

## ADDENDUM

### TO THE ICMP REPORT: COLOMBIA'S RESPONSE TO ENFORCED DISAPPEARANCES (ICMP.COS.110.3.doc from April 2008)

**Subject:** Decree 1290 on the establishment of an administrative procedure for providing individual reparation

1. On 22 April 2008, the Government of Colombia adopted Decree 1290, establishing an administrative mechanism to provide individual reparation to victims of armed groups on the margin of the law. The decree ostensibly provides reparation to victims as an "advance" to the individual reparation, which under the Justice and Peace Law (JPL), should be provided by the perpetrators.<sup>1</sup>
2. This reparation includes "solidarity compensation," restitution, rehabilitation, satisfaction and guarantees of non-repetition.
  - According to the decree, solidarity compensation provides family members of the disappeared with 40 legal minimal monthly salaries per disappeared person, which is shared when there is more than one beneficiary.<sup>2</sup> However, rather than providing new benefits, the decree, replicates benefits currently provided through the Program for Financial Support to Victims of the Armed Conflict.<sup>3</sup>
  - Satisfaction incorporates provisions that recognize the victims and violations suffered. These include support for publications, commemorations, memorials, and assistance with burials. Further, it includes priority access for beneficiaries to all social services offered by the state, although it does not extend the coverage of such social services to beneficiaries who would not otherwise qualify.<sup>4</sup>
  - Restitution will be provided "when possible" and rehabilitation "when needed", but there is no explanation of how or under what conditions. The same applies to the guarantee of non-repetition.

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<sup>1</sup> The State reserves its right to reimbursement from the reparation provided to the victims by the perpetrators.

<sup>2</sup> Solidarity Compensation will be implemented gradually, with a payment once per year, over a maximum period of ten years, following the approval of the compensation by the CAR. All previous financial assistance received from the state for the same violation is deducted.

<sup>3</sup> See paragraphs 207 and 208; ICMP Report: Colombia's Response to Enforced Disappearances; ICMP.COS.110.3.doc.

<sup>4</sup> The previously discussed model was to provide automatic access to social services and free medical insurance for at least some of the victims. See paragraph 203; ICMP Report: Colombia's Response to Enforced Disappearances; ICMP.COS.110.3.doc.

3. As established, the administrative reparations program appears to be an attempt to provide minimum compensation for a select group of victims, rather than a holistic system of reparation, and is not sufficient in the context of massive and systematic violations of human rights.
4. Decree 1290 neglects to address the main challenges for the administrative reparations program previously identified by authorities, including the CNRR which in November 2007 concluded that the program should, “*diminish the noticeable asymmetry that exists between the socio-economic benefits given to demobilized individuals and the treatment of victims who usually get very little or no benefits at all as a result of State reparation policies*” and “*resolve the multitude of problems faced by the victims in order to prove to the courts who was the author of the violations.*” The CNRR further stated that “*all victims shall be beneficiaries of administrative reparation, independent of the perpetrator.*”<sup>5</sup>
5. The decree differentiates between victims and beneficiaries, using a definition of victims which is broader than that in the JPL, and a much narrower definition of beneficiaries (covering fewer categories of crimes than the JPL does). However, it is extended to cover crimes committed up to the entry into force of the decree rather than the earlier entry into force of the JPL. In addition, it explicitly excludes various violations including those perpetrated by state agents.
6. Another problem is that although *Accion Social* is tasked with trying to verify applications, the Committee for Administrative Reparation (CAR) has the sole discretion to determine which applicants qualify as beneficiaries. Moreover, the decree does not provide for appeals to the decisions of the CAR regarding denial of beneficiary status or the level of reparation assigned.
7. The decree could be read as preventing victims from obtaining individual reparation from the perpetrator pursuant to the JPL unless they first try and fail to receive reparation under the decree.<sup>6</sup>
8. The administrative reparations program as established contradicts the ruling of the Inter-American Court of Human Rights, which has found that Colombia “*has an obligation to ensure that victims of grave violations of human rights and their relatives do not face complexities or excessive procedural burden when submitting requests for reparation that would impede or obstruct the fulfillment of their rights.*”<sup>7</sup> The difficulty in obtaining documentary evidence required to meet the standard of proof established by the decree will make it hard for many victims to apply. This is exacerbated by the socio-economic background of some victims and the extensive time period between many of the crimes and the application for administrative reparation.
9. Although a broad consultative process was supposed to accompany the creation of the administrative reparation program, it appears that only the CNRR, as a representative of a specific victims’ group, was consulted. Various victims have expressed dissatisfaction with their exclusion from the process, and have protested the consultation of the CNRR as both a representative of the victims and an implementing institution.

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<sup>5</sup> See “*Administrative Reparation: an Urgent Requirement for Integral Reparation of Victims of the Conflict*”, CNRR. CNRR Bulletin Number 1, pages 12-13, November 2007.

<sup>6</sup> See: “*The Administrative Reparation Decree – Another Hoax for the Victims?*”; Lawyers Association “Jose Alvear Restrepo”.

<sup>7</sup> Inter-American Court of Human Rights. *La Rochela massacre v. Colombia*, Decision of 11 May 2007. para.198.