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## OPEN LETTER TO THE PRESIDENTIAL CANDIDATES PUTTING HUMAN RIGHTS AT THE HEART OF THE ELECTION CAMPAIGN

Dear Presidential Candidate

Amnesty International is writing to you, and to all the other candidates in the 25 May presidential elections, to urge that respect for human rights and an end to impunity be placed at the centre of your political platform. To underscore the depth of your commitment to human rights, Amnesty International is calling on you to set out in detail how, if elected, you will address the long-standing human rights concerns summarized in this letter, which will also be made public, and ensure that international human rights and humanitarian law are fully respected.

Over the years, Amnesty International has published numerous reports, based on detailed monitoring in situ, about conflict-related human rights abuses and violations of international humanitarian law (IHL) committed by the security forces, paramilitaries and guerrilla groups during the internal armed conflict. In its long-standing dialogue with successive Colombian governments, Amnesty International has repeatedly emphasized the responsibility of the state to fulfil its national and international legal obligations to respect and protect human rights, as well as making clear the responsibility of guerrilla groups to fully respect IHL.

The on-going peace process involving the government and the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia, FARC) – which may in future also include the National Liberation Army (Ejército Nacional de Liberación, ELN) – offers the best chance in over a decade to put an end to the hostilities. It holds out the hope that most, if not all, the human rights abuses and violations that have characterized the 50-year armed conflict will be consigned to the past. However, many seemingly intractable conflict-related human rights and humanitarian challenges persist and there is a risk that in the post-conflict environment these may become more acute. Amnesty International's analysis of flawed peace processes in other parts of the world suggests that this is a very real danger. Amnesty International urges you to make a commitment to respect human rights, including the right of victims to truth, justice and reparation.

This letter focuses on key questions related to two fundamental issues: protecting civilians and respecting the right of victims of human rights abuses to truth, justice and reparation. Amnesty International hopes that your answers to these questions will act as a public demonstration of your commitment to adopt concrete and effective steps to protect civilians and end impunity.

### SUMMARY OF CONCERNS

## PROTECTING CIVILIANS

According to the report *¡Basta Ya! Memorias de Guerra y Dignidad* published in 2013 by the government's National Centre for Historic Memory, between 1985 and 2012 there were almost 220,000 conflict-related killings, 80% of the victims were civilians, and at least 25,000 enforced disappearances. Some 27,000 people were kidnapped between 1970 and 2010. Official sources also acknowledge that more than 5 million people were forcibly displaced between 1985 and 2012.

Civilians continue to bear the brunt of the worst excesses of the conflict. Indigenous, Afro-descendent and peasant farmer communities face particularly acute threats because they live in areas of strategic importance for the parties to the conflict and on lands that are the subject of economic interest, such as agro-industrial and mining concerns. Human rights defenders, trade unionists, land claimants, and women and girls are also affected by the human rights consequences of the conflict. The security forces, paramilitaries and guerrilla groups are all responsible for serious human rights abuses and violations of IHL, such as unlawful killings, forced displacement, enforced disappearances, torture, hostage-taking and abductions, and sexual violence.

President Juan Manuel Santos has acknowledged that Colombia continues to experience armed conflict and that the hostilities have created millions of victims. The administration has set up the National Human Rights and IHL System to coordinate action on human rights and published a human rights agenda for 2014-2034. This is a sign of progress, as is the fact that certain key indicators of human rights abuses and violations, such as killings of civilians and kidnapping, have fallen over the last decade. But it would be a mistake to claim that the country has largely overcome its bloody past. It has not. In some important respects, the human rights consequences of the conflict are as grave as they ever were and, in some regions, more acute. For example, over the last year, Afro-descendant communities in the port city of Buenaventura have been the target of a growing tide of violence, mainly by paramilitaries and criminal gangs. The violence has been concentrated in poor areas of the city earmarked for the development of port infrastructure. Despite a heavy police and military presence in these areas, the authorities have failed to stem the violence.

