

**LAWYERS' DELEGATION TO COLOMBIA**  
**May 2006**

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## Introduction

Our delegation of ten UK legal professionals and one legal journalist visited Colombia between 12 and 20 May 2006. The delegation was one of a series organized by the British-based human rights NGO 'Justice for Colombia'. We set ourselves the task of investigating the rule of law in Colombia and how it complies with international human rights standards, especially as they affect the trade unions.

We heard evidence from trade union leaders and their members in the agricultural, health, education and petroleum sectors, and from lawyers and other human rights defenders. We met with Government agencies and representatives of the armed forces. Before going to Colombia we had read the current reports on its human rights situation by the US State Department, Amnesty International, Human Rights Watch and the Office of the United Nations High Commissioner for Human Rights. We also had reports from Colombian sources, including the Public Defender's Office and the Ministry of Defence.

Every day there are massive human rights violations in Colombia. These are, to a large degree, denied by the Government which, it appeared, is giving a highly misleading impression of its record on human rights to many outsiders including the UK Government. As this report indicates it has masked criminalization of ordinary citizens seeking to engage in civil society, including trade unionists and journalists, as a necessary part of the war on terror. For many Colombians, the protections afforded by the country's laws and its 1991 Constitution are purely theoretical. Across a wide range of the State's operations, international human rights standards are regularly flouted.

Peasant farmers are forced from their land. Opponents of Government and business interests, and human rights defenders, are murdered, 'disappeared', arbitrarily detained and often tortured. They, and journalists who tell the truth about the country, receive death threats by phone and letter. Women are raped by soldiers, children used as human shields on military patrols, and the Army rounds up civilians *en masse* in search of 'guerrilla sympathizers'. International labour standards are still regularly breached despite the efforts of the trade unions and ILO.

A common tactic used by State agencies to crack down on either real or imaginary opponents of President Alvaro Uribe's Government is to identify them with the left-wing insurgency. "Anti-terrorist" law and practices take precedence over humanitarian norms.

Very few of the individuals responsible for heinous violations of human rights have anything to fear by way of investigation, prosecution or punishment. This general condition of impunity is extended by Law 925 and Decree 128, the inappropriately entitled "Justice and Peace Law" which came into force this year. Its practical effect is to pardon or give extremely lenient sentences to paramilitaries responsible for past atrocities and abuses.

The testimonies we received from victims and their relatives point to the complicity of State actors and their proxies in the many human rights violations. We cannot discount the efforts of individuals working in State agencies who strive to uphold the rule of law. But the failure to bring about justice and reparations following the almost complete extermination of the Union Patriótica political party, combined with the continuing murders of trade unionists - 498 since President Uribe first came to power - have gravely undermined confidence in the government and legal institutions to deliver justice and democracy. In the chapters that follow we will explain these conclusions and offer our recommendations.

# 1. Repression and violence against trade unionists

From our visit to Colombia we learned that trade unionists face death threats, assassinations, detention and displacement as a result of their lawful activities.

The perpetrators of the attacks are members of the Army and the security forces, or the right-wing paramilitary units of the AUC (United Self-Defence Forces of Colombia). As we state elsewhere in this report, there appeared to be not only impunity for those acting unlawfully in this regard, but those seeking to defend trade unionists against these attacks were themselves subject of unlawful threats, detention and, on occasion, assassination.

State-sponsored violence against trade unionists in Colombia has been thoroughly documented in ILO and ICFTU reports. We were able to substantiate these reports through first-hand testimony from trade unionists who have suffered personally and from people who have had family members killed or detained.

Below we give some examples of this first hand testimony. We had no doubt that those who came to talk to us were speaking the truth. Indeed their treatment does not seem to be a matter of controversy. The only issue appears to be whether those so targeted were engaged in any unlawful activity such as terrorism or acting in support of terrorism. Again we consider the facts speak for themselves. What was absent from any of these accounts was persons convicted after a lawful trial. The accounts were either of death threats and displacements, disappearances, assassinations, or where there were detentions, release after 6 or 12 months without a conviction. As again is reported elsewhere, the use of paid informers was common place and the so called evidence, which was usually gathered after detention, was too poor to be placed before a court.

As well as the appalling record of attacks and murders targeted at trade unionists, we also investigated the state of collective trade union rights in Colombia. We raised with the Vice-Minister for Social Protection known breaches of ILO conventions and pointed out that the ILO has condemned the broad definition of ‘essential services’ used in Colombia in order to ban strikes.

The Vice-Minister said progress was being made through dialogue between employers and unions at a regional level and claimed that the ILO did not properly appreciate the threat posed to the public in Colombia by strike action.

We take the view that the parties responsible for this state of affairs are:

1. The **Colombian Government**, because the role played by the security forces and the Army has been thoroughly recorded,
2. The **security forces** and **Army personnel**,
3. On occasions, as recorded in some of the examples below, the **employers and companies** engaged in privatization who stand to gain from the elimination of active trade unionists, and who we were told have instigated paramilitary action against them.

The examples we give are drawn from three major, nationally-organised trade unions: ANTHOC, the health workers’ union, USO, the petroleum workers’ union, and FENSUAGRO, the agricultural workers’ union.

## 1. ANTHOC – health workers

In the past six years this union, which has 27,000 members, primarily in public but also in some private health-care institutions, has recorded 456 death threats, 121 assassinations, 258

displacements, and 800 other human rights violations. 14,000 members have been dismissed. They say they have been targeted because of their efforts to keep hospitals open and defend public health from a privatisation programme sponsored by the Inter-American Development Bank. Health now accounts for about 28% of public expenditure – although 51% of Colombians have no health cover - and the cost is now being transferred to private health insurance companies including SANITAS, Grupo BBVA and Banco de Santander - all Spanish companies. We were told that these companies maintain links with DAS, the Colombian state security agency, and with paramilitary forces.

We heard testimony from various ANTHOC members including:

- At 5.30am on 24 January 2006, **Walter Santamaria**, an ANTHOC activist in Valle de Cauca department, was shot three times as he left his house. He had previously received a series of death threats and after the assassination attempt he was forced to flee to Bogotá, leaving his wife and two small children behind.
- **Marta Lozano** of ANTHOC's branch in the city of Florencia, Caqueta department, was displaced as a result of opposing the privatisation of health services in her region. On 25 November 2005, at a hospital meeting convened to negotiate on the privatization dispute with the union, a bomb was detonated in the hospital, killing one trade unionist and injuring 39 others. Death threats she received after that forced her to leave for Bogotá. Only days before our delegation visited, her oldest daughter had attempted suicide.
- **Lidia Rosa Galeano** of ANTHOC's branch in the city of Cucuta, Norte de Santander department, told us that her sister, a nurse and a regional ANTHOC official, was murdered by paramilitaries on 10 December 2000, following threats she had received while investigating allegations of corruption involving the hospital director, the mayor of Cucuta and the local head of social services. One brother was murdered the same year, another brother disappeared in 2004 six months after being detained by DAS security agency and subsequently released. Lidia was herself threatened when she denounced her sister's murder.

## 2. USO – petroleum workers

USO (Union Sindical Obrera) is the union which organises Colombians working for the State oil company Ecopetrol and in multinationals such as Texas, Chevron and Omimex. Their right of free association is regularly breached by the companies' practice of issuing service and temporary contracts.

We met with **Juan Ramon Rios**, the General Secretary of USO, **Hector Vaca**, its Secretary for Energy Affairs, and **Fernando Ramirez**, of its Human Rights and Peace Committee. They told us that USO has been victimized for over 80 years because its policy is to defend the country's oil resources from foreign ownership.

USO has 2,000 members at Ecopetrol. It also has 1,800 members all told in several other companies: Occidental, the Spanish company Gaz Natural, Ominex, which has Colombian, US and Mexican ownership; and Chevron-Texaco. At one time USO had 5,000-6,000 members, but membership has shrunk because of privatisation and hostile Government actions aimed at eliminating trade unions. In some cases companies have been offering voluntary redundancy and early retirement in order to cut the workforce.

In 2004 USO called a strike against privatisation. The Government declared it illegal and 267 workers were unlawfully dismissed. In January 2005 an arbitration tribunal ordered the reinstatement of 104 of the sacked workers. At this point the president of Ecopetrol, Isaac Janovic, said he would reinstate them and then dismiss them again according to due process.

Disciplinary procedures were taken against all the reinstated workers. Fourteen of them, from Orito, Barrancabermeja and Cartagena, were dismissed again.

