

United Nations Human Rights Council

20th Session: June 18 – July 6, 2012

COLOMBIA

The aim of this document is to provide information and make recommendations on the situation in Colombia in relation to various issues to be covered during the 20th session of the Human Rights Council, either in reports on Colombia, or in global reports that mention or are directly or indirectly related to the situation in Colombia.

The issues covered in this letter are [Violence Against Women](#); [Freedom of Peaceful Assembly and Association and Freedom of Expression](#); [Independence of the Justice System](#); [Extrajudicial Executions](#) and [Transnational Corporations and Human Rights](#).

VIOLENCE AGAINST WOMEN

All armed groups in the internal armed conflict in Colombia continue to use sexual violence as a strategy of war and terror. As the Colombian Constitutional Court has emphasized, there is a direct link between displacement and sexual violence and displaced women disproportionately suffer the impact of armed conflict. Of the 183 specific cases of sexual violence against women and girls for which the Constitutional Court of Colombia ordered the Attorney General to pursue research in Sentence 092 of April 2008 “to date only four of these cases have been brought to trial”ⁱ.

There is vast underreporting of violence against womenⁱⁱ and a lack of awareness with regards to these crimes. Even so, in 2010 69,713 cases of domestic violence were reported against women (at least 8 per hour), 128 cases of murder for reasons of gender and 16,916 cases of sexual violence (2 per hour)ⁱⁱⁱ. Colombian organizations reported an increase in sexual violence in areas where mining activities are being carried out^{iv}.

“Colombia must increase its efforts to fight impunity for crimes of sexual violence”.

Margot Wallström

UN Special Representative on sexual violence in armed conflicts, May 2012

As noted by the Special Rapporteur on violence against women^v, women human rights defenders, particularly women leaders of communities and those who struggle for land rights, indigenous peoples and ethnic or religious minorities, trade unionists and the LGBTI population are particularly vulnerable. **In the first half of 2012, 18 women defenders were victims of attacks** (this included one murder and two sexual assaults)^{vi}.

The alarming levels of violence against women and widespread impunity reported by the Special Rapporteur on violence against women in the report she will present on June 25 during this UN Council session^{vii} will also apply to Colombia.

With regards to the above, we recommend that you:

- ***Express concern about the extent of violence against women***
- ***Call upon the Colombian State to adopt measures to combat impunity for these crimes, in line with the recommendations of the UN Human Rights Committee in its comments on Colombia (August 4, 2010), the UN Special Representative on sexual violence in armed conflict during her recent visit to Colombia, and the Universal Periodic Review.***
- ***Demand that armed groups immediately stop the use of sexual violence as a war strategy***

FREEDOM OF PEACEFUL ASSEMBLY AND ASSOCIATION AND FREEDOM OF EXPRESSION

Colombia, along with countries like Belarus, Syria and the Democratic Republic of Congo, is mentioned by the Special Rapporteur on the rights to freedom of peaceful assembly and association in his report^{viii} as a state in which **people who exercise their right to freedom of association can be the victims of threats, intimidation or violence, including extrajudicial executions, forced disappearances, arbitrary detention, torture or cruel, inhuman or degrading treatment, smear campaigns, etc.**

During 2011 alone, 239 attacks were reported against human rights defenders, including 49 killings and 6 forced disappearances. In 2010, the figure was lower: 174 defenders were attacked. The beginning of 2012 was marked by the continuation of attacks, as **between January and March, 13 defenders were killed, and one forcibly disappeared^{ix}. A “significant increase” was also reported in attacks against journalists in 2011: 131 journalists were victims of some kind of aggression^x.** This violence creates fear among journalists and can lead to self-censorship, which seriously affects the right to free speech and the right of citizens to be informed. Almost all of these attacks remain unpunished.

With regards to journalists, as emphasized by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, in the report he will present on June 19^{xi}, **although the protective measures taken by the Colombian authorities must be recognized as positive, they must be accompanied by legal and political measures, including public condemnation of the attacks against them and public support for their work from the highest State authorities.** Otherwise these measures will be ineffective.

Arbitrary arrests of human rights defenders increased from 11 in 2010 to 23 in 2011^{xii}, while the International Trade Union Confederation (ITUC) reports the imprisonment of 16 trade unionists in 2011. The **Public Safety Law** (Law 1453 of June 2011) which penalizes different spheres of public life and gives sentences of several years in prison for, among other things, acts such as the "disruption of official acts" and "obstruction of roads affecting public order" could further aggravate this trend. **The Law creates disproportionate obstacles to freedom of assembly and demonstration.** It opens the door for defenders to have baseless charges brought against them as well as against others who are part of peaceful demonstrations in favour of protection of and respect for fundamental rights.