The president has acknowledged the legitimacy of the work carried out by human rights defenders, both men and women, and has condemned attacks against them. But activists continue to face grave dangers. According to the Colombian human rights NGO Somos Defensores, more than 70 human rights defenders were killed just in 2013. Indigenous and Afro-descendant activists, land rights defenders and community leaders were among the victims. According to the Colombian NGO National Trade Union School (ENS), at least 27 members of trade unions were also killed in 2013. These attacks, as well as continued death threats and the misuse of the legal system to bring bogus charges against activists and the theft of sensitive information, undermine the work of human rights organizations and contribute towards creating a climate of fear. The government's various physical protection programmes for human rights defenders and other groups at risk of attacks have invariably saved lives. However, the best form of protection remains elusive: namely a demonstrated commitment by the state that it will not tolerate human rights abuses and violations and having the political will to bring to justice all those suspected of criminal responsibility for such crimes.

Activists and protesters continue to face criminalization and police violence. Legislation has been implemented in ways that facilitate the criminalization of legitimate protest and allegations of excessive and disproportionate use of force by the security forces – especially the ESMAD anti-riot police – during demonstrations persist. Claims by senior officials that protests – such as those by Indigenous communities in October 2013, peasant farmers taking part in a national strike in August 2013, and the peasant farmer demonstrations in Catatumbo in June 2013 – were orchestrated by guerrilla groups also placed protesters at risk of revenge attacks by paramilitaries.

Extrajudicial executions by the security forces continue to be reported, albeit fewer than under the previous administration. However, the Office of the Attorney General has failed to make progress in bringing to justice those responsible for these crimes. Despite repeated orders from the Constitutional Court and recommendations from the United Nations (UN) and the Inter-American human rights system that cases implicating members of the security forces in human rights violations must be investigated by the ordinary civilian justice system, many cases continue to be investigated by the military justice system, which has consistently failed to deliver justice.

Guerrilla groups also continue to commit serious human rights abuses and violations of IHL, especially against communities in rural areas. Despite their public commitment to end kidnapping, cases continue to be reported. The NGO País Libre reported 58 kidnappings by guerrilla groups in 2013, an increase over the previous year. Landmines, mostly laid by the FARC, also continue to kill and maim civilians and members of the security forces. Guerrilla and paramilitary groups continue to conscript boys and girls, forcing families in rural areas to flee their homes to protect their children. The FARC also continues to carry out indiscriminate attacks that place civilians at risk.

The government continues to insist that paramilitary groups ceased to exist following a government-sponsored demobilization process begun in 2005. They have not. Paramilitary groups continue to attack civilians. The government now refers to these groups as criminal gangs (*bandas criminales, bacrim*), and claims they are common criminals. However, the modus operandi of these groups and their victims – human rights defenders, trade unionists and Afro-descendent, Indigenous and peasant farmer leaders – are strikingly similar to those of “pre-demobilization” paramilitary groups. Reports suggest that many of these “post-demobilization” groups are led by middle-ranking leaders in the “pre-demobilization” paramilitary groups.

One of the defining features of Colombia’s armed conflict has been widespread rape and other violent sexual attacks, primarily against women and girls, although men and boys have also be targeted. The Constitutional Court in its Judicial Ruling 092 of 2008 (Auto 092 of 2008) confirmed the scale and systematic nature of sexual violence. The report *¡Basta Ya! Memorias de Guerra y Dignidad* states that there were more than 1,700 victims of conflict-related sexual violence between 1985 and 2012, most of them women and girls. However, widespread under-reporting of these crimes means the true figure is likely to be significantly higher.

Very few of those suspected of criminal responsibility for these crimes have been formally identified by the judicial authorities, let alone brought to justice. Reports published in 2013 by the Constitutional Court and by the NGO Follow-up Group on Auto 092 of 2008 (Grupo de Seguimiento al Auto 092 de 2008) concluded that successive governments had made very little progress in implementing the orders of the Court relating to conflict-related sexual violence.

