



COLOMBIA
Arbitrary Detentions
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During the Álvaro Uribe Vélez presidential administration, arbitrary detentions have become a mass, generalised and systematic practice in Colombia. The mass and generalized nature is seen through the significant increase in the number of persons who have been arbitrarily detained, and frequently as a part of mass detentions. Additionally, the persistence of illegal actions by members of the public force, as well as the judicial authorities, reveals that the arbitrary detentions are deliberate, as well as obey to clear patterns of behaviour. In reality, the increase in violations to the right to personal liberty is due to the government implementing the measures to carry out the “war on terrorism”, which essentially is a part of the “democratic security” policy.

Alarming increase in arbitrary detentions. The increase in violations to personal liberty is evident. From July 1996 to June 2002 (six years), approximately 2,869 persons were arbitrarily detained, while at least 6,648 persons were subjected to arbitrary detention during the period from August 7th 2002 to June 30th 2005 (almost three years). Additionally, from August 7th 2002 to August 6th 2004, 5,535 persons were arbitrarily detained. These actions occurred as part of 77 mass detentions in which from ten persons (for example, the detention taking place in Villa Hermosa in the Department of Tolima on May 22nd 2003) to two thousand persons (for example, the detention taking place in Arauca in the Department of Arauca on November 12th 2002).

On February 11th 2006, in the Piñuña Negro Police Inspector’s Office (Department of Putumayo), members of the Prosecutor General’s Office [Fiscalía] detained 10 persons. They justified the detention due to the existence of “suspicion”, since they had no arrest warrant of any kind¹.

At approximately 8:30 in the morning on March 5th 2006, 14 persons were detained² in the rural community of Pueblo Nuevo within the municipality of Tame (Department of Arauca) by detectives

¹ The following campesinos were detained: Ariel Ortiz Ramírez, María Isabel Cabrera, Luis Fernando Duque, Telmo Cuervo Tejue, Cesar Alonso Castro, Santander Tapia Moreno, Arbey Mina Estupiñán, Humberto Jaime Tejuan, Argemiro Narváez, and Yarley Enerica Maniguay.

² Joaquín Alberto Vásquez (civil identification number -c.c.- 88.242.230); Albeiro Ramírez (c.c. 96.192.806); Richard Bernarez Espinel (c.c. 96.198.296); Jesús Alex Campo Pinto (c.c. 96.121.694); Merardo Alfaro Rincón (c.c. 7.489.908); Pedro Alfaro Montoya (c.c. 80.149.723); Benjamín Ortega Jaimes (c.c. 13.828.871); José César Gélvez Jerónimo (c.c. 96.191.162); Carlos Julio Suárez (c.c. 96.124.024); Giovanni Téllez Pineda (c.c. 96.123.891); Olimpo Bautista (c.c. 17.259.864); Guillermo Jaimes León (c.c. 96.167.240); Humberto Hernández (c.c. 13.353.052) and; René Prieto Vernate.

from the Administrative Department of Security (DAS), functionaries from the Prosecutor General's Technical Investigation Body (CTI), as well as military members belonging to the national army's 8th Brigade and the 5th Mobile Brigade. The public functionaries and military members held the population from the rural community in the installations of the School for Agricultural and Livestock Promotion and, in spite of the fact they had no arrest warrants, captured 14 persons who six re-inserted persons pointed out as belonging to guerrilla groups³.

Perverse effect of government policy and statements by senior authorities. The “democratic security” policy was built upon the belief that vast layers of civilians are suspect of incurring in terrorist acts because, according to the government, the principal support for the terrorist groups' actions is “their members blending in with the civilian population” (decree 2002 of 2002). Under this pretext, the previous Prosecutor General justified carrying out “sweep operations”, during which entire populations were surrounded and, later, the persons to be arrested were selected. Likewise, the president of Colombia used this argument to publicly justify the urgent need to carry out mass detentions:

“Since we are concerned about western Caldas and where it meets with western Risaralda, (...) we are carrying the same task. Mass operations have been carried out in this area. Many national and international observers are upset about this, but it is a way to isolate the terrorists by taking away their bases of support and by affecting their supply sources.

