitarian organisations over continued security force abuses and an overall budget review caused by the global economic downturn.<sup>110</sup> UK security-related aid will henceforth be channelled through UN agencies in Colombia and other multilateral institutions.

While the UK will allocate £900,000 in 2009-2010 to support UN Office on Drugs and Crime (UNODC) projects, its support for UN-led projects that aim to promote human rights adherence within the security forces has not yet been formalised. Despite the decision to cut aid for human rights training of the security forces, London should consider how to continue supporting Colombia's efforts to revamp the existing 35 human rights practical training courses and design and implement an evaluation system for military per-

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<sup>105</sup> Crisis Group interview, international cooperation officers and justice sector analysts, Bogotá, 29 January and 5 March 2009.

<sup>106</sup> Crisis Group interviews, human rights advocates, NGO official, justice sector analysts and international cooperation officials, Bogotá, 5, 19 February, 5 March, 21, 28 and 30 April 2009.

<sup>107</sup> The overall value of USAID justice and human rights programs was some \$35 million in FY2008. The SAT unit has been almost entirely paid for by USAID since its creation in 2001. USAID has financed 98 per cent (almost \$1 million) of annual operation costs. In 2009-2010, it will reduce its cooperation to 30 per cent of the SAT unit budget. Crisis Group interview, international cooperation official, Bogotá, 30 April 2009.

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<sup>108</sup> Crisis Group interviews, SAT analysts and international cooperation officer, Bogotá, 12 March and 30 April 2009. See also "Audit of USAID/Colombia's Human Rights Program", op. cit.

<sup>109</sup> See "Foreign Secretary statement on Colombia to the House of Commons", 30 March 2009, at [www.fco.gov.uk](http://www.fco.gov.uk). The UK provided £190,000 annually for HR training for security forces and explosive ordnance-disposal training to clear minefields. Sibylla Brodzinsky, "UK ends bilateral military aid to Colombia", *The Guardian*, 29 April 2009.

<sup>110</sup> Crisis Group interview, UK embassy cooperation official, Bogotá, 20 April 2009. Brodzinsky, op. cit. "Fit for Purpose: how to make UK policy on Colombia more effective", ABColombia, 2009.

sonnel who have participated in such training. One way might be to work with OHCHR and a pool of other partners.<sup>111</sup> This effort could be useful to measure whether troops and their commanders are able to apply their human rights and IHL knowledge and the rules of engagement in simulated real-life situations and to enhance mechanisms of accountability based on those measurements.

UK landmine clearance assistance will continue to be critical in 2009, as Colombia prepares to host in Cartagena the November Ottawa Convention session. London should use its leadership in the G-24 landmine clearance working group<sup>112</sup> to press the government to sweep not only the remaining minefields planted by its forces, but also communities affected by unconventional anti-personnel mines and makeshift explosive devices planted by illegal armed groups, in particular the FARC and ELN. The U.S. as well should use its substantial assistance to programs in Colombia for demining, mine awareness and survivors' assistance as a point of leverage for such actions.

OHCHR has been observing and reporting the human rights and IHL situation in Colombia since 1997; and its mandate was extended in 2007 through September 2010. From 2003 to 2006, its relations with the Uribe administration were seriously strained, as the then head of its Bogotá office, Swedish diplomat Michael Frühling, shared Colombian and international human rights NGOs' criticism of the JPL law as designed to preserve impunity at the cost of victims' rights. Frühling was also critical of government inaction on pervasive and systematic human rights violations and IHL breaches by the security forces.<sup>113</sup> Under his successors, Uruguayan Juan Pablo Corlazzoli and German Christian Salazar-Volkman, OHCHR has taken steps to acknowledge the government's efforts to address both security and human rights challenges, but it con-

tinues to highlight the persistence of extrajudicial executions as well as other abuses.<sup>114</sup>

OHCHR and the ICRC have participated in the above-mentioned monitoring committee created by the defence ministry and the vice-presidential human rights office to look into reported extrajudicial executions between 2007 and 2008 in all seven army divisions. These closed-door sessions were important, as senior officers were challenged to openly discuss with international observers suspected cases in their jurisdiction and the need for tighter controls.<sup>115</sup> This opening of the military to international scrutiny should be followed up by further monitoring committee sessions to address recorded cases of torture, enforced disappearance, illegal detention, illegal occupation of civilian property and sexual violence committed by military personnel.

## 1. Reducing impunity

International cooperation, including with the U.S. justice department, the GTZ-implemented ProFis program of Germany's foreign office, and the governments of Spain, the UK and Canada, has been important for the efforts of the attorney general's office to address impunity. Yet, resources are insufficient for the number of pending investigations and prosecutions. Some headway has been made in opening criminal investigations and bringing indictments, in particular in old and high-impact cases, but the human rights unit in charge of pursuing extrajudicial executions and crimes against trade unionists has been working slowly. The JPL process – highly sensitive for victims – has also been slow.<sup>116</sup> Human rights organisations in the U.S. want more monitoring of Washington's aid to the attorney gen-

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<sup>111</sup> The Superior School for Public Administration (ESAP) is helping the Colombian defence ministry design such an evaluation system, while the Inter-American Human Rights Commission is working with the armed forces to establish human rights performance indicators. Crisis Group interview, military official, defence ministry, Bogotá, 11 March 2009.