The Government has repeatedly refused to comply with the recommendations of the ILO at its 93<sup>rd</sup> session to reinstate all of the sacked workers and to put in place other guarantees, including the right of collective bargaining. The sacked workers are banned from public sector jobs for 10-13 years and are officially blacklisted. Other common practices are 'mobbing' (severe harassment) and the forced redeployment of union activists in order to isolate them. In the past three years Ecopetrol has taken out disciplinary proceedings against 1,500 of its 2,000 employees; this is to stop them engaging in union activities. Promotion is another method; if a person is promoted to the supervisory grades, he is ineligible for membership of USO.

Under Law 734 of 2002 there is a disciplinary code for public sector workers, including those in the petroleum sector. A company's disciplinary body is supposed to be independent, but at Ecopetrol the members are appointed by the company president.

There are now 40,000 subcontractors in the petroleum industry, including 5,000 in Ecopetrol. The company aims to replace USO members with subcontractors, and has set up its own union for them, called SINDISPETROL. Contract workers have fixed-term contracts. Some have worked for 15-20 years on a series of short-term contracts. 1,200 Ecopetrol workers have already been sacked and replaced by 'agency' contractors who are paid one-third of the salaries of 'conventional' workers (15,000 pesos a day against 45,000). To reduce production costs, the Government has regulated contract pay by decree.

There has been no consultation with USO, nor is there any opportunity to discuss policies on employment or social security. The union has launched a recruitment campaign among contract workers, but their contracts run from eight to 60 days, on a renewable basis, and if they join the union the employers won't renew.

**Hector Vaca** explained that USO has tried to recruit the British Petroleum workers in Casanare department, but that this is very difficult. The paramilitaries defending the BP infrastructure have threatened the union and BP employees are told to join local associations and discouraged from any contact with USO. The Colombian Government is aware of this but won't protect the right to join a union. Meanwhile it is giving more incentives to the multinationals to invest in Colombia. It allows the companies to take 100% of production out of the country, paying only limited royalties and taxes. Meanwhile these companies offer bonuses to employees who give up their union membership.

**Fernando Ramirez** recalled that Ecopetrol started out as the Tropical Oil Company, and in 1948 was renamed Colombia Oil. There were strikes in the industry in 1924, 1948, 1963, 1971, 1977 and 2004. The strikers faced firing squads and some were thrown into the river Magdalena. In the past two decades 110 USO members have been assassinated, two have disappeared, 400 are internal exiles and six have been kidnapped but since released. All these attacks were carried out by paramilitaries and the security forces. Some USO members were tortured before being murdered. Ten of its members are also in exile abroad and three hundred current members have received death threats. There are 300 orphans as a result of the assassinations. Nine hundred lawsuits are in progress against USO members for 'rebellion' or sabotage.

After a ruling made by the Inter-American Commission on Human Rights the Government was compelled to establish a protection programme for trade union officials. This is known as the CRER but in Fernando's case it amounts to nothing more than a mobile phone and a radio. Indeed most trade unionists that are killed or subjected to assassination attempts have some form or other of 'protection' provided by CRER. DAS, the State security agency, takes

the line that only the President and Government ministers are at high risk and most union leaders who have been killed were classed by DAS as low risk. That includes three union presidents. Meanwhile there is a budget of 3.9 billion pesos for security for the president of Ecopetrol.

USO says it needs permanent international observers to protect its organizers.

### **3. FENSUAGRO – agricultural workers**

FENSUAGRO was founded in December 1976 to campaign for land reform and the rights of rural workers (*campesinos*). The union is deeply concerned about various issues:

1. **Employment conditions:** As part of the Government's 'democratic security' programme, paramilitaries have been demobilised and given jobs working land from which peasant farmers have previously been displaced (by the paramilitaries) and which are now owned by companies. The displaced people are later returned to their home areas, sometimes by force, and now have to work the land as company employees. They have no employment rights and they are not allowed to belong to a trade union. The multinationals use employment agencies, known as co-operatives, to recruit these people and act as middlemen and then deny the existence of any direct contract between themselves and the employee. The co-operatives place the workers on short-term contracts and, if they object, their contracts are not renewed. In addition the workers have no access to national insurance or State-provided health care and run the health risks of exposure to agricultural chemicals.
2. The March 2005 signing of the **Free Trade Agreement (FTA)** with the United States, which the union says makes Colombian produce uncompetitive. This builds upon the North American FTA (NAFTA) agreed in 1993 between the US, Canada and Mexico. It aims to integrate the economies of all Latin American countries (with the exception of Cuba) into a single trading bloc, to dismantle trade barriers, privatise State-owned industries and loosen restrictions on the movement of capital. It was the view of FENSUAGRO that this will have serious implications for democracy in Colombia. Transnational corporations can use the FTA to challenge national legislation and even to sue a government for loss of profit. We were told that the FTA will compel Colombia to eliminate tariffs on many US agricultural goods, including cotton, wheat, soya beans, apples, pears and peaches. Sensitive products, such as Colombian sugar and US poultry and rice, will be protected as before for the next few years. FENSUAGRO expects the FTA to be disastrous for small producers, who will be unable to compete on the domestic market with US products.
3. The practice of **aerial fumigation** is said to help eliminate the illicit drug trade, but it destroys other crops, damages the environment and is seen as a deliberate tactic to force peasant farmers from their land and secure access for Government agents to the remote areas in which the guerrillas operate. We were told that US-trained forces and mercenaries, ex-military officers employed by US corporations, are conducting the fumigation – basically chemical warfare operations that destroy crops and livestock and drives peasants from their devastated lands. The displaced farmers receive neither protection nor compensation. Little is yet known about the long-term impact on human health of the chemical contamination.
4. FENSUAGRO also opposes the '**peace laboratories**' which have been set up in some areas, with financial assistance from the European Union, and which are officially described as development schemes. The trade union argues that the program imposes, without consulting local people, the large-scale production of agro-industrial crops such as African palm in place of local food crops. The US company

Goodyear is taking 50,000 hectares in Cauca department for rubber plantations; Nestlé and Nabisco are growing cacao. To free land for the multinationals, which employ them as 'security', the paramilitaries attack and displace local communities. Government programmes to 'return' displaced people do not restore the land to them, so the displaced farmers end up as hired labour on the new plantations (also see above under Employment conditions). The Government has also given the mining company AngloGold concessions for silver and gold mining within one of the 'peace laboratories'. FENSUAGRO sees these programmes as a mechanism for multinationals to colonize the land.

The union was also extremely concerned by the regular human rights abuses being perpetrated against its affiliates. While we were in Colombia a mass demonstration of 10,000 indigenous peasant farmers organized by FENSUAGRO in the departments of Cauca and Nariño, in the south of the country, was forcibly broken up by riot police. Several of the demonstrators were killed and many, including one-year-old child Tavares Ortega, and the President of a local community council, Rubiel Bedoya, were seriously injured.

In Bogotá, we attended a trade union demonstration against the re-election of President Uribe and the FTA at which the riot police and the army, equipped with machine guns and tear gas, were very evident. There was also a tank with water cannon on display. We were fortunate not to experience any problems or casualties, although we heard that a student had been badly beaten.

The union has had hundreds of its members assassinated and many others detained. The situation has deteriorated in recent years and officials at the CUT (*Central Unitaria de Trabajadores*, the largest Colombian trade union federation) told us that 447 trade unionists had been assassinated since President Uribe came to power in 2002. Since then the figure has passed the 500 mark.

We heard testimony from various FENSUAGRO members including:

- **Hector Torres**, the human rights co-ordinator for the union in the Lower Ariari region of Meta department, who told us that coca leaf had been the main crop grown there. Proceeds from the sale of the coca leaf have been used in the community to develop the local infrastructure and to build roads and bridges. Now community councils have been set up to promote the growing of bananas to replace coca. The community council in Puerto Rico has built 300 kilometres of road to enable growers to take their new produce to market. There has been no State investment in the area, apart from sending in troops under the military offensive known as 'Plan Patriota'. In December 2004 the authorities launched a new programme, 'Operation Empora', in response to FARC guerrilla activity in the area. Mobile brigades were sent into the villages of Puerto Rico and Los Llames and they began arresting local organisers. The community has regularly denounced the violations committed by the army and the paramilitaries who came with them. In 2005 there were four major massacres in the region: eight people in Pinalito were killed and their bodies chopped up by chainsaw; four people were killed in Lower Ariari; six people were killed in the village of Argentina; and four were killed in a massacre at Matabamba. The 40<sup>th</sup> Army battalion has been accused of this massacre. The army have also arrested many *campesinos* and taken them to the cities of Villavicencio and San José de Guaviare. Between 1 January 2006 and 6 February 2006 the union recorded 25 disappearances and 11 murders in the Lower Ariari area alone.
- **Isaias Ortiz** was president of a community action group in Cundinamarca department, but left the area after being threatened. On 20 November 2004 his sister-in-law was taken by the army, interviewed by the investigators from the Attorney

General's office and then imprisoned. She is now in Buen Pastor prison in Bogotá. Three of his friends and colleagues who were working on the land were also arrested. His brother Augustin was arrested, his house was destroyed and he was imprisoned. He had two children; his son had to leave school to look after his mother and sibling. In April this year his sister was also taken away and he is now having to look after the children.