“Last week I told General Castro Castro that we could not continue with the mass arrests in this area every Sunday of 40 or 50 persons, rather 200 arrests [were needed] to accelerate the imprisonment of the terrorists and strike against these organisations”⁴.

Inexistence of a valid arrest warrant. Mass detentions frequently occur without any written warrant by the competent judicial authority in which the arrest is issued for one or several persons. Additionally, in these cases, the circumstances surrounding the deprivation of liberty does not correspond to a situation of flagrancy, nor does it adapt to a situation that justifies carrying out an “administrative arrest”. Frequently, the arrest warrant is also invalid because: i) it does not have precise information previously and adequately identifying and individualising the person to be apprehended; ii) it is issued as the authorities carry out the apprehension; or iii) it is issued after the authorities have restricted the liberty of one or several persons.

Arrest warrants issued without justifiable grounds. According to Colombian criminal procedural law, the issuance of an arrest warrant must be produced within the framework of a formal process. In other words, this means after the judicial authority has decided to open a criminal investigation. In order to come to this decision, the judicial authority must have sufficient elements concerning the existence of punishable conduct, the individualisation or identification of the supposed responsible parties, as well as sufficient grounds to presume the criminal responsibility of the processed persons. If there are any doubts, the judicial authority must carry out, or continue previous, investigation work.

³ The functionaries and members of the military were accompanied by alias ‘Roldán’ (guerrilla member who had deserted from the Arturo Castellanos Mobile Column of the Revolutionary Armed Forces of Colombia – FARC), John Kennedy Caballero Reyes, alias ‘Parales’ (guerrilla member who had deserted from the FARC's 10th Front), by alias ‘Sangre Chulo’ (who had deserted from the National Liberation Army's [ELN] urban militias), alias ‘Santa Rosa’ (who had deserted from the National Liberation Army), as well as two other re-inserted persons who were not identified.

⁴ *Palabras del presidente Uribe al instalar Congreso anual cafetero*, Bogota, SNE, December 10th 2003, www.presidencia.gov.co/discursos/congresocafetero.htm

Judicial authorities have frequently issued arrest warrants that disregard Colombian procedural legislation, since the decision to issue them is not based on sufficient grounds. In many cases, the issuance of arrest warrants is not preceded by an adequate investigation. In this way, the judicial authorities decide on a person's deprivation of liberty, presuming as certain: i) the accusations made by the "informants", "co-operating persons" and "reinserted persons"; and ii) the accusations found in intelligence reports and battle orders by the public force and security agencies.

Illegal use of intelligence reports and battle orders as evidence. In spite of the fact that procedural legislation establishes that intelligence reports and battle orders cannot not be used as valid evidence in a criminal process, judicial authorities in many cases have processed and ordered the arrest of persons, arguing as valid and sufficient grounds the information contained in these reports.

Baseless accusations made by "informants", "collaborators" and "re-inserted persons". Most of the arbitrary detentions recently occurring in Colombia have been established by baseless accusations made by "informants", "collaborators" and "reinserted persons" (collaborating with the public force and State security agencies), who assert that the detained persons have some type of link with guerrilla groups. Examining 37 criminal processes (related to the arbitrary detention of more than 1,500 persons) determined that: i) in most cases, the information provided by "informants", "collaborators" and "re-inserted persons" was inconsistent (nonetheless, the judicial authorities granted their baseless accusations the character of valid circumstantial evidence or testimony); ii) in some cases, they identified themselves with a false document or with two distinct identification documents; iii) providing information was conditioned with economic or legal benefit; and iv) several persons, who contributed to the detention and processing of "supposed guerrilla members", appear providing information simultaneously in multiple processes in different parts of the country.

On January 29th 2006, in the urban centre of the township El Coco of the municipality of Tiquisio (Department of Bolivar), members of the national army's Nariño Battalion detained Edilberto Pérez and Edinson Campuzano de la Rosa. The military members did not have arrest warrants with them. They argued as grounds for each person's detention the existence of accusations made by "informants" and demobilised paramilitaries. They were released at around midnight the same day, though the military conditioned the release of Edinson Campuzano with that he had to present himself before the military garrison, accompanied by his father, the following day.

