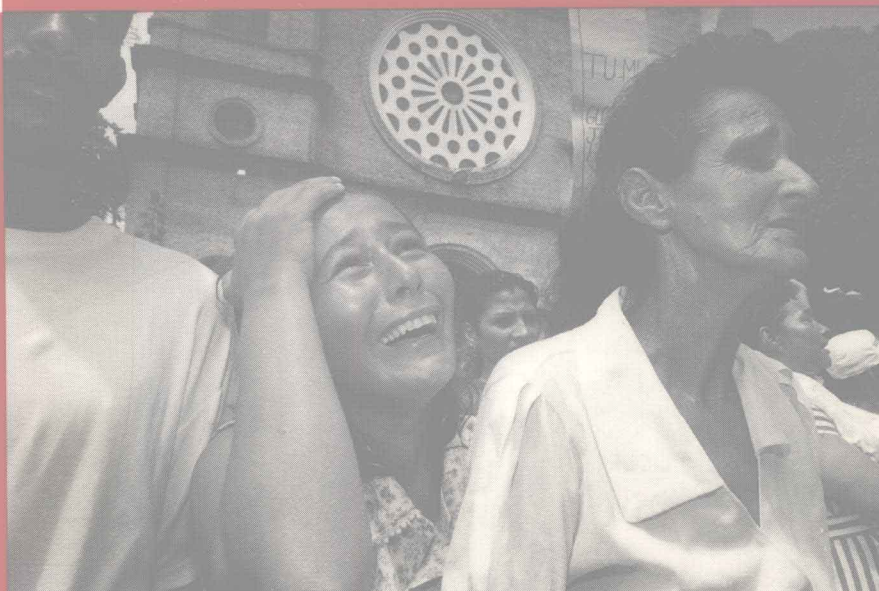


War Without Quarter

Colombia and International
Humanitarian Law



WAR WITHOUT QUARTER

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Human Rights Watch

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Cover photograph: A woman mourns family members killed in a paramilitary massacre in Barrancabermeja, Santander in 1998. © Agencia Toma

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We would like to thank the many organizations, governmental offices, and individuals who contributed time, energy, and information to Human Rights Watch during the research and editing of this report. For security reasons, we have chosen not to identify them by name. Without their courage and tenacity, this report could not have been written.

Since 1997, twenty human rights defenders have been murdered in Colombia, among them lawyers, students, writers, human rights researchers, and judicial investigators. Some of them were well known while others had less reknown. But they faced the same danger. Their deaths show that there is no safe place in Colombia so long as atrocity and impunity rule.

We dedicate this report to the memory of two brave and committed Colombians who assisted us in the preparation of this report and risked their lives to defend the rights of all Colombians. Josué Giraldo, co-founder of the Meta Civic Committee for Human Rights, was murdered by an unidentified gunman on October 13, 1996, as we began research for this report. With his colleagues, Giraldo documented dozens of cases involving human rights and international humanitarian law violations in Meta. Jesús María Valle, president of the “Héctor Abad Gómez” Permanent Human Rights Committee of Antioquia, was murdered on February 27, 1998, beside the desk where he had served us coffee weeks earlier. At the time, we were concluding this report. Valle helped document many of the Antioquia cases included in these pages, in particular the ones that took place in and near Ituango, where he had served on the town council.

Giraldo and Valle were valued and dear colleagues and we mourn them. Yet their example and their work convinces us that we should keep fighting for the respect of fundamental values; something that shouldn't be so difficult to achieve.

This report was made available in Spanish with the support of the Kaplan fund and was translated by Juan Luis Guillén and edited by José Miguel Vivanco.

At Human Rights Watch, special thanks are due to Megan Himan and Jessica Galeria for research and production assistance.

GLOSSARY

ACCU- *Autodefensas Campesinas de Córdoba and Urabá*; the Peasant Self-Defense Group of Córdoba and Urabá, a paramilitary group led by the Castaño family in northern Colombia.

AUC- *Autodefensas Unidas de Colombia*; United Self -Defense Groups of Colombia.

auxiliador/a de guerrilla - guerrilla supporter.

CCJ - *Comisión Colombiana de Juristas*; Colombian Commission of Jurists.

CCN - *Comisión de Conciliación Nacional*; National Conciliation Commission.

CIME - *Centro de Inteligencia Militar*; Military Intelligence Center, which centralizes the intelligence services of the Colombian military.

CINEP- *Centro de Investigación y Educación Popular*; Popular Research and Education Center, a Colombian human rights group based in Santafé de Bogotá.

CODHES- *Consultoría para los Derechos Humanos y el Desplazamiento*; Consultancy for Human Rights and the Displaced.

CONVIVIR - *Servicios de Vigilancia y Seguridad Privada*; Special Vigilance and Private Security Services.

CREDHOS - *Comité Regional para la defensa de los Derechos Humanos*; Regional Committee for the Defense of Human Rights, a Colombian human group that covers the Middle Magdalena region and is based in Barrancabermeja, in the department of Santander.