- **Rigoberto Conde** has a sister who was detained by the Army in 2003 because she was carrying a picture of Che Guevara in her pocket. She was held for three days and tortured by having her head immersed in mud and water. The family afterwards left the area. The region that they moved to was surrounded and blockaded by the Army. A brother who went in search of food disappeared. Another brother was captured and killed by the army when taking breakfast to a fellow worker in the fields. Their mother is now mentally ill.
- **Jaiber Tique**, a displaced person from the Upper Ariari region in Meta department, told us that after President Uribe came to power in 2002 the army, in conjunction with emerald dealers from the region, expelled 90% of the people living in Upper Ariari - some 10,000 people. They are now living in either Lower Ariari or Bogotá. This was called 'Operation Conquest'. There were also 200 assassinations. Cattle and tools were stolen and a hundred people were tortured. There were still around one hundred people in the mountains resisting removal from their land, in spite of an army blockade that prevents food, medicine and other supplies from entering the area.
- **Ana Luz Cuchimba** had been deputy regional president of the Patriotic Union political party and a member of the Colombian Communist Party. She was displaced with her family from Toleda and they are now in Lahulia, where they are still under threat from the paramilitaries and the Army.
- **Raoul Moreno** is the brother of Aidee Moreno, the director of the human rights department at FENSUAGRO. On 13 June 1999 an Army detachment from the Rapid Response Unit arrived at his house in the Ariari region of Meta department at 6 a.m. He was detained for two days, then taken to the regional Attorney General's office and accused of being a terrorist. He was imprisoned for one month and then went back to Ariari. While in detention he was shown an army 'hit list' with his name on it. On 30 September 2000, his mother was assassinated. Threats against his family continued. On 3 September 2002 his brother, the president of the local community group, was assassinated. On 20 September 2002 his niece was kidnapped by the army's Lejanias unit. Her body was found later, hacked to pieces. In 2003 he left Ariari himself and came to Bogotá, where he has to keep moving around because of death threats. On 9 April 2005 his brother Jiverio, after constant death threats, also moved to Bogotá.
- Human rights workers **Emilio Vargas**, **Esteban Bello** and **Alirio Romero** were all detained in November 2005. The anti-terrorist GAULA police accuse them all of being terrorists and claim that arms and explosives were found on them; according to the wife of Mr Vargas, **Luz Marina Beltran**, these were planted on them. She told us that she sends her husband money in prison, but it never reaches him. He is being ill-treated, constantly stripped of his clothes, made to stand and denied food. (Since our return we have written to the Attorney General about these detentions, but have heard nothing back in spite of his promises to respond with further details.)
- **Bitelvina Vargas** was detained in November 2005, released after two weeks and later re-arrested. Her brother-in-law **Agustín Ortiz Cortez** was arrested at 4 a.m. on 16



February 2006. The contents of his house were smashed and ripped apart. Family members do not know what evidence was used to arrest them and no charges have been brought.

FENSUAGRO officials also told us of two other cases of concern:

- **Miguel Ángel Bobadilla**, a member of FENSUAGRO's national executive, was detained by anti-terrorist police on 11 May 2006, the day before we arrived in Colombia, together with his wife **Nieves Mayusa** and her sisters **Carmen Mayusa** (herself a national official of the health workers' trade union ANTHOC) and **Yaneth Mayusa**. The arrest was on suspicion of rebellion and guerrilla activity – common charges for trade union activists. Miguel Ángel and Nieves have two children, including a young baby, and the security forces took them into temporary custody as well. After much pressure the authorities agreed to release the minors into the care of relatives and trade union colleagues. The day after his arrest Miguel Ángel was accused in the media of kidnapping, terrorism and extortion. His name had appeared just days before on a hit list which, according to Rafael García (a former commander in the DAS State security agency), had been given to paramilitaries by DAS itself.
- **Yaneth Pachou**, the sister of the treasurer of a local community action group, was murdered along with three others on 5 January 2006. They were shot by a masked gunman after being forced out of their homes. Her sister-in-law, the wife of the community leader, was also murdered, leaving three young children who are being cared for by FENSUAGRO's human rights committee.

## 2. The 2006 Presidential election

In Latin America, Colombian President Álvaro Uribe is a key ally of US President George Bush. First elected in 2002, Uribe subsequently changed the Constitution to allow himself to run for a second term and, on 28 May this year, he was re-elected with 62.2% of the vote (although, owing to the very low turnout, only 27.5% of registered voters voted for him). Since first coming to power Uribe's image as a democrat and his policy of 'democratic security' have been carefully nurtured at home and abroad, not least by dominating the Colombian media. There is only one national daily newspaper, 'El Tiempo', which is owned by the family of the Vice-President Francisco Santos.

Our delegation was in Colombia in the week running up to the elections and a member of the delegation spent a day with the Gaviria campaign in Bogotá. **Carlos Gaviria** was the Presidential candidate for the 'Polo Democrático Alternativo', a united democratic leftwing party. We later learned that his share of the vote, 22.04%, had quadrupled the party's standing since the previous elections.

Although the election was ostensibly free and fair, we formed the view that there was significant evidence of intimidation, threats and worse during the campaign period.

Gaviria's campaign chief in Bogotá was **Wilson Borja**, a high-profile Congress representative and former head of FENALTRASE, the largest public sector union in Colombia. In 2000 he narrowly survived an assassination attempt. The alleged would-be assassin was finally apprehended three years afterwards, only to escape from a Government security facility last year. Borja has 24-hour bodyguards and a bullet-proof car, in which he drove around Bogotá to visit activists and attend rallies. The Gaviria campaign rallies attracted large numbers of students and young people. In view of police activities activists were warned at briefing sessions that police would harass them and try to confiscate their election materials.

Media coverage was heavily slanted in Uribe's favour. One radio network gave him an hour-long interview and carried no alternative coverage that week. The Electoral Commission in Colombia, supposedly an independent body, is controlled by the ruling party, so there is no proper channel of complaint about electoral bias. Uribe claimed publicly that a vote for any other candidate was 'a vote for terrorism'. Some of his campaign literature identified Gaviria, a university law professor and former judge on the Constitutional Court, with the FARC rebels. Another of the Presidential candidates had withdrawn from the race in fear for his life.

We were told that threats to trade union activists, disappearances, and attacks by paramilitaries increased in frequency during the run-up to both the Congressional elections in March and the presidential elections in May. Largely because of intimidation less than 5% of the workforce now belongs to trade unions, yet many trade unionists were actively involved in Gaviria's election campaign.

Against this background, and the human rights violations described elsewhere in this report, it is hard to view the elections as genuinely free and fair. It is crucial that the office of the United Nations High Commissioner for Human Rights maintains its strong presence in Bogotá and at other locations in Colombia. The International Labour Organization has now decided to open a mission in Colombia. We welcome any and all protection it will be able to offer the labour movement there.

The delegation had a meeting with two voluntary organizations working for displaced people in Colombia. We asked **Alfonso Castillo** of ANDAS about President Uribe's surprisingly high public approval rating (56%). What was the reason for this? He said:

“The Uribe phenomenon is very interesting. The first explanation is the way he uses the media. He is very intelligent, a very good communicator, and he manipulates situations to his advantage. Secondly, all the power of the State is focused on promoting his image. He came to power in the middle of tremendous conflict, and took to saying that he would provide an alternative. That led many people to believe he would be a saviour. But little by little people are waking up to the reality.”

### 3. The ‘war on terrorism’ in Colombia

In the four years since Alvaro Uribe won the presidency of Colombia by promising to defeat the guerrillas and make the country safe in 180 days, the war has intensified and spread. It now costs US\$1.3m per day (of which the US government provides \$500,000).<sup>1</sup>

From everything we saw, heard and read during our visit, it appears that Uribe’s policy of ‘democratic security’ has intensified the repression and multiplied the extra-judicial executions, arbitrary arrests<sup>2</sup> and mass detentions. There has been an increase in harassment and intimidation against journalists, human rights defenders and lawyers, trades unionists, peasant and indigenous leaders, and against people living in areas previously controlled by left-wing guerrillas. Stigmatised as supporters of terrorism, these social actors are vulnerable to assassination by the right-wing paramilitary groups which have flourished under conditions of impunity.