## THE RIGHT OF VICTIMS TO TRUTH, JUSTICE AND REPARATION

The failure to bring to justice those suspected of criminal responsibility for human rights violations and abuses has helped perpetuate the prolonged conflict in Colombia. The fact that most victims have yet to receive full reparation also undermines confidence in the administration of justice.

The government of Juan Manuel Santos has taken an important first step in recognizing that victims of the conflict have a right to truth, justice and reparation. The 2011 Victims and Land Restitution Law has become the centrepiece of the government’s human rights agenda. It seeks to provide full reparation to some, albeit not all, victims of the conflict and to return to their rightful occupants some of the millions of hectares of land misappropriated by the parties to the conflict.

Control of land, for political, economic and military reasons, has been one of the main drivers of the conflict. The impact on the millions of Colombians who have traditionally relied on the land for their livelihoods – in particular subsistence or small-scale farmers, Indigenous Peoples and Afro-descendent communities – has been enormous. Some 8 million hectares of land have been misappropriated, often through violence, during the conflict. This has been a primary cause of the forced displacement of more than 5 million people and other human rights violations. The perpetrators have not only been the parties to the conflict, but also members of local and regional political and economic elites who hired paramilitaries to force people off their lands, as well as drug traffickers. Large-scale infrastructure developments and the agro-industrial, agro-fuel and extractive industries have often benefitted from such forced displacement and associated land grabs.

The Victims and Land Restitution Law has the potential to have a positive impact on the lives of many victims. However, its effectiveness has been hampered by the limited remit of the legislation, among other serious shortcomings. These have been compounded by a lack of capacity and political will to enforce the law effectively, partly because responsibility for implementing it largely rests with often poorly resourced and sometimes corrupt local and regional institutions.

Implementation of the law has been painfully slow. Fewer than 400 cases have been settled, a fraction of total land restitution cases. In only a handful of these cases have land claimants been able to return to their lands; many cite the lack of security and the failure of the state to provide adequate support to make their returns economically viable as the key reasons preventing them from returning. Meanwhile, human rights violations persist. According to the state's National Protection Unit, some 1,000 land claimants and leaders have requested physical protection measures. According to the Office of the Attorney General more than 30 land claimants and leaders were killed between 2010 and mid-2013.

The paramilitary demobilization process, and the 2005 Justice and Peace Law – through which combatants who laid down their arms benefited from reduced prison sentences in return for confessions about human rights violations and reparations for their victims – failed to dismantle such groups and to respect their victims' right to truth, justice and reparation. Only 22 of the thousands of paramilitaries whose cases were submitted to this process have been convicted of human rights violations. Most of the 30,000 or so paramilitaries who ostensibly laid down their arms never even submitted themselves to the limited scrutiny of the Justice and Peace Law. Many of these paramilitaries continue to operate as part of the "post-demobilization" armed structures. Supporters of the paramilitary demobilization process argued that forgoing justice for the sake of peace was a price worth paying. However, eight years after the Justice and Peace Law came into force, there is clear evidence that the demobilization process failed to bring long-lasting peace, the demobilization of paramilitaries or an end to human rights violations by these groups.

Amnesty International is concerned that history may repeat itself and that the victims of human rights abuses by guerrilla groups may see their rights to truth and justice negotiated away during the current peace talks as the price of peace.

The government has also supported legislation that risks undermining the little progress made to date to bring to justice some of those suspected of crimes under international law and other human rights abuses and violations. In June 2012, Congress approved an amendment to the Constitution (the Legal Framework for Peace) which could enable human rights abusers to evade justice. This will give Congress the power to limit criminal trials to those "most responsible" for human rights abuses and violations and to suspend the prison sentences handed down to all paramilitary, guerrilla and security force combatants convicted of such crimes. In August 2013, the Constitutional Court upheld the constitutionality of the law but ruled that the sentences of those "most responsible" could not be completely suspended if they were responsible for crimes against humanity, genocide or war crimes. However, there is no clear definition of, or criteria to determine, "most responsible".