We therefore ask that you call on Colombia, in accordance with the recommendations presented by the two Rapporteurs in their respective reports, to:

- Adopt measures to protect the freedoms of peaceful assembly and association and freedom of expression and to fight impunity for attacks motivated by the exercise of these freedoms***
- review and / or repeal any legislation which imposes disproportionate restrictions on the exercise of the freedoms of expression, assembly and demonstration***
- immediately release those people who have been arbitrarily detained for exercising these freedoms***

We recommend that you demand that the armed actors in the conflict respect International Humanitarian Law and not attack people who make use of these freedoms

INDEPENDENCE OF THE JUSTICE SYSTEM

1. Reforms which undermine the independence and autonomy of the judiciary

As reported by the Council of State^{xiii} and Supreme Court judges^{xiv}, constitutional reform to justice currently under way seriously undermines the independence and autonomy of the judiciary. It jeopardizes the separation and balance of powers, fundamental elements for the rule of law and democracy.

The reform proposes several mechanisms that would weaken the competence of judges in their judicial functions, including the extension of the ability to render justice to individuals, notaries and lawyers and the withdrawal of the competence of judges in various fields.

The reform affects the independence of the Attorney General's Office as it is expected to remove the participation of the Supreme Court and the State Council during the appointment process, which would therefore remain in the hands of the President and the Senate.

The reform also aims to protect high-ranking officials from possible investigations and sanctions, particularly in the case of members of Congress, by seeking to evade the jurisdiction of the Supreme Court. It is important to remember that the Court has played a key role with respect to the para-politics scandal. In late 2011 the Supreme Court had opened over 160 investigations and / or proceedings against members of Congress for para-politics^{xv}. Similarly, the new ***Law on intelligence and counterintelligence*** (June 2011) **excludes intelligence agency officials from the duties of complaint and statement.** While the abolition, by *Decree 4057 of 2011*, of the **Department of Administrative Security (DAS)** (responsible for illegal intelligence activities and attacks against defenders, trade unionists, and the high courts among others) has been welcomed, there are concerns that **former DAS officials have been transferred to other state bodies**, primarily the Attorney General's Office, the Technical Investigation Corps (about 3000 officers) and the police (estimated to be around 4000 officials), **which are key bodies within the justice system.** These appointments have been made **without investigation or previous sanction** of crimes they may have committed while in the DAS.

This reform is proposed within a context in which judicial officials and other stakeholders who contribute to the justice system are already under severe pressure, as reflected in the murders of 11 lawyers between January and April 2012^{xvi}.

2. Reforms which reinforce impunity

“Evading responsibility for violations committed during conflict via the manipulation of laws and procedures does not function in the long term and, on the contrary, weakens the possibilities of achieving real, positive and lasting changes”

Todd Howland

Representative in Colombia of the UN High Commissioner for Human Rights, May 2012

The Government of President Santos has been pushing for a constitutional amendment under which “All cases are presumed to be related to the service-related operations and procedures of the security forces. When these situations lead to criminal proceedings, these will be handled by the Military and Police Criminal Justice System”^{xvii}. **Although the proposed extension of military jurisdiction initially contained in the proposed reform of justice was removed, it has subsequently been included in the proposed reform of the military code which is currently on the table.** This proposal is being put forward at a time in which more than 12,000 soldiers are being investigated by the justice system in a number of courts for serious violations of human rights. The reform also envisages the creation of a **special jurisdiction for**

police which has also generated concern.

The authorities have made statements assuring that human rights violations would be tried by the ordinary courts, but there are strong doubts about this. Indeed, as highlighted by the **Special Rapporteur on extrajudicial, summary or arbitrary executions**, in his report to be presented on June 19^{xviii}, at present and there are difficulties with regards to **so-called "false positives"** for which **military justice is still claiming jurisdiction**, considering these crimes to be part of legitimate operations. There are also reports of **pressure and retaliation against military judges who seek to transfer cases to ordinary courts, and against military officers involved in extrajudicial executions** so that they do not give testimonies^{xix} (For more information on extrajudicial executions, see below).