We heard many testimonies, from different parts of the country, about:

- arbitrary mass detentions;
- the use of patently unreliable and frequently anonymous ‘informers’;
- patently unfounded accusations of rebellion, terrorism or support for terrorism being used to justify detention;
- violations of due process safeguards surrounding detention;
- harassment and intimidation of lawyers acting for unpopular clients
- impunity for paramilitary groups targeting the State’s ‘internal enemies’.

#### Mass detentions

These appear to be most common in areas which the Government had surrendered to the FARC guerrillas in the 1980s and 90s. That, we were told, meant there was no State presence in those areas – no schools, no health care, no roads, no infrastructure of any sort. The community was left to organize its own survival as best it could. In fact there is a long tradition of self-organization in Colombia, and people draw on this by forming community action councils to meet the community’s basic needs. Where necessary they work out a *modus vivendi* with the guerrillas. We were told that when Army enters areas where this has happened, all the inhabitants are automatically assumed to be guerrillas, or at least guerrilla supporters.

Witnesses from San Vicente de Caguán (Caquetá department) which was handed over to the FARC five years ago, told us that when it was retaken by the Army the inhabitants were charged with collaborating with the FARC. Witnesses from Montes de Maria (Sucre department), a cluster of villages close to both an oil pipeline and a drugs corridor to the US, told us the purpose of the Government-declared ‘rehabilitation zone’ in that area was to clear out the local population. Peasants’ food crops have been destroyed on the pretext that they are used to feed guerrillas, although no guerrillas have been sighted in the area for three years. For the same reason, medicines are often unobtainable. Groups of soldiers frequently arrive by lorry in the villages of the area in the early hours of the morning, forcing everyone out of bed and taking men away. Twenty-seven men in the area had been detained in November 2005 and taken to the Picota prison in Bogotá.

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<sup>1</sup> According to Carlos Lozano, editor of Voz newspaper, Bogotá.

<sup>2</sup> Arbitrary arrests went up to over 6,000, an increase of more than 300 per cent, in the first two years of Uribe’s presidency according to the ‘Coordination Colombia-Europe’ coalition of NGOs.

We were told that 95 percent of the detainees rounded up in this way are released by the courts for lack of evidence – though many of them spend long periods in detention before this happens. In the communities visited by the Army, houses are raided two or three times a week and community organizations are criminalised. In some places this was described as “collective punishment”. Following a military defeat by the FARC of a paramilitary group (known as the Bloque Centauros), anti-terrorist units began rounding up community leaders, and the army and paramilitaries carried out a series of reprisal massacres.

In one operation among many in Sucre department, 156 peasant farmers (*campesinos*) were arrested in November 2003. The local prosecutor, Mr Pacheco (unusually, a qualified lawyer) released 128 of the men for lack of any reliable, admissible evidence against them. He was then investigated by the Attorney-General, suspended and detained on suspicion of supporting the guerrillas. Later, he was exonerated.

### **The use of informers**

We were told that when the Army arrives in an area it conducts a local census. (In Montes de Maria, we heard that a census of people and animals is conducted every four months.) It then recruits young men, who may be demobilised paramilitaries or former guerrillas. These men are prompted (‘guided’) to identify people as guerrillas. With the help of these young balaclava-clad informers, local people are rounded up and designated ‘guerrillas’. As Hernan Sanin Posada, the Deputy Defence Minister, admitted to us, the informers may be paid for their services. The same informers have been known to supply information on up to 200 individuals living in ten or more departments of the country – information which cannot be other than unreliable. We were told that the informers are taken on patrols and to military checkpoints, and are employed in towns as well as in rural areas to point out ‘subversives’. We heard that these young men produce their incriminating statements in improbably stilted legal language.

One member of the agricultural workers’ trade union FENSUAGRO, who practises organic farming and seed distribution in Puerto Leguizamo (Putumayo department), spoke of being rounded up the day after a large joint military operation. Of the eleven people initially arrested, only three were taken, by helicopter, to the military base in the city of Puerto Asis, and told that “you three are enough”. At the base this man was offered money to work as an informer. When he refused to cooperate, three ‘re-inserted’ (rehabilitated) guerrillas were used to accuse him of the offence of ‘rebellion’ and of supporting the FARC guerrillas. Many people in the prison where he was held had been detained on similar threadbare evidence. In his community, he said, 22 people had been taken. None of them could afford proper lawyers to defend them, so they spent six months in prison while the allegations were investigated.

### **Patently unfounded allegations**

Miscarriages of justice continue because legitimate political activity is constantly treated as endorsement of violence and terror.<sup>3</sup> While some of the detentions appear to be arbitrary, others are apparently targeted at particular individuals – not however on the basis of genuine information and evidence, but using obviously fabricated evidence of involvement with guerrillas.

The offences of rebellion, terrorism and support for terrorism are some of the most serious on the statute book. Having heard so many grave cases of trade unionists, human rights defenders and social activists being arrested and accused of terrorism, we asked the Attorney-

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<sup>3</sup> The Colombian Commission of Jurists lists a number of recent cases where academics and human rights defenders were incarcerated and accused of support for insurgency. See the report ‘Human rights defenders and the fight against terrorism in Colombia’, CCJ, 2005.

General what guidance, if any, was given to local prosecutors in deciding the criteria for arrest on suspicion of support for terrorism. He replied that because local prosecutors had autonomy, no guidance could be given. We said no such autonomy had been evident when a certain local prosecutor, Mr Pacheco (see above), was suspended and investigated. That, said the Attorney-General, had happened while his predecessor was in office.

### **Lack of due process**

Due process is essential to protect innocent people from unfounded allegations. Alarming, the Colombian Government seems set on weakening due process rights. The Colombian Commission of Jurists told us that following Uribe's accession to the presidency in 2002, the 1991 Constitution (which guarantees due process rights) was amended to enable the military to detain and question suspects and search premises without a judicial warrant, and also to take censuses of the population and to intercept communications. The Constitutional Court later ruled that all the amendments were unconstitutional because of procedural irregularities when they were adopted. The CCJ now fears a fresh attempt to push them through. Meanwhile, warrantless detention and military censuses appear to be widespread, even without constitutional sanction. Many of those who spoke to us said they had been arrested without a warrant, or were not allowed to see a warrant, and some said that warrants were filled out retrospectively. In one case, we were told that a local prosecutor sitting in the military base was filling the names of people already rounded up on the warrant forms.

Colombia's trial system is in the process of switching from an inquisitorial to an adversarial ('accusatorial') system. The latter system is in place in Bogotá, but even there the two systems are running in parallel, since the old system applies to all those arrested under it. While the advent of the new system means much shorter periods of pre-trial detention, the fact that examining judges no longer conduct investigations and search for evidence has produced an unwelcome effect: the absence of legal aid results in accused persons entering guilty pleas because they cannot afford to hire lawyers to obtain the necessary evidence to fight the allegations.

### **Lawyers accused**

Members of the Colombian Commission of Jurists (CCJ) described the hostile attitude of public authorities and the police towards human rights lawyers. The CCJ had been threatened for its work on behalf of the 'peace community' of San José de Apartadó (Antioquia department), which declared itself a 'neutral zone' in 1997. Its former mayor Gloria Cuartas was labelled a guerrilla sympathiser in 2005 after publicly accusing the Army's notorious 17<sup>th</sup> brigade of involvement in the continuing massacres against the community's leaders. The CCJ said lawyers were frequently identified by judges with their clients, and labelled 'guerrillas' lawyers'.

### **Dangerous allegations**

Vice-President Francisco Santos and President Álvaro Uribe have publicly denounced opposition parties and candidates or human rights groups and lawyers as communists, guerrillas or supporters (direct or indirect) of terrorism. The CCJ told us that in September 2003 the President described human rights defenders as "*Political schemers at the service of terrorism, cowards who hide behind the banner of human rights, trying to give terrorism back the space which the public forces and the citizens have taken away*".<sup>4</sup> When Gloria Cuartas ran for the senate in 2005, a video was released during the elections accusing her of engaging

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<sup>4</sup> Speech on 8 September 2003, transmitted on all national television channels at prime time by presidential order, quoted in 'Human rights defenders and the fight against terrorism in Colombia', Colombian Commission of Jurists, 2005.

in international propaganda work for the FARC. In 1997 the Inter-American Commission of Human Rights had condemned the Colombian Government's involvement in the 'political genocide' of the Unión Patriótica party in the 1980s and early 1990s. Years later, Uribe released a video showing a UP survivor alleging that the party was a guerrilla front. Negotiations for a friendly settlement of the UP case are currently stalled.