Moreover, in a context in which high levels of impunity continue to protect those responsible for human rights abuses and violations, full and impartial investigations to identify who is "most responsible" are far from guaranteed. As a result, the legislation risks further undermining the right of victims to truth, justice and reparation. There are also concerns that the scope that the new legislation gives to the Attorney General to prioritize some investigations over others may serve to undercut the obligation under international law to investigate all cases of human rights violations and abuses and violations of IHL.

In December 2012, Congress approved a further reform of the Constitution that would have given military courts greater control over criminal investigations into cases in which members of the security forces are implicated in human rights violations. Although the Constitutional Court threw out the reform on procedural grounds in October 2013, the government has not discounted the possibility of resubmitting it to Congress.

In December 2012, Congress also passed an amendment to the Justice and Peace Law, which again extended the deadline for demobilizations. The new legislation allows members of illegal armed groups who did not lay down their arms when the law was approved in 2005 to benefit from its provisions. This has sent a dangerous message to paramilitary and guerrilla groups that they can continue to operate and to commit human rights abuses and violations and still benefit from the generous provisions in the Justice and Peace Law.

The UN and the Inter-American human rights system continue to play a pivotal role in efforts to improve the human rights situation in Colombia. The peace process offers these intergovernmental institutions, as well as

the international community, a crucial opportunity to assist the Colombian government in ensuring that the right of victims to truth, justice and reparation, essential to delivering an effective and durable peace, is an integral part of the process.

Despite some notable, if limited, successes in the ordinary courts in holding to account those who have committed human rights abuses and state protection programmes that have succeeded in saving lives, many victims continue to turn to the Inter-American human rights system in a last ditch effort to see justice served and to protect their lives.

It was of concern that it took an order from a Colombian court in April 2014 to force the government to reverse its decision not to comply with a request by the Inter-American Commission on Human Rights on 18 March 2014 that precautionary measures be adopted for Bogotá Mayor Gustavo Petro and that his removal from office be suspended until the Commission could rule on the case. States should fully implement IACHR decisions and the government's reticence to do so on this occasion not only could have damaged the Inter-American human rights system but Colombia's standing within it.

## QUESTIONS FOR THE CANDIDATES

### PROTECTING CIVILIANS

- Indigenous, Afro-descendent and peasant farmer communities continue to bear the brunt of the conflict and account for almost all victims of forced displacement. Women and girls from these communities have been particularly hard hit.

**What concrete steps will you take to ensure that such communities are effectively protected? In particular, what specific measures will you adopt to fully implement Constitutional Court Decision T-025 (2004) on the rights of internally displaced people, including Ruling 004 of 2009 on Indigenous Peoples and Ruling 005 of 2009 on Afro-descendent communities, as well as the UN Guiding Principles on Internal Displacement and the UN Declaration on the Rights of Indigenous Peoples?**

**What concrete steps will you take to ensure respect for the right of Indigenous and Afro-descendent communities to free, prior and informed consent in matters relating to their collective territories?**

- Human rights defenders, including trade unionists and community leaders, have played a critical role in standing up for human rights, despite threats and attacks against them. Although the president has promoted a more positive relationship with human rights defenders, activists continue to be threatened and killed.

**What specific measures will you implement to ensure that human rights defenders are effectively protected so that they can carry out their vital work in safety?**

**Will you ensure that procedural safeguards are in place to ensure that the justice system is not misused to target human rights defenders as set out by the 2013 UN Human Rights Council Resolution on "Protecting human rights defenders"?**

**What sanctions will you apply to public officials who undermine the legitimacy of the work of human rights defenders?**

- Sexual and gender-based violence against women and girls continues to be a hallmark of the conflict.