Manipulation of legal evidence. During the processing of many arrested persons, in addition to the arbitrary nature of the apprehensions, the manipulation of evidence is to be added: i) in many cases, judicial authorities or members of the public force have instructed witnesses on the content of their statements (normally "informants", "collaborators" and "re-inserted persons") in order to incriminate the processed persons; ii) in some cases, low-ranking military officers have been pressured to make statements incriminating the processed persons; iii) in other cases, members of the public force and State security agencies have added to the information provided by the "informants"; iv) in some cases, the judicial authorities have falsified the documents containing the preliminary investigation and the police line-up; and v) in many cases, the irregularities are obvious concerning the police line-up or the presentation of photographs.

Detentions resulting from exercising rights or liberties. In particular, the systematic practice of arbitrary detentions affects those who carry out human rights defence work, as well as those who legally participate in political opposition.

On March 21st 2006, in El Mangolo within the municipality of Apartadó (Department of Antioquia), at approximately 8:45 in the morning, Gildardo Tuberquia (San José de Apartadó peace community internal council member) was detained at a national police control post (checkpoint). Gildardo was detained because he refused to be registered and demanded the police to abide to Constitutional Court ruling C-1024 of 2002 in which the high court prohibits administrative authorities from obligating the population with providing personal information (relating to residence, work, activities, family relations and other matters different than a person's legal identification). Due to national and international pressure, Gildardo was released three hours later.

Detentions in order to make persons guide military troops. When counter-insurgent operations are carried out, it is common that the military obligates civilians to serve as guides for the troops in areas the military does not have sufficient information.

On January 29th 2006 at approximately 2:30 in the afternoon, in the rural community of Las Nieves in the municipality of Río Viejo (Department of Bolívar), military members belonging to the national army's Nariño Battalion deprived the liberty of a young person, Edwin Santander Luna, and forced him to lead them to the rural community of Mina Yuca, which is also within the municipality of Río Viejo.

Illegal detention of minors. In some cases, when military operations are carried out, persons under the age of 18 years are also detained.

On Saturday, February 4th 2006, in the township of La Cafra within the municipality of Vista Hermosa (Department of Meta), military members belonging to the national army's 53rd Counter-Guerrilla Battalion detained 16-year-old Dugan Velandia Oliveros. When a human rights defender asked about his detention, the military members initially concealed his whereabouts. Later, they recognised they had him in their power and stated that he would not be released until Monday, February 6th 2006.

Murders and forced disappearances of persons who were subjected to arbitrary detention. In some cases, serious indications exist regarding links between the arbitrary detention of a person and his or her later murder or forced disappearance.

Bogotá, May 4th 2006

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A case illustrating the issue of arbitrary detention

In the early morning of September 27th 2003, in the municipality of Quinchía (Department of Risaralda), which for the most part is dedicated to growing coffee, 116 persons were deprived of their liberty. The national police and the Prosecutor General's Office carried out the arrests as a part of "Operation Liberty". General Héctor Darío Castro, the national police deputy director at the time, was in charge of the operation. The police recorded the occurrence the following manner:

"At 1:00 in the morning, 800 uniformed members of the police and almost 200 agents from the Prosecutor General's Office left from Pereira to the previously mentioned municipalities in order to carry out the arrest warrants. Travelling by helicopter, truck, bus and armoured pick-ups, the members of the public force struck Quinchía's urban area and the 17 rural communities where the supposed subversives acted freely"⁵.

The principal objective of "Operation Liberty" was to effectuate the sixty arrest warrants once the authorities carried out the preliminary questioning concerning an attack on the police. In effect, on May 2nd 2003, in the rural community of San José de Quinchía, a national police patrol had been ambushed by members of the Óscar William Calvo Front of the Popular Liberation Army (EPL). As a part of these acts, three agents were killed and four more were wounded. According to the national police, the national human rights and international humanitarian law unit of the Prosecutor General's Office carried out an investigation for over six months. This investigation counted on the support of the Technical Investigation Body (CTI) of the Prosecutor General's Office and the SIJIN (a police agency with criminal investigation powers) from Risaralda until "sufficient merits and evidence [were found] to issue arrest warrants for sixty persons in this part of the country due to their supposed links with the EPL"⁶.