In March 2005 President Uribe condemned the lawyers' collective CAJAR. In his presidential campaign this year he attacked human rights defenders and said all the other candidates were 'communists'. In April 2006, when allegations surfaced of DAS collusion with paramilitaries, Uribe responded by attacking the journalists who wrote the story – even as he admitted to personal meetings with paramilitary commander Salvatore Mancuso, who has been convicted of human rights abuses and is wanted for extradition to the United States for drug-trafficking.<sup>5</sup>

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<sup>5</sup> 'Uribe must end attacks on media', Human Rights Watch, 17 April 2006.

## 4. Impunity

Impunity – the deliberate failure to prosecute crime – has long been identified as a key obstacle to fundamental reform in Colombia. Impunity for human rights violations is especially widespread. According to the Inter-American Commission on Human Rights, impunity is "structural and systemic. [It] is not simply a question of leaving numerous individual crimes unpunished...[but]...of the creation of an entire system of impunity...[which]...is one of the most important factors contributing to the continued violation of human rights and to the general increase in violence...." in Colombia.

We identified two chief causes of the impunity. First, a widespread failure by the existing legal system to ensure full and effective accountability. Second, and perhaps more worryingly, changes and proposed changes to the law and the legal system by the Uribe administration which make it even less likely that the violators will be called to account.

On the face of things, Colombia's sophisticated legal system would, if it worked properly, be quite effective in protecting the rights of its citizens. There is an independent authority responsible for investigating and prosecuting criminal cases (the Fiscalía). Although there is a separate system of military courts, moves are now being made to arrange for the crimes of genocide, torture, forced disappearance, crimes against humanity and rape to be tried in the ordinary courts. And there is a national human rights Ombudsman with regional offices (the Defensoría del Pueblo) and an Inspector General's office (the Procuraduría General de la Nación). At the top of the court structure are four more organs: a dedicated Constitutional Court, the Supreme Court of Justice, the Council of State (the appellate court in constitutional cases) and the Superior Judicial Council. The reformed Constitution of 1991 enables citizens to claim their constitutional rights as citizens through a variety of conventional civil remedies for damages, as well as the popular and by all accounts very effective *tutela* procedure<sup>6</sup> (see further below).

Yet virtually all the evidence we heard while in Colombia showed that the system simply does not work. The pattern of testimony was depressingly similar from one case to the next: horrific human rights violations (arbitrary arrests, mass detentions, torture and extra-judicial killings), with virtually no attempt made by the State organs to bring those responsible to account. Time and again, victims gave us graphic accounts of how family members had been attacked, intimidated or killed. In hardly any case had there been a criminal trial of the perpetrator or a successful civil claim for damages.

We heard, for example, that on 25 November 2005, at a hospital in Florencia, Caquetá where a meeting of ANTHOC (the healthcare workers' union) was taking place, a bomb was detonated by remote control, killing one person and injuring 39 more. There has been no official investigation.

On 4 May 2003, 25 year-old Alexas Riberio, who worked as a watchman for a mining company in Cano Negro in Arauca, was killed at work. We were told that the role played by the army, or by anyone else, in the killing has never been investigated. Grenades had been

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<sup>6</sup> Article 86 of the 1991 Constitution provided, for the first time, that "everyone can use the *Acción de tutela* to demand before judges, in any moment and place, through a preferential and summary procedure, for themselves or for whom they are acting in their own name, the immediate protection of their constitutional and fundamental rights, when they feel that those rights are being threatened or violated by either action or omission of any state authority". Petitions of *tutela* therefore permit an individual who feels his or her constitutional rights are being violated to request immediate court action, provided they have no other legal recourse. Dora Lucia Arias of the CAJAR lawyers' collective told us that they had brought around 5,000 *tutela* cases since the remedy came into existence.



planted on his body to make it look as if he had been killed in combat; this would avert a trial in the ordinary courts. (We were told that victims of torture and extra-judicial killings are afterwards routinely dressed in military fatigues, for the same reason.)

In 2005 Hernando Hernandez, a human rights worker for the FENSUAGRO agricultural workers' union, was detained without trial for 6 months. We were told that since 1986, when the *Central Unitaria de Trabajadores* (CUT, the largest Colombian trade union federation) was founded, there had been only 6 successful prosecutions for the 3800 registered<sup>7</sup> assassinations of trade unionists. This reflects the findings of the Inter-American Commission on Human Rights, which says it is aware of “only a very few cases in which State agents responsible for human rights violations have received criminal convictions”.

Impunity is further compounded by attacks on those within the justice system who try to protect human rights. Nearly all the human rights lawyers we met said they had received death threats and had to worry for their own safety. We heard a very moving account from regional prosecutor Orlando Rafael Pacheco Carrascal. In May 2004 he was himself arrested, persecuted and internally displaced because he had ordered the release, for lack of evidence against them, of 156 people detained in Sucre department. Pacheco's experience is part of a broader politicisation of the Fiscalía, which has been described as resulting in a “marked hostility to human rights investigations” and an “ongoing effort to purge the [Fiscalía] of officials willing to pursue these investigations”<sup>8</sup>.

What we heard bore out the opinion of the UN Working Group on Enforced or Involuntary Disappearances that in Colombia there is a "...gap between a highly sophisticated legal system and very poor concrete results of the legal mechanisms".

We also saw several examples of proposed and actual changes to the law and legal system which further entrench impunity. The chief concern in this area is the Justice and Peace Law (Law 975 of 2005), promulgated in July 2005, and related Decrees, discussed below. This legislation will, it is feared, confer impunity on demobilised paramilitaries who have committed atrocities in the past.

We were also very concerned to hear of repeated attempts by the Uribe administration to eliminate or severely restrict the right to bring *tutela* proceedings. Petitions of *tutela* have been used in the past to compel the Colombian state to comply with its obligations to assist displaced people; to force the civil justice system, rather than the military courts, to exercise jurisdiction in cases implicating senior members of the security forces; to secure payment for teachers on strike; and to win individual protections in health-care, education and social security. Since coming to power in 2002 President Uribe has worked to undermine the *tutela* mechanism. His Government has twice proposed, in October 2002 and February 2004, that the Constitutional Court should be prevented from ruling on measures announced during ‘states of internal commotion [emergency]’; that *tutela* should be restricted to cases where fundamental rights are threatened; and that judges in *tutela* cases should take account of circumstances such as the public interest and financial sustainability.

The Uribe administration is keen to clip the wings of the Constitutional Court, which it has criticised as an impediment to its own policies, and has called for a new supreme court composed of Government representatives. Uribe has also attacked the reformist 1991 Constitution as inadequate for the purposes of his ‘democratic security’ policy. His Government has entered a reservation to the jurisdiction of the International Criminal Court for at least the next 7 years. This ensures that crimes against humanity committed by

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<sup>7</sup> Many of these cases are not properly recorded owing to poor communication between regions, a shortage of resources for human rights monitors, fears of reprisal, etc

<sup>8</sup> Amnesty International Briefing to the UN Committee Against Torture, November 2003, page 17

Colombian state agents cannot be tried in the International Criminal Court before 2013 at the earliest.

When we met the ‘People’s Defender’ (Defensor del Pueblo), Volmar Pérez Ortiz, he did not seem unduly worried about all this. Congress, he said, was unlikely to support the proposals to restrict *tutela*, and the Constitutional Court issues were merely a “technical debate”. But lawyers at the Colombian Commission of Jurists said they were “permanently concerned” about these issues. Another lawyer, Felix Bonilla, who worked with the teachers’ trade union FECODE, said the Government’s aim was to “do away with” *tutela*.

We do not share the optimism of the Defensor del Pueblo. We are afraid the constitutional changes proposed by the Uribe administration will entrench impunity even more and so prevent redress for the victims of human rights violations.