CTI - *Cuerpo Técnico de Investigación*; Technical Investigation Unit, investigators who work for the attorney general's office.

DAS - *Departamento Administrativo de Seguridad*; Administrative Security Department. An investigative police force that operates without uniforms and is administered by Colombia's executive branch. All other police units are administered by the Interior Ministry.

Data Bank - the Data Bank on Political Violence (*Banco de Datos de Violencia Política*) is run by the Intercongregational Commission for Justice and Peace and the Popular Research and Education Center. It compiles information on human rights and international humanitarian law violations.

Defensoría - Public Advocate's Office, the government's public advocate, responsible for protecting the citizenry against abuses of their constitutional rights. The advocate oversees regional and local offices as well as Colombia's corps of public defenders.

DIJIN - *Dirección Nacional de Policía Judicial e Investigación*; Intelligence and Judicial Investigations Bureau of the Police.

ELN- *Ejército de Liberación Nacional*; the National Liberation Army.

EPL - *Ejército Popular de Liberación*; Popular Liberation Army.

Esperanza - *Esperanza, Paz y Libertad*; Hope, Peace and Liberty party.

GAD - *Grupo de Apoyo a Desplazados*; Forcibly Displaced Persons Support Group.

FARC - *Fuerzas Armadas Revolucionarias de Colombia*; Revolutionary Armed Forces of Colombia, Colombia's largest insurgency.

FMLN- *Frente Farabundo Martí para la Liberación Nacional*; Farabundo Martí National Liberation Front.

FUNPAZCOR- *Fundación por la Paz de Córdoba*; Foundation for the Peace of Córdoba, a civilian organization with charitable goals founded in 1991 by the family of Carlos Castaño.

ICRC - International Committee of the Red Cross.

IHL - International Humanitarian Law.

JAC - *Junta de Acción Comunal*; Neighborhood Action Committee.

Justice and Peace - *Comisión Intercongregacional de Justicia y Paz*; Intercongregational Commission for Justice and Peace.

MAS - *Muerte a Secuestradores*; Death to Kidnappers. MAS was formed by drug traffickers in 1981. The name was also adopted by army-organized paramilitaries in the Middle Magdalena region, some of which later allied with drug traffickers. The name is now generic and is used throughout Colombia by some paramilitary groups.

Mine Ban Treaty - Convention on the Use, Stockpiling, Production, and Transfer of Anti-Personnel Mines and On their Destruction.

MINGA - *Asociación para la Promoción Social Alternativa*; Association for Alternative Social Development, Colombian human rights group. *Minga* is a Quechua term meaning collective work.

OAS - Organization of American States.

OIA - *Organización Indígena de Antioquia*; Antioquia Indigenous Organization.

personeros - municipal officials charged with receiving complaints about rights abuses from the citizenry.

polacheras - name used for girls who flirt with or date local soldiers and police officers.

Procuraduría - Internal Affairs, the government agency responsible for investigating reports of crimes by government employees and recommending administrative punishment like suspensions, fines and dismissals. Within the agency, specific divisions are responsible for investigating the abuses of various branches of government. They include the Delegate for the Armed Forces and the Delegate for the Police Forces. The Delegate for Human Rights investigates reports linking state agents to forced disappearance, torture, and massacres, defined as the killing of four or more people by the same individuals and at the same time. However, Internal Affairs can only recommend administrative, not criminal sanctions.

retenido - retained.

SIJIN - *Seccional de Policía Judicial*; Sectional Judicial Police.

toma/s - indiscriminate attacks, including temporary seizure of towns.

tomberas - see *polacheras*.

Twentieth Brigade - unit of the Colombian Army which centralized military intelligence.

UC-ELN - *Unión Camilista-Ejército de Liberación Nacional*; Camilista Union National Liberation Army.



APPENDIX I

Article 3 common to the Geneva Conventions of 12 August 1949

Article 3. In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.

Preamble

The High Contracting Parties, Recalling that the humanitarian principles enshrined in Article 3 common to the Geneva Conventions of 12 August 1949, constitute the foundation of respect for the human person in cases of armed conflict not of an international character, Recalling furthermore that international instruments relating to human rights offer a basic protection to the human person, Emphasizing the need to ensure a better protection for the victims of those armed conflicts, Recalling that, in cases not covered by the law in force, the human person remains under the protection of the principles of humanity and the dictates of the public conscience, Have agreed on the following:

Part I. Scope of this Protocol

Art 1. Material field of application

1. This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions or application, shall apply to all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.

2. This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.

Art 2. Personal field of application

1. This Protocol shall be applied without any adverse distinction founded on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria (hereinafter referred to as "adverse distinction") to all persons affected by an armed conflict as defined in Article 1.

2. At the end of the armed conflict, all the persons who have been deprived of their liberty or whose liberty has been restricted for reasons related to such conflict, as well as those deprived of their liberty or whose liberty is restricted after the conflict for the same reasons, shall enjoy the protection of Articles 5 and 6 until the end of such deprivation or restriction of liberty.