According to the national police, the apprehension of another twenty persons was due to that "they were found in circumstances that could implicate them with this illegally armed group [alluding to the EPL]"⁷. On October 31st 2003, a prosecutor from the national human rights and international humanitarian unit of the Prosecutor General's Office "issued a measure to ensure appearance at trial, consistent with preventative detention without the benefit of release, for 65 persons charged with conspiracy to engage in criminal conduct, terrorism and rebellion. (...) Supposedly, the accused are auxiliaries of the Oscar William Calvo Bloc of the EPL guerrilla group operating in this part of the country. The mayor of Quinchía, Gildardo Trejos Vélez, as well as four other public functionaries, were already charged for these same acts"⁸.

On August 2nd 2005, 62 of the 116 persons were released, who had been arrested twenty months previously. Their release was ordered in the appeals ruling by a prosecutor delegated to the Bogotá Superior Tribunal, who overturned the accusatory ruling made against several public functionaries and dozens of inhabitants of Quinchía. The press bulletin for the Prosecutor General's Office reads as follows:

"The legal exam established that the evidence taken into account to ensure the appearance of the accused at trial was weakened by the discovery of new elements, which meant that 62 of those being investigated were released. The accusations held for four other persons"⁹.

After the 62 persons were released, the governor of Risaralda expressed that the real "Operation Liberty" had arrived to Quinchía. According to Alexander Hurtado, one of the defence attorneys, "the defence [still] asks what the accusations were concretely. They were initially charged with rebellion, extortion, conspiracy to engage in criminal conduct and homicide with terrorist objectives. During the legal process, each one of the charges was shown to be baseless, and when an accusatory ruling was finally issued they were charged with the crimes of rebellion and extortionist kidnapping"¹⁰. For his part, in a letter directed to the mayor of Quinchía, one of the persons released, ex-president César Gaviria Trujillo stated:

"For a long time, important party leaders had publicly expressed their concern in regards to the mass arrests related to subversion and terrorism.

⁵ *Policía captura [a] 90 presuntos milicianos del Epl*, Bogotá, 29 September 2003, www.mindefensa.gov.co/fuerza/polnotnal20030929operativo_libertad_eje_cafetero.html

⁶ Ibid.

⁷ Ibid.

⁸ Prosecutor General's Office, "Asegurados por presunta rebelión en Quinchía, Risaralda", *Press Bulletin no. 379*, Bogotá, 31 October 2003, www.fiscalia.gov.co/pag/divulga/Bol2003/octubre/bol379.htm

⁹ Prosecutor General's Office, "Decisión por capturas de Quinchía, Risaralda", *Press Bulletin no. 190*, Bogotá, 30 July 2005, www.fiscalia.gov.co/pag/divulga/Bol2005/julio/bol190.htm

¹⁰ "Quinchía respira aires de libertad", newspaper daily *La Tarde*, Pereira, 6 August 2005, www.latarde.com/2005/8/6/pol1.htm

“Mister Mayor, the case of Quinchía is a clear example that this practice, framed within a democratic security strategy pushed forward by the current executive administration, requires a profound revision”¹¹.

On August 4th 2005, the editorial for *El Tiempo*, the national daily newspaper, read:

“It is remarkable that the Prosecutor General’s Office would have delayed 22 months to recognise that it did not have 117 guerrilla members imprisoned, but rather a whole town of falsely accused persons. If it is already an abuse to proceed with indiscriminate arrests like these, it is made even worse by a justice system delaying an eternity to establish who should be allowed to go free. All of the money the State will have to pay will be little in terms of making reparations to the innocent persons who were object to the iniquitous treatment.

“These mass round-ups have been seriously criticised for their irregularities, their manipulations and for their many baseless elements. With this prior record, in addition to such scandalous cases as that of the traumatised people of Quinchía, it is surprising the government persists in carrying out these actions. How many more innocent persons will have to be arrested to recognise that, like the shelters for re-inserted persons, the costly and counterproductive strategy of mass arrests is a mistake and must be suspended?”¹².

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¹¹ Letter by César Gaviria Trujillo to the mayor of Quinchía, Bogotá, 11 August 2005, www.partidoliberal.org.co/portal/index.php?option=content&task=view&id=649&Itemid=

¹² “¿Cuántos más harán falta?” Editorial from the daily newspaper, *El Tiempo*, Bogotá, August 4th 2005, pages 1-18.