## 5. The Justice and Peace Law and related Decrees

Right wing paramilitary groups have been a feature of Colombian life for many years, and have been responsible for the vast majority of human rights violations, often acting in collusion with state security forces. In late 2003 President Uribe introduced a demobilisation process for the paramilitaries. All the lawyers we met in Colombia, except those working for Government agencies, condemned the legal framework in which the demobilisation process is taking place.<sup>9</sup>

The most fundamental concern is that the framework ensures legal impunity for the vast majority of demobilising paramilitaries. Law 784/2002 pardoned demobilised armed actors who had not committed serious human rights violations; decree 128/2003, which superseded it, pardoned all those who had not been *investigated* for such violations before demobilisation. Because, according to estimates by the Prosecutor General, only 55 of over 11,000 paramilitaries<sup>10</sup> demobilised by the time of the Decree had been investigated for such crimes, it is thought that over 99.5% of the demobilised paramilitaries will not even be summoned to testify in order to help establish the truth<sup>11</sup>. Under Law 975 of 2005 (the ‘Justice and Peace Law’) if the Prosecutor General concludes that a paramilitary’s “voluntary statement” covers all the crimes s/he has committed, there is no further investigation of the crimes. The case is immediately remitted for sentencing, and the maximum sentence is to be 8 years imprisonment, however heinous the crime. If the Prosecutor General does not accept that the paramilitary has made a full confession, charges must be brought within 36 hours and the case prepared for hearing within 60 days, even in complex cases of murder<sup>12</sup>. These time limits pose a serious limitation to effective investigation and prosecution. Additionally, the absence of appropriate penalties for the gravest crimes runs contrary to international humanitarian law.

The new law offers neither justice, nor truth, nor peace. It was framed to give the impression of resembling legislation introduced in other South American countries to underpin systems of transitional justice, following the atrocities committed by oppressive regimes. All these systems, however, involve civil society in the process and are intended to ensure that history does not repeat itself. Neither of these features can be found in the Colombian legislation.

Crucially, there has been no full-scale demobilisation. The paramilitaries’ economic, military and political power structures have not been dismantled. Although hostilities have in theory come to an end, demobilised paramilitary groups continue to violate human rights on a regular basis. They often disguise their activities by posing as members of private security firms or working as informers for the security forces. Evidence has emerged of continuing links between the paramilitaries and the Colombian state forces, most recently in Arauca, Meta, Chocó and Medellín. At least 2,750 people have been killed or disappeared by paramilitaries since the start of the demobilisation process in December 2002. Seventy-five per cent of these incidents have occurred in areas where paramilitary units, although officially demobilised, continue to operate, especially in the department of Antioquía. The Prosecutor

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<sup>9</sup> Even the Attorney-General, Mario Iguarán, who is said to have been responsible for drafting the Justice and Peace law, conceded that it had ‘gaps, faults, and a lack of reparations for victims’ (meeting with Attorney-General, 18 May 2006).

<sup>10</sup> By mid-March 2006, about 24,000 paramilitaries had demobilised (Colombia Forum, Issue 40, p.5).

<sup>11</sup> *Comisión Colombiana de Juristas*, Colombia 2005: Situation of Human Rights and Humanitarian Law, para. 3.1-3.2

<sup>12</sup> There are also real concerns about the credibility of the demobilisation process. In her 2005 report on Colombia, the UN High Commissioner for Human Rights noted a serious discrepancy between the 14,000 demobilised fighters and the number of weapons handed in (just over 7,000). Analysts have noted that twice as many people have demobilised as were originally estimated to comprise the paramilitary groups. The legislation provides no means of contesting the membership returns supplied by paramilitary commanders (Colombia Forum, Issue 40, p.5).

General has reported a positive outcome in only 3.9% of the cases of human rights violations which occurred during the process of negotiation with the paramilitaries. What is more, new paramilitary groups are now beginning to emerge, such as the “Nueva Generación” group in Putumayo<sup>13</sup>.

The Ombudsman’s office (Defensoría del Pueblo) castigated the fact that the law does not allow victims to give evidence or participate in the process<sup>14</sup>. The legal framework does make provision for reparations for the victims of human rights abuses<sup>15</sup>, but these provisions are fatally flawed. Seven of the 12 members of the National Commission for Reparation and Reconciliation, set up in October 2005, are Government or State representatives. The victims’ movement has not been consulted, and the two members appointed in March 2006 to represent the interests of victims are mere figureheads, according to human rights bodies and other NGOs. The Commission itself has no guaranteed budget<sup>16</sup>.

Perhaps the most worrying feature is the risk of permanent ‘institutionalisation’ of paramilitarism through Decree 4760 of 2005. This gives paramilitaries a veiled amnesty for the illegal seizures of land from displaced people, and even offers incentives to grow crops on those lands. Decree 2767 of 2004 allows the Ministry of Defence to hire demobilised paramilitaries (in early 2006 President Uribe announced that 15,000 – 20,000 demobilised paramilitaries would be trained as unarmed civic policemen<sup>17</sup>); and authorizes the use of weapons by civilians<sup>18</sup>.

International criticism<sup>19</sup> of the Justice and Peace law and related decrees has resulted in a series of legal challenges to the legislation<sup>20</sup>. It is unlikely that these will lead to substantive amendments, because the measures have been skilfully presented, inside and outside Colombia, as an honestly-brokered peace process.<sup>21</sup>

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<sup>13</sup> See *Comisión Colombiana de Juristas*, Colombia 2005: Situation of Human Rights and Humanitarian Law, paras. 2.1-2.2 and 3.3; Colombia Forum, Issue 40, p.6 and the Report of the UN High Commissioner for Human Rights on Colombia, January 2006 (E/CN.4/2006/009).

<sup>14</sup> 12<sup>th</sup> Report to Congress of the Defensor del Pueblo (2005).

<sup>15</sup> See further on this *Comisión Colombiana de Juristas*, Bulletin No. 3, With No Guarantee of the Right to Reparation

<sup>16</sup> Colombia Forum, Issue 40, p.7

<sup>17</sup> Colombia Forum, Issue 40, p.6

<sup>18</sup> *Comisión Colombiana de Juristas*, Colombia 2005: Situation of Human Rights and Humanitarian Law, paras. 2.4-2.5

<sup>19</sup> See for example the comments of the UN High Commissioner for Human Rights, the International Commission of Jurists and the British Bar Human Rights Committee

<sup>20</sup> One such challenge was determined by the Constitutional Court shortly after the delegation returned to the United Kingdom (see *El Tiempo*, Hours of Tension following the Justice and Peace judgment, 20 May 2006).

<sup>21</sup> Colombia Forum, Issue 40, p.5

## 6. Displaced people

There are an estimated 3 million internally displaced people (IDPs) in Colombia as a result of the internal armed conflict. We met with **Jaime Cedano** of *Redvivir* and **Alfonso Castillo** of *Andas*. Both are NGOs working with victims of State crimes, including mass displacements of the civilian population

**Jaime Cedano** explained the different types of displaced groups: those who have abandoned their home regions because of the fighting there; those displaced by mega-projects where Government schemes have simply taken their land; and peasants forced off their land by paramilitaries who want the land to grow narcotics.

There is a fourth group - people displaced as a result of threats against their lives, for instance because of political or trade union activities. *Redvivir* works with this group, setting up production schemes to help them earn an income.

**Alfonso Castillo** told us that *Andas* was set up 16 years ago by former members of the Union Patriótica. Based in 12 cities in Colombia, it provides legal and psychological help to activists and offers capacity-building to enable people to exercise their rights.

“Under Law 387 of 1987 the local authorities are supposed to provide housing for displaced people, but they ignore the rules. The Constitutional Court has condemned them for this. When the Government says they give humanitarian aid, they mean just one handout, a box of food when people arrive. To get subsidised housing, you have to have a bank account; and most displaced people don't have anything to open an account with. Most of them don't get any health care either.”

## 7. Journalists and press freedom

Freedom of expression is supposedly protected by Article 20 of Colombia's 1991 Constitution<sup>22</sup>. However, journalists are constantly threatened both by State agents and by paramilitary and illegal armed groups. On 14 June 2006, barely a fortnight after Alvaro Uribe's re-election as President, the New York-based Committee to Protect Journalists reported a fresh wave of threats of violence against journalists and non-governmental organizations, including the press freedom group 'Fundación para la Libertad de Prensa' (FLIP). On 7 June an unknown group calling itself the Free Colombia Democratic Front sent emails to the FLIP and other civil society groups, accusing them of having ties to guerrillas and declaring them military targets. During our visit in May Carlos Lozano, editor of the weekly 'Voz', told us that his predecessor, Manuel Cepeda Vargas, had been assassinated in 1994.

"Some of our journalists in Bogotá have been killed, others have had to leave the country, often for Europe. In the past 12 years there have been repeated threats on my life. The offices we used to work from were blown up twice."

Julio Avella, a former 'Voz' correspondent in Bucaramanga, was one of the victims. Arrested in 2004 on a charge of 'helping the guerrillas', he spent six months in prison before being released on an official admission that it had all been a 'mistake'. But the next day he began receiving death threats from paramilitaries. They continued until Voz got him and his family out of the country to Switzerland, where they are living now.