**What will you do to ensure that Auto 092 is effectively implemented?**

**Will you commit to developing and implementing, in consultation with survivors and women's human rights defenders, a comprehensive plan of action to prevent conflict-related sexual and**

**gender-based violence including fully investigating all reported cases, bringing those responsible to justice and providing reparation for the victims?**

RESPECTING THE RIGHT OF VICTIMS TO TRUTH, JUSTICE AND REPARATION

- Impunity for human rights violations in the context of the armed conflict remains widespread.

**How will you ensure the investigation and prosecution of all those credibly suspected of committing crimes under international law and other human rights abuses?**

**Will you repeal the Legal Framework for Peace?**

**Will you reject any legislative measure to broaden the scope of military jurisdiction and ensure that all cases of human rights violations or crimes under international law are handled by ordinary civilian courts and that any such cases already in the military justice system are transferred to civilian courts?**

**Will you ensure that the civilian prosecuting authorities carry out prompt, thorough, full and impartial investigations and prosecutions into human rights abuses and violations against human rights defenders?**

**What specific measures will you take to reverse the very high levels of impunity for conflict-related sexual and gender-based violence?**

- The persistence of paramilitary structures and their continued links to sectors of the security forces and other state sectors represent one of the most serious threats to the rule of law in Colombia.

**What specific measures will you adopt to ensure that paramilitary groups and their political and economic support structures are effectively dismantled and that any links with state actors are effectively investigated and broken?**

- The 2011 Victims and Land Restitution Law is an important first step in providing remedies and reparation for victims of crimes under international law and other human rights violations. However, in its present form and in the context of the continuing conflict, it will not ensure that all victims receive full reparation, including restitution.

**What specific measures will you adopt to ensure that the right of victims to full reparation – including through implementation of the 2005 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law and the 2005 UN Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons – is realized?**

**What specific measures will you adopt to ensure that land claimants can return to their territories or be resettled elsewhere safely and sustainably?**

- The international community's scrutiny of the human rights situation has been a valuable tool for ensuring that the Colombian state and guerrilla groups are held accountable.

**Will you extend the comprehensive mandate of the Office in Colombia of the UN High Commissioner for Human Rights for at least a further three years?**

**Will you fully implement the repeated recommendations of the UN High Commissioner for Human Rights?**

**Will you fully implement – to the extent appropriate to the executive – the judgements of the Inter-American Court of Human Rights and all recommendations made by the Inter-American Commission on Human Rights, including by accepting all requests for precautionary measures?**

**Will you recognize the competence of the Committee on Enforced Disappearances, a key**

**mechanism which forms part of the International Convention for the Protection of all Persons from Enforced Disappearance ratified by Colombia in July 2012?**

- In its Resolution 1325 (2000) on Women, Peace and Security, the UN Security Council urged member states to “ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict” (para 1). Subsequently, the Security Council called on member states to develop National Action Plans or other national level strategies to implement Resolution 1325 at the national level.

**Will you develop, in consultation with women’s human rights defenders and other civil society actors, a National Action Plan to articulate priorities and co-ordinate the implementation of Security Council Resolution 1325 at the national level?**

**Will you ensure that women participate in all peace talks and in all their implementation mechanisms on an equal basis with men?**

Colombia has an obligation under international law to protect its citizens from human rights abuses and violations; to investigate and bring to justice all those suspected of having criminal responsibility for serious crimes under international law; and to ensure the right of victims to full reparation, including restitution. If the Colombian state is unable or unwilling to meet these obligations, then Amnesty International believes this would be solid grounds for the International Criminal Court to intervene.

Amnesty International therefore respectfully requests that you place these issues at the heart of your presidential campaign and, if elected, that you ensure that the right of all citizens to live free from fear, as well as the right of all victims of the conflict to truth, justice and reparation are fully respected. Adopting such a human rights based strategy as the overarching centrepiece of your administration would be the greatest contribution to peace you could make as president.

We look forward to your responses, which we will also make public.

Yours,

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