Art 3. Non-intervention

1. Nothing in this Protocol shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.

2. Nothing in this Protocol shall be invoked as a justification for intervening, directly or indirectly, for any reason whatever, in the armed conflict or in the internal or external affairs of the High Contracting Party in the territory of which that conflict occurs.

Part II. Humane Treatment

Art 4. Fundamental guarantees

1. All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors.

2. Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever:

- (a) violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
- (b) collective punishments;
- (c) taking of hostages;
- (d) acts of terrorism;
- (e) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
- (f) slavery and the slave trade in all their forms;
- (g) pillage;

(h) threats to commit any or the foregoing acts.

3. Children shall be provided with the care and aid they require, and in particular: (a) they shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care;

(b) all appropriate steps shall be taken to facilitate the reunion of families temporarily separated;

(c) children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities;

(d) the special protection provided by this Article to children who have not attained the age of fifteen years shall remain applicable to them if they take a direct part in hostilities despite the provisions of subparagraph (c) and are captured;

(e) measures shall be taken, if necessary, and whenever possible with the consent of their parents or persons who by law or custom are primarily responsible for their care, to remove children temporarily from the area in which hostilities are taking place to a safer area within the country and ensure that they are accompanied by persons responsible for their safety and well-being.

Art 5. Persons whose liberty has been restricted

1. In addition to the provisions of Article 4 the following provisions shall be respected as a minimum with regard to persons deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained;

(a) the wounded and the sick shall be treated in accordance with Article 7;

(b) the persons referred to in this paragraph shall, to the same extent as the local civilian population, be provided with food and drinking water and be afforded safeguards as regards health and hygiene and protection against the rigours of the climate and the dangers of the armed conflict;

(c) they shall be allowed to receive individual or collective relief;

(d) they shall be allowed to practise their religion and, if requested and appropriate, to receive spiritual assistance from persons, such as chaplains, performing religious functions;

(e) they shall, if made to work, have the benefit of working conditions and safeguards similar to those enjoyed by the local civilian population.

2. Those who are responsible for the internment or detention of the persons referred to in paragraph 1 shall also, within the limits of their capabilities, respect the following provisions relating to such persons:

(a) except when men and women of a family are accommodated together, women shall be held in quarters separated from those of men and shall be under the immediate supervision of women;

(b) they shall be allowed to send and receive letters and cards, the number of which may be limited by competent authority if it deems necessary;

(c) places of internment and detention shall not be located close to the combat zone. The persons referred to in paragraph 1 shall be evacuated when the places where they are interned or detained become particularly exposed to danger arising out of the armed conflict, if their evacuation can be carried out under adequate conditions of safety;

(d) they shall have the benefit of medical examinations;

(e) their physical or mental health and integrity shall not be endangered by any unjustified act or omission. Accordingly, it is prohibited to subject the persons described in this Article to any medical procedure which is not indicated by the state of health of the person concerned, and which is not consistent with the generally accepted medical standards applied to free persons under similar medical circumstances.

3. Persons who are not covered by paragraph 1 but whose liberty has been restricted in any way whatsoever for reasons related to the armed conflict shall be treated humanely in accordance with Article 4 and with paragraphs 1 (a), (c) and (d), and 2 (b) of this Article.

4. If it is decided to release persons deprived of their liberty, necessary measures to ensure their safety shall be taken by those so deciding.

Art 6. Penal prosecutions

1. This Article applies to the prosecution and punishment of criminal offences related to the armed conflict.

2. No sentence shall be passed and no penalty shall be executed on a person found guilty of an offence except pursuant to a conviction pronounced by a court offering the essential guarantees of independence and impartiality. In particular:

(a) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence;

(b) no one shall be convicted of an offence except on the basis of individual penal responsibility;

(c) no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under the law, at the time when it was committed; nor shall a heavier penalty be imposed than that which was applicable at the time when the criminal offence was committed; if, after the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;

(d) anyone charged with an offence is presumed innocent until proved guilty according to law;

(e) anyone charged with an offence shall have the right to be tried in his presence;

(f) no one shall be compelled to testify against himself or to confess guilt.

3. A convicted person shall be advised on conviction of his judicial and other remedies and of the time-limits within which they may be exercised.

4. The death penalty shall not be pronounced on persons who were under the age of eighteen years at the time of the offence and shall not be carried out on pregnant women or mothers of young children.

5. At the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained.

Part III. Wounded, Sick and Shipwrecked

Art 7. Protection and care

1. All the wounded, sick and shipwrecked, whether or not they have taken part in the armed conflict, shall be respected and protected.

2. In all circumstances they shall be treated humanely and shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any grounds other than medical ones.

Art 8. Search

Whenever circumstances permit and particularly after an engagement, all possible measures shall be taken, without delay, to search for and collect the wounded, sick and shipwrecked, to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead, prevent their being despoiled, and decently dispose of them.

Art 9. Protection of medical and religious personnel

1. Medical and religious personnel shall be respected and protected and shall be granted all available help for the performance of their duties. They shall not be