

Press statement

Statement by Professor Philip Alston, UN Special Rapporteur on extrajudicial executions

Mission to Colombia 8-18 June 2009

I carried out a fact-finding mission to investigate extrajudicial executions in Colombia from 8-18 June 2009, and traveled to Bogotá, Antioquia (Medellín), Santander (Bucaramanga), and Meta (Villavicencio).

I am very grateful to the Government of Colombia for inviting me, and for its full and sustained cooperation with my mission. I am especially grateful to President Álvaro Uribe Vélez for an extended and very engaged discussion of some of the key issues. I also met with the Vice-President, the Minister for Foreign Relations, the Minister for Defence, and the Vice Ministers for Defence, and Interior and Justice. Further meetings were with the Constitutional Court, the Supreme Court, the Supreme Judicial Council, the Inspector General, the Public Prosecutor, the Ombudsman, and the National Commission on Reparation and Reconciliation. I met with the Commander of the Army, and the Commanders of the 7th, 4th, and 2nd divisions, as well as military legal advisors and military judges. I met with the Governor of Antioquia, *personeros* throughout the country, a range of Senators and Representatives, and many civil society organizations. I conducted over 100 interviews with witnesses, victims, and survivors. I am especially grateful to the extremely competent, dedicated and insightful officials in the Colombia Office of the UN High Commissioner for Human Rights for their assistance with my mission. They, however, bear no responsibility for the conclusions I have reached.

As an independent expert reporting to the UN Human Rights Council, my mandate is to investigate killings committed in violation of international human rights or humanitarian law; to determine the extent and causes of impunity for such killings; and to propose specific and constructive reforms to reduce killings and promote accountability. In Colombia, I focused on killings by the security forces, guerrillas, paramilitaries and other armed non-state actors, and I examined the effectiveness of the criminal, civil and military justice systems in relation to those killings. It should be noted at the outset that killings by these actors disproportionately affect rural and poor populations, Indigenous people, Afro-Colombians, trade unionists, human rights defenders and community leaders.

The findings that I am presenting today are preliminary. My full report will be published in 4-5 months from today, and will take account of information to be provided by the Government in the course of the next month or so as part of a continuing dialogue. Today I will focus only on a limited range of issues.

I wish to begin by acknowledging the dramatic improvement in the security situation since 2002. The total number of homicides has been much reduced, and security levels in many parts of the country have been transformed. Much remains to be done, however.

Extrajudicial executions by guerilla groups

FARC and ELN guerrillas continue to carry out significant numbers of unlawful killings, especially in order to control and instill fear in rural populations, to intimidate elected officials, to punish those alleged to be collaborating with the Government, or to promote criminal objectives. Their indiscriminate and inhumane use of landmines also kills and maims many.

Extrajudicial executions by the security forces

The most prominent concern is the incidence of so-called “false positives” (*falsos positivos*) and the most publicized examples are the killings of young men from Soacha in 2008.

The phenomenon is well known. The victim is lured under false pretenses by a “recruiter” to a remote location. There, the individual is killed soon after arrival by members of the military. The scene is then manipulated to make it appear as if the individual was legitimately killed in combat. The victim is commonly photographed wearing a guerrilla uniform, and holding a gun or grenade. Victims are often buried anonymously in communal graves, and the killers are rewarded for the results they have achieved in the fight against the guerrillas.

But there are two problems with the narrative focused on *falsos positivos* and Soacha. The first is that the term provides a sort of technical aura to describe a practice which is better characterized as cold-blooded, premeditated murder of innocent civilians for profit. The second is that the focus on Soacha encourages the perception that the phenomenon was limited both geographically and temporally. But while the Soacha killings were undeniably blatant and obscene, my investigations show that they were but the tip of the iceberg. I interviewed witnesses and survivors who described very similar killings in the departments of Antioquia, Arauca, Cali, Casanare, Cesar, Cordoba, Huila, Meta, Norte de Santander, Putumayo, Santander, Sucre, and Vichada. A significant number of military units were thus involved.

Some officials continue to assert that many of the cases were in fact legitimate killings of guerrillas or others. But the evidence – including ballistics and forensics reports, eyewitness testimony, and the testimony of soldiers themselves – strongly suggests that this was not the case. The “dangerous guerrillas” who were killed include boys of 16 and 17, a young man with a mental age of nine, a devoted family man with two in-laws in active military service, and a young soldier home on leave. I cannot rule out the possibility that some of the *falsos positivos* were, in fact, guerrillas, but apart from sweeping allegations, I have been provided with no sustained evidence to that effect by the Government. Evidence showing victims dressed in camouflage outfits which are

neatly pressed, or wearing clean jungle boots which are four sizes too big for them, or lefthanders holding guns in their right hand, or men with a single shot through the back of their necks, further undermines the suggestion that these were guerillas killed in combat.

A further problem concerns the systematic harassment of the survivors by the military. A woman from Soacha described how, in 2008, one of her sons disappeared and was reported killed in combat two days later. When another of her sons became active in pursuing the case, he received a series of threats. He was shot and killed earlier this year. Since then, the mother has also received death threats. This is part of a common pattern.