<sup>112</sup> The G-24 was established as a forum for 24 donor countries to discuss with the government and representatives from civil society, NGOs and other organisations how best to channel and coordinate funding so as to improve Colombia's human rights situation and expand the rule of law.

<sup>113</sup> Juan Forero, "New Colombia law grants concessions to paramilitaries", *The New York Times*, 23 June 2005. See interview of Frühling in "Se necesita reconocer la realidad del país", *Un Pasquín*, 22 February 2006.

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<sup>114</sup> The OHCHR has acknowledged the Colombian government's efforts to address the HR situation but has also highlighted the persistence of extrajudicial executions by the security forces; arbitrary detentions, usually of human rights defenders and community leaders accused of rebellion and related crimes without sound legal grounds; cruel, inhuman and degrading treatment or punishment, including sexual violence, attributed to security forces; and occupation by members of the security forces of civilian property and schools and the giving of gifts to children to persuade them to provide information on guerrillas, which violates IHL. "Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia, 2008", 5 March 2009.

<sup>115</sup> Crisis Group interview, international analyst, Bogotá, 27 April 2009.

<sup>116</sup> Crisis Group interview, justice sector analysts, Bogotá, 5 March 2009.



eral's office and for that aid to be linked to faster JPL prosecutions.<sup>117</sup>

Enhanced international assistance for the human rights and justice and peace units of the attorney general's office should have five priorities:

- increasing a logistics and infrastructure fund to finance attorneys' and investigators' travel expenses to distant places to gather evidence and prosecute;
- focusing training programs on the regional attorneys specialised in humanitarian issues (*fiscales de asuntos humanitarios*), two or three of whom work in each regional office to support the human rights unit, and on the judges, so as to accelerate their transition from the written inquisitorial system in which they have worked for decades to the new oral accusatory one;
- expediting criminal investigations, prosecutions and sentencing in high-profile cases and those involving the worst atrocities;
- strengthening programs for the protection of victims and witnesses, especially women, in order to encourage their participation in the investigations and prosecutions; and
- encouraging adjustment of JPL procedures so that voluntary confessions of former paramilitaries – which are slow and frequently delayed – can be cross-examined faster by attorneys making better use of the data about paramilitary crimes that is already available at the justice and peace unit.<sup>118</sup>

At the same time, the U.S. justice department should develop a cooperation protocol with the justice and peace and human rights units of the attorney general's office to ensure that all extradited former AUC paramilitary chiefs continue to complete their confessions and testimony under the JPL about human rights violations in Colombia via video conferencing and that they will be sent back to Colombia once their U.S. sentences are served.

Victims' perception of the ineffectiveness of justice is also fuelled by the slow procedures to identify the remains of missing persons. The International Commis-

sion on Missing Persons (ICMP) is currently advising the forensics investigators of the human rights and justice and peace units of the attorney general's office as well as the judicial police on reforming and consolidating the remains identification protocols and developing a more systematic and efficient system through DNA identification techniques.<sup>119</sup>

## 2. Supporting government-human rights advocates rapprochement

After initially adopting a cautious stance toward Uribe's strong military security approach and underlining the need to take more decisive action against impunity and the paramilitaries, the EU, through the European Commission delegation in Bogotá, has in the past two years gradually assigned more weight to trade talks.<sup>120</sup> The second half of 2009 could again bring significant changes. The next six-month EU presidency, starting on 1 July, will be held by Sweden, one of Colombia's main partners for human rights protection.<sup>121</sup> Sweden's attention to the human rights platforms in the PNADH since its early stages could help the EU encourage a new rapprochement between the government and Colombian human rights organisations. The same approach should apply for Spain, which assumes the EU presidency in January 2010. A number of EU member states supported such an initiative during the UN Human Rights Council's Universal Periodic Review discussions in Geneva on 10 December 2008.<sup>122</sup>

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<sup>119</sup> The ICMP presence in Colombia is financed by the UK, Spain, U.S. and Germany. ICMP has worked in the aftermath of the Balkans wars. Crisis Group interviews, international cooperation officials, Bogotá, 20 and 21 April 2009.

<sup>120</sup> Since the meeting of the Colombia support group (G-24) in Cartagena in early 2005, the EU has started to back Uribe's policies more clearly while continuing to highlight the importance of civil society in promoting and defending human rights. Crisis Group Latin America Report N°17, *Uribe's Re-election: Can the EU Help Colombia Develop a More Balanced Peace Strategy?*, 8 June 2006, pp. 15-16.