'Voz' itself often receives death threats against its journalists, usually by phone but also in the form of anonymous letters. Last year an anonymous funeral wreath arrived at the paper's offices. Lozano's assistant Alvaro Angarita commented on the close links between the political establishment in Colombia and the media, and the fact that Colombia's only national daily newspaper is owned by the family of the Vice-President. The media owners intimidate journalists who try to organize. In turn, they practise self-censorship. This helps to explain why there is still no proper journalists' union in Colombia.

On 15 May, three days after we arrived in Bogotá, 15,000 indigenous people joined a week-long protest against land confiscations and the Free Trade Agreement in the departments of Cauca and Narino. The demonstration was supported by FENSUAGRO, the agricultural workers' union. On the second day of the protest, according to some media reports, the demonstrators were fired upon from Black Hawk helicopters while blockading the Pan-American highway. There was one reported death. On May 18 we learned that four Colombian journalists had been arrested by police at the site of the demonstration and had their equipment confiscated. They were Richard Calpa, Marcel Forero, Carmen León and Jesus López. This effectively prevented media coverage of the demonstration and its demands.

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<sup>22</sup> "Every individual is guaranteed freedom to express and diffuse his/her thoughts and opinions, to transmit and receive information that is true and impartial, and to establish mass communications media. The mass media are free and have a social responsibility. The right of rectification under equitable conditions is guaranteed. There will be no censorship." [Unofficial translation]

## **8. Women in Colombia**

We were able to discuss the situation of women in Colombia with the Women's Officer of the CUT trade union federation. We talked with women's rights lawyers, attended a meeting at a women's theatre in Bogota and heard from women's organizations.

Gloria Cuartas, former Mayor of the peace community of San José de Apartador, told us that Afro-Colombian, indigenous and peasant women, particularly in areas such as Putumayo, Arauca, Caqueta and Choco, are among those worst affected by the conflict.

We visited Arauca department, where we held a separate session with local women. They told us that women are raped by members of the armed forces, and if the women report rape to the authorities, the victims are often accused of being guerrillas as well as being stigmatized.

A women's rights activist from AMOSI, the regional organization for peasant and indigenous women, reported sexual abuse and violence against women to the Colombian Standing Committee on Human Rights. She has since received death threats and been followed.

The Deputy Defence Minister told us that such incidents were infrequent and isolated and were punished with the utmost severity. We were promised statistics of convictions for these offences by the military, but none have been received.

### **Montes de Maria**

Marta Sanchez, a community leader from Montes de Maria in Sucre department, told us that the fumigation of crops in this impoverished community is destroying yucca, rice and plantain, poisoning the land and displacing the population. At roadblocks, the Army tax locals for taking their produce to the market. To combat the guerrillas, the military lay landmines on land farmed by remote communities. They come into the town, set up hammocks on their porches, kill their chickens, force the women to prepare food for them and sit with their children showing them how to play with their guns. There are now only 27 women left in Montes de Maria. Some have had their men killed or taken away.

### **Women IDPs**

Back in Bogotá, we heard from the Popular Women's Movement, which mobilises Afro-Colombian, peasant and indigenous women. The speaker described the Soacha suburb in Bogota, which is full of displaced women. Here urban paramilitaries patrol the women, trying to dictate their behaviour, the clothes they wear and when they can go out. Afro-Colombian women in the neighbourhood are expected to cook and "attend" to the paramilitaries. The paramilitaries leave in the early hours of the morning, usually stealing something from the house so that if they are reported, the police focus on theft rather than sexual violence.

### **Women at work**

Of the 72% of Colombians who work in the informal sector, 52% are women. Those working from home have no labour protection or social security. In the lead-up to Valentine's Day, flower sellers typically work from 5 a.m. to 10 p.m.

Of the 270,000 teachers in Colombia, 85% are women. Of 520,000 health-care workers, 485,000 are women. As a result of privatisation and reform of the health-care system, an

estimated 135,000 women have lost their jobs. Since last year, eight female nurses and 16 teachers have been assassinated.

### **Families and displacement**

We heard much moving testimony of the impact of displacement and separation on the health and wellbeing of families. Most of the IDPs had arrived in Bogotá from outlying regions with little but the clothes on their backs. They were living in Bogotá's urban sprawl without State assistance or compensation for their displacement. Because of privatization, most IDPs had no health cover. Those who are widows cannot reclaim land stolen from their families and husbands, and remain trapped in poverty.



## 9. Prisons

The conditions in Colombia's prisons were severely criticised in the 2005 Report of the United Nations High Commissioner for Human Rights. They continue to "violate and threaten the fundamental rights of persons deprived of their liberty". According to the High Commissioner, the overcrowding itself, with sometimes twice as many prisoners being incarcerated as the prisons have room for, constitutes cruel, inhuman and degrading treatment. Sanitary conditions, food, education and work are all inadequate. In women's prisons, mothers with babies are given one food ration only. There are serious and credible allegations of torture. Of the 69,500 prisoners, only 16,000 have actually been convicted; the remainder are awaiting trial or the outcome of appeals, or are political detainees who are not tried at all.

**Hernando Hernandez Tapasco** told us something of what he endured during his 6 months detention without trial. **Simon Bortina**, a fellow FENSUAGRO activist jailed for 180 days for his activities, described prisoners sleeping on the floors and in corridors and the ready circulation in the prison of cocaine, marijuana, prostitutes and weapons.

We had planned to visit La Picota men's prison and Buen Pastor women's prison in Bogota. Previous delegations to Colombia have been able to make at least one prison visit. But even after continued negotiation by the Justice for Colombia organisers, we were refused access to either of the prisons. We concluded that the prison administration does not at present welcome independent visitors.

## 10. Meeting in Arauca

On 16 May we flew up to Arauca, a department on the Venezuelan border which has been a focus of much guerrilla and paramilitary activity. The Army is here in strength and the centre of the town of Saravena, which we visited, is a muddle of ruined buildings and sandbags following guerrilla rocket attacks in late 2004. It is the local people, and especially local activists, who have suffered most from Army raids intended to flush out guerrilla sympathizers.

Here we met a group of trade unionists and local people whose names have been omitted due to security concerns. We heard that since Uribe came to power Arauca had become a laboratory of war. Human rights violations were systematic and massive

One resident told us how the military set up camp in the houses and schools, using the civilian population as human shields against the guerrillas. Local people are robbed by the soldiers and accused of being guerrilla supporters. The resident gave us the names of two people killed by the Army and said three others had been shot and injured.

Another resident explained how, a week before the elections, 30 people were arrested and taken away in the neighbouring village of Pueblo Nuevo.

The anti-terrorist policies followed by the Government in Arauca are aimed at eliminating grassroots organisations and it is one of the most highly militarised areas of Colombia, partly because of the US oil companies in the region.

“The Army try to fit people up so they can jail them. They come into a town or village, take data and photos and videos of all the people, then this information is brought to the battalion HQ near the airport where the ‘reinserted’ paramilitaries are; they are paid informers who identify people as subversives, then the Army goes out and rounds these people up. The informers get paid by results, so if they say 50 people are supporting the guerrillas, they get more money than if they say five. Right now 17 people are being held in the capital of Arauca. They were taken the Sunday before last [7 May]. These 17 were taken to the base of the 5<sup>th</sup> mobile brigade. Then they brought in more, in groups of three, four and five, to make it 30. All 30 were taken away.”

One active trade union member told us “the traditional parties in Colombia have always fought the left. They stand for the oligarchy and the big landowners. Government repression takes place all over the country, but it is particularly directed against the small farmers who are unable to settle in areas which are already cultivated. They tend to go off and colonise the jungle and they are targeted the most. In 1996 and 1998 the peasants organised big marches to protect their land. In 2000 the paramilitaries arrived. They called themselves self-defence groups. They killed well over 700 trade unionists and peasant activists. The man behind it was the governor of Santander department.

“The army come here and go to the schools and take children out without their parents’ permission. They take them to a military base and get them to salute the flag, and take them around on armoured cars. They arrest farmers, torture and execute them, then dress them up in guerrilla clothes and present them to the media as guerrillas killed in combat. When they arrest people, they have the local Fiscalía [attorney general] in the base writing out arrest warrants after the event.

“Something else you should know is that there are 200 US soldiers based here in Arauca and you can sometimes see them patrolling the streets.”

## **11. Response of the Colombian Government**

Having heard many individual testimonies from trade unionists and others, we raised the incidents with several of the public authorities – the Attorney General, the Ministry of Defence, the Public Defender's Office, the Human Rights Ombudsman and the Army itself.

We summarise their responses as follows:

### **The Public Defender**

He is responsible for defending human rights, especially those of the most vulnerable. However, he does not have any enforcement powers. His job is to ensure that Government recommendations are implemented, and to receive complaints and petitions nationally and through local offices. These run at about 5,000 a year. He said his office was independent and not subject to any interference.