As for the **constitutional reform initiative known as the “Legal Framework for Peace”** on transitional justice^{xx} (Bill No. 094, 2011), this includes the possibility of **amnesty for human rights violations by actors in the armed conflict (guerrillas, paramilitaries and members of the Colombian Armed Forces), even in cases of crimes against humanity.** It would also give Congress **the power to suspend the execution of sentences imposed by the courts against guerrillas, paramilitary or military personnel convicted** of serious crimes, or to grant a pardon, even in cases of gross violations of human rights, war crimes or crimes against humanity.

To these proposed reforms is added **the reinforcement** (under a draft amendment to the “Justice and Peace” Law) and the **extension to military personnel** (Statutory Law for the military) of **procedures under the Justice and Peace Law**, whose inability to fulfill the right of the victims to truth, justice and reparation has been widely documented. The draft amendment to the Law introduced a **prioritization of cases** and grants preferential powers to and Peace prosecutors over the ordinary justice system. The Justice and Peace Law was in fact a “de facto” amnesty for more than 30,000 demobilized paramilitaries (with only 6 sentences in the 7 years since Law 975 for ‘justice and peace’ began to be implemented^{xxi}).

EXTRAJUDICIAL EXECUTIONS

As highlighted by the OHCHR in its latest report and by the **Special Rapporteur on extrajudicial, summary or arbitrary executions** in his report to be presented on June 19, **this crime continues to be committed in Colombia^{xxii}**. Between 2002 and 2009, there were 2,180 violations of the right to life perpetrated directly by State agents (1,877 extrajudicial killings and 303 enforced disappearances)^{xxiii}. According to CINEP^{xxiv}, **in 2011, there were 38 cases of extrajudicial executions and 3 enforced disappearances presumed to have been committed by State agents**. Paramilitary groups have not been effectively dismantled. Nevertheless, the government continues to deny the existence of paramilitary groups in the country, with serious implications for overcoming the problem and for the protection of victims^{xxv}.

As highlighted by the Rapporteur, **persistent impunity and the lack of responsibility attributed to State officials for these events represents the greatest concern. Directives remain in force, which offer incentives to members of the armed forces when they present people killed in battle as military results**. The directives, which were issued after the facts, allegedly to deal with the commission of extrajudicial executions by members of the army and police, in fact establish defence mechanisms to protect the military against charges of committing these crimes. These directives also continue to violate the principle of distinction contained in the rules of International Humanitarian Law, by confusing civilians with guerrilla groups.

*Of the 561 cases being investigated by the Human Rights Unit which correspond to events which occurred after 29 October 2008, **only two (0.4%) have ended with a sentence.***

Colombian Commission of Jurists
February 2012

In relation to the abovementioned facts, we ask you to:

- ***Express concern about these legislative initiatives with regard to the elements described above and call upon the Colombian authorities to withdraw these provisions and to refrain from promoting and adopting reforms that could strengthen and / or lead to impunity in cases of human rights violations and infractions of international humanitarian law committed by both state officials and by paramilitary groups and guerrillas, as well as reforms that threaten the independence of justice and the balance of powers, on the occasion of the presentation of the report of the Special Rapporteur on the independence of judges and lawyers, on June 25.***
- ***Call on the Colombian authorities to comply with the recommendations made by the various United Nations mechanisms in this regard, particularly in the last report of the Office of the High Commissioner for Human Rights in Colombia, under the Universal Periodic Review and by the Special Rapporteur on extrajudicial, summary or arbitrary executions in his report, to address impunity for crimes committed by the different armed actors in the armed conflict, and to ensure the right of victims to truth, justice, reparation and guarantees of non repetition.***

TRANSNACIONAL CORPORATIONS AND HUMAN RIGHTS

As mentioned above, **Colombia is still the country where the most trade unionists are killed in the world**. According to a recent UNDP report **2,800 unionists have been murdered since 1984, there have been 216 disappearances and 163 kidnappings^{xxvi}**. And while the number of murders has decreased since 2003, threats have increased. For this reason, as highlighted by the report's coordinator, Carlos Miguel Ortiz **"We should be asking whether there has been a decrease in violence or a transformation of its manifestations"**. Impunity for violence against trade unionists is widespread (over 90 %).

The illegal armed actors in the internal conflict (guerrillas and paramilitaries) have taken over lands by establishing political and economic influence, which has contributed significantly to the

**Colombian organisations
denounce an increase in sexual
violence in mining areas.**

Press release during the visit of Ms.
Wallstrom, May 2012

concentration of land, in turn facilitating economic activities such as mining, agribusiness^{xxvii}, and the implementation of megaprojects. Colombia has one of the