<sup>121</sup> Swedish cooperation has focused on supporting peace-building and conflict management initiatives, as well as the promotion and protection of human rights and international humanitarian law, the strengthening of the rule of law, the fight against corruption and impunity and gender and ethnic minorities' issues. Crisis Group interviews, international cooperation officers, Bogotá, 29 January and 28 April 2009.

<sup>122</sup> Sweden, Spain, France, the Netherlands, Germany, the UK, Ireland and Romania called for reopening dialogue with different sectors of civil society, in particular human rights organisations, and completion of the PNADH in accordance with the OHCHR's recommendations. "Report of the Working Group on the Universal Periodic Review: Colombia", UN Human Rights Council, A/HRC/10/82, 9 January 2009.

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<sup>117</sup> Crisis Group interviews, human rights organisations, Washington DC, April-May 2009.

<sup>118</sup> Voluntary confessions of former paramilitaries have proved to be very lengthy and slow and to suffer frequent delays and postponements requested by the defendants' lawyers. Crisis Group interviews, justice sector analysts and officials, attorney general office's human rights and international affairs units, Bogotá, 5 March and 20 April 2009.

USAID intends to adopt a more preventive approach by December 2009 in its assistance programs to communities at risk of human rights abuses.<sup>123</sup> This initiative, still under discussion, could have a more significant impact if harmonised with current USAID efforts to assist the government to elaborate the PNADH proposal. Coordination of such abuse prevention-oriented programs with Swedish and Spanish assistance to the HR platforms could give more substance to PNADH discussions: identifying, for example, long-term human rights goals and a more pragmatic strategy to tackle current threats faced by communities.

In parallel, OHCHR and other international cooperative efforts should concentrate on building civil society's capacity to influence the decision-making process for public policies geared to protecting victims' rights. In particular, support should be directed to enhancing public awareness of the need for the legislature to pass the victims' law bill; advancing the government's administrative reparations for victims; and working with government institutions to accelerate land restitution and protection of IDPs.<sup>124</sup> Special attention should also be given to ethnic minorities (Afro-Colombians and indigenous), women and handicapped persons.

## V. CONCLUSION

The Uribe administration should make a much stronger commitment to protecting human rights, not least in order to preserve and expand security gains. It is promoting an optimistic vision of a Colombia on the verge of overcoming its long internal conflict, but that conflict is evolving, not ending. Violations of human rights and breaches of IHL persist and in some instances are increasing. New illegal armed groups – the NIAGs – have stepped up intimidation and violence against civilians; the government's early warning system to prevent HR violations is often useless; and the sluggish justice system is an ineffective deterrent for per-

petrators of human rights abuses and those who send intimidating messages and death threats. Despite some recent measures in reaction to the mounting extrajudicial execution scandal, the security forces have a long way to go regarding accountability, professionalism and full commitment to human rights. The state will be better able to deal with post-conflict scenarios when the security forces' human rights record is irreproachable.

Cooperation from the U.S., Canada and the EU should aim to help bridge the unnecessary and highly counter-productive divide between advocates of the government's security policy and human rights defenders. Open and constructive dialogue between these camps is vital if Colombia's human rights problems are to be addressed effectively. An absolute precondition is an end to the stigmatisation by high government officials of human rights groups as linked to guerrillas. The U.S., Canada and the EU should actively promote such a rapprochement in the framework of the PNADH.

The U.S. and the EU and its member states should also encourage and support development of transparent methods for evaluating units and officers on their capability and performance with respect to ensuring the protection of fundamental rights of the population. Besides the televised accountability sessions of the military, they should encourage new monitoring committee sessions in the army divisions, with OHCHR participation, to address reported cases of human rights violations and IHL breaches by troops. They should also promote the transfer of all military investigations involving human rights violations to the civilian justice system. International actors should likewise push for the revamping of the early warning system, so that it can effectively prevent human rights violations, and support the efforts of the attorney general's office to reduce impunity and ensure the rule of law across the country.

**Bogotá/Brussels, 25 May 2009**

<sup>123</sup> USAID helped developing contingency plans for local communities in ten areas considered at risk of becoming victims of human rights abuses. As the overall goal of preventing such abuses has not been achieved due to the lack of coordination between the national and local levels, the Inspector General's office recommended reprogramming \$397,000 of the remaining budget to other activities likely to yield more significant results. Crisis Group interview, international cooperation officer, Bogotá, 30 April 2009; "Audit of USAID/Colombia's Human Rights Program", op. cit.

<sup>124</sup> Crisis Group interviews, international cooperation officials and international analyst, Bogotá, 20, 21, 27 and 28 April 2009.

## APPENDIX A

### MAP OF COLOMBIA



Courtesy of The General Library, The University of Texas at Austin.



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