The key question is who was responsible for these premeditated killings? On the one hand, I have found no evidence to suggest that these killings were carried out as a matter of official Government policy, or that they were directed by, or carried out with the knowledge of, the President or successive Defence Ministers. On the other hand, the explanation favoured by many in Government – that the killings were carried out on a small scale by a few bad apples – is equally unsustainable. The sheer number of cases, their geographic spread, and the diversity of military units implicated, indicate that these killings were carried out in a more or less systematic fashion by significant elements within the military.

Starting in 2007, the Government has taken important steps to stop and respond to these killings. They include: disciplinary sanctions, increased cooperation with the ICRC and the UN, the installation of Operational Legal Advisors to advise on specific military operations, increased oversight of payments to informers, the appointment of the Suarez Temporary Special Commission, the appointment of Delegated Inspectors to army divisions, requiring deaths in combat to be investigated first by judicial police, modifying award criteria, and creating a specialized unit in the Prosecutor's Office (*Fiscalia*).

These encouraging steps demonstrate a good faith effort by the Government to address past killings and prevent future ones. But there remains a worrying gap between the policies and the practice. The number of successful prosecutions remains very low, although improved results are hoped for in the coming year. Three problems stand out. The first is that the *Fiscalia*, and especially its Human Rights Unit, lack the requisite staff, resources and training. A substantial increase in resources is essential. The second is that in some areas military judges ignore the rulings of the Constitutional Court and do all in their power to thwart the transfer of clear human rights cases to the ordinary justice system. The transfer of information is delayed or obstructed, wherever possible jurisdictional clashes are set up, and delaying tactics are standard. Delays, often of months or years, result and the value of testimony and evidence is jeopardized.

The good news is that there has been a significant reduction in recorded allegations of extrajudicial executions by the military over the last 6-9 months. If this trend is confirmed, it will represent a welcome reversal of course, but the problem of impunity for past killings must still be addressed.

Extrajudicial executions by paramilitaries and other illegal armed groups

Despite the significant steps taken by the Government to reduce paramilitary violence, killings by groups that include formerly demobilized paramilitaries continue at a disturbingly high rate across the country. The Government needs to address the resurgence of these groups through comprehensive policies that focus on law-enforcement (including strengthened investigative and prosecutorial functions) and the sustained engagement and protection of the affected communities.

The Government position is that these groups are criminal gangs and must be dealt with as such. While this approach may be appropriate in particular localities, it does not fully address the nature of, and threat presented by, these armed non-state actors in different regions. Regardless of the name applied to them, a failure to address the reasons why these groups have emerged and the extent to which they permeate state institutions and terrorize civilian populations threatens to undermine the important security gains made by the Government. It should urgently improve its efforts to effectively and promptly investigate, prosecute and punish killings by these forces.

By all accounts, demobilized paramilitaries are a major part of the illegal armed groups. Post-2003 demobilization and reintegration policies have not prevented former paramilitaries from killing and engaging in other criminal acts. Although senior paramilitary leaders have been arrested, the economic and command and control structures of paramilitaries do not appear to have been fully and effectively dismantled. In addition, there is an alarming level of impunity for former paramilitaries, and the investigation and prosecution of extrajudicial executions and other human rights violations by former paramilitaries appears to lag severely.

Government institutions

Within Colombia's complex and sophisticated legal structure, the role of the *Fiscalia* is pivotal. The *Fiscal-General* is chosen by the Supreme Court from a list of three individuals proposed by the President. Given the central and critical function of the *Fiscalia*, it is essential that the next *Fiscal-General* be a person of independence, strength and stature.

Human rights defenders

Colombian civil society is vibrant and diverse. It makes invaluable contributions to public discourse and to raising awareness of human rights. But human rights defenders (HRDs) are frequently intimidated and threatened, and sometimes killed, often by private actors. They have been accused by high level officials of being – or being close to – guerrillas or terrorists. Such statements have also been made against prosecutors and judges. These statements stigmatise those working to promote human rights, and encourage an environment in which specific acts of threats and killings by private actors can take place. It is important for senior officials to cease the stigmatization of such groups.

It is also important that a constructive space be fostered for civil society organisations and Government to communicate. I was struck by the extent of polarization in Colombia between NGO and Government positions.

Compensation to victims

It is my understanding that the current draft law on victims' rights – approved by the commission set up to reconcile the texts approved in the Senate and the House of Representatives – contains a definition of victim that includes victims of state agents and generally puts them on equal standing with victims of paramilitaries. It is imperative that as the draft law moves forward, that victims of both state and non-state actors continue to be treated equally.

Other issues

I will be addressing a number of reforms in my full report. They will include:

- Presidential directives to the military justice system to comply with the letter and the spirit of the jurisdictional competency law.
- The undertaking of an independent investigation of the procedures and outcomes of the military justice system in human rights cases.
- All forms of incentives to members of the military for killing should be removed.
- Increased coordination, especially with respect to the tracking of cases of alleged extrajudicial executions, between those institutions responsible for investigating such allegations should be promoted.
- There should be no statute of limitations in civil suits against officials in cases of extrajudicial executions.
- The Office of the Public Prosecutor should continue to be strongly supported, and be provided additional staff, funding, and training.