### **The Attorney General**

In view of the seriousness of the offences of rebellion and support for terrorism, for which many trade unionists and others are arrested and detained, we asked the Attorney General what, if any, guidance local prosecutors had in terms of the criteria for arrest. He told us that the autonomy of the local prosecutors rendered it impossible to promulgate such guidance. We suggested that this autonomy was not in evidence during the suspension and investigation of Mr Pacheco (see above); he observed that this occurred during the tenure of his predecessor.

### **The Ministry of Defence**

Meeting the Vice-Minister of Defence and Carlos Gomez, the Army's adviser on human rights, we asked about the recent violence in Cauca and Narino departments. They said the incident was under investigation and that the police had been trying to clear the Pan-American Highway, blocked by the demonstrators. No shots had been fired and only teargas had been used. The demonstrators had thrown a policeman from a hilltop and he was now a paraplegic.

Yes, they did use paid informers – payment was by results.

As for the military assistance received from the UK Government, no figures were available but training in human rights and humanitarian law was received from Britain, and the UK military shared with the Colombians their experience of dealing with the IRA.

The criticisms of the UN's High Commissioner for Human Rights and the recent increase in abuses perpetrated against trade union activists are taken very seriously. In 2005 there were 11,000 military operations and 1,300 complaints about Army behaviour. One per cent of the members of the armed forces were currently under investigation.

Queries from ILO observers, lawyers, journalists and NGOs were welcome.

### **Ministry of Protection**

We met with Jorge Sanchez and Gloria Gaviria, the human rights coordinator, and Jose Gabriel, the head of internal relations. They confirmed the ban on strikes in essential services. In April the magazine 'Semana' had published a 'hit list' of people supposedly targeted by DAS, but there was no proof that DAS actually held such a list.

## **12. British military aid to Colombia**

Our delegation was gravely concerned to learn that the UK Government currently has a classified military aid programme in Colombia. We find it hard to understand how our Government can justify the provision of such aid, which is believed to be valued at over £1 million per year, in view of the human rights abuses detailed in this report and supported by many authoritative reports.

We fail to comprehend why aid is not given for social programmes and humanitarian assistance, for example to assist the displaced persons or facilitate good governance by way of working with local people and civil society, including the trade unions, who wish to engage in the democratic process. We were deeply concerned to learn that, despite the high levels of poverty in Colombia, all UK assistance to Colombia is for military purposes and that the Department for International Development (DFID) provides nothing.

Though we have requested a meeting with Lord Triesman, the Foreign Office Minister responsible, to raise these concerns he has refused to meet with the delegation participants.

Whilst the Government has acknowledged that it gives ‘counter-narcotics’ aid it still declines to give details of how much aid is sent to Colombia or which military units the aid is going to. This is a major concern as some ‘counter-narcotics’ units in the Colombian Army are heavily implicated in human rights abuses. This is particularly apparent with the ‘High Mountain Battalions’ that specialise in counter-insurgency work and which, according to reports in the British press, are receiving UK military aid.

Calls for an end to UK military aid are supported by 293 Members of Parliament including the majority of the Parliamentary Labour Party and 153 Colombian civil society organisations, including all major trade unions and the CUT trade union federation, have also called on the Prime Minister to freeze this type of aid.

Our delegation was extremely concerned that UK military assistance to the Colombian Army may be contributing to the human rights abuses detailed in this report and elsewhere and we believe that such aid should be ended until there is a clear and demonstrable improvement in the appalling human rights record of the Colombian state security forces

## Conclusions

Trade unionists in Colombia are subjected to repression by state actors and those supported by state actors for carrying out lawful activities. The State is directly responsible for much of what occurs including the mass detentions, and the targeted arrest and detention of activists accused by paid informers on evidence which, it appears, is known to be false.

Trade unions and their members who oppose the drive to privatise public services and publicly owned enterprises are at the forefront of such attacks as are farm workers who are seen to stand in the way of exploitation of the land by multinational or Colombian corporations for commercially valuable crops and mineral extractions.

The combination of such repression combined with the growing use of agency workers denied trade union rights is part of a policy which seeks to fatally weaken trade unions and punish activists.

While the Government officially recognises the need to protect trade unionists who have received death threats, the protection offered is often not effective and at the same time as offering protection the Government, by identifying such trade unionists as terrorists or supporters of terrorists makes them targets of those it professes to be protecting them from.

It was our impression that an important factor in the electoral success of President Uribe was his virtually complete control of the media. The editor of the only daily opposition newspaper has to be under constant armed guard and his staff are subjected to intimidation and attempts on their life.

We concluded that the sophisticated legal system which formally provides for a satisfactory justice system is often flouted in practice with the knowledge and connivance of the State. Indeed we came across those who were punished for attempting to prevent unlawful detentions.

Among our concerns in that respect are:

- violations of due process safeguards surrounding detention;
- patently unfounded accusations of rebellion, terrorism or support for terrorism being used to justify detention;
- harassment and intimidation of lawyers acting for unpopular clients;
- impunity for paramilitary groups targeting the State's 'internal enemies';
- attempts to dilute the effective remedy of 'tutela' and the powers of the Constitutional Court.

Impunity, by which we mean the deliberate failure to prosecute crime, results in a widespread failure by the existing legal system to ensure full and effective accountability. The widely condemned Justice and Peace Law (Law 975 of 2005), promulgated in July 2005, and related Decrees, confers impunity on demobilised paramilitaries who have committed atrocities in the past. It does not allow victims to give evidence or participate in the process. Demobilised paramilitaries are permitted to benefit from land illegally seized from displaced persons, and large numbers are trained as civic policemen

The Uribe Government has entered a reservation against the International Criminal Court for the next seven years with the result that crimes against humanity committed by state agents cannot be tried in the Court before 2013.

An estimated 3 million people in Colombia have been displaced as a result of the internal conflict. They receive inadequate assistance and are often denied housing, health care or humanitarian aid other than one handout of food.

Women are particularly vulnerable to sexual abuse and violence from the army and paramilitaries, when the men in a family are detained or killed, or they are displaced. We were told that when they reported such acts, they were accused of being guerrillas. It seemed that Afro-Colombian women may be particularly victimised.

Journalists and defence lawyers are also targeted by State agents and paramilitaries. Non-governmental organisations are accused of supporting the guerrillas and thus made targets for the paramilitaries.

The effects of the Free Trade Agreement, which the Colombian Government signed in March 2005, include the dismantling of trade barriers and privatising state owned industries, are of deep concern. A demonstration against it by indigenous people supported by FENUSAGRO the agricultural workers union, which took place during our visit, was reportedly attacked by the army, with the loss of four lives, and four journalists were arrested by police at the site and had their equipment confiscated.

We were denied access to the prisons although previous delegations have been permitted to visit. We heard disturbing accounts of overcrowding, lack of health care, poor sanitation, food, and education. We were particularly concerned at the detention of children with their mothers and the fact that mothers received no food allowance for their children.

As far as we could we raised these matters with the authorities and report their response.

As outlined in the final chapter we are also particularly concerned that Britain provides military aid to the Uribe government but no bilateral humanitarian assistance to civil society. We would urge the Government to reconsider this policy in view of the evidence we outline in our report that there are continuing grave human rights abuses in which the army and other state actors are both directly and indirectly responsible.

We also consider it vital that international agencies including the ILO and UN continue to have a permanent presence to monitor the situation.

## **Appendix 1: List of delegates**

**Lucy Anderson** is Senior Equality and Employment Rights Officer for the TUC.

**Lionel Blackman** is a solicitor-advocate and senior partner of a practice specializing in criminal litigation.

**Tess Gill** is a barrister at Old Square Chambers, Grays' Inn, London, specializing in employment law.

**Henrietta Hill** is a barrister at Doughty Street Chambers, London, specializing in discrimination and criminal justice cases.

**Anna Konzon** is a solicitor and team manager based at the Chelmsford office of Thompsons, specializing in workplace accidents and occupational diseases for trade unions and their members.

**Karen Mitchell** is a senior partner and solicitor based at the Chelmsford office of Thompsons, and a specialist in workplace accidents and occupational diseases.

**Anya Palmer** is a barrister at Old Square Chambers, Grays' Inn, London, specializing in employment law and discrimination.

**Smita Shah** is a barrister at Garden Court Chambers, London, specializing in family law.

**Victoria Vasey** is a barrister at Garden Court Chambers, London.

**Frances Webber** is a barrister at Garden Court Chambers, London, specializing in immigration, asylum and human rights.

**Patricia Wheeler** is a freelance law translator working mainly for the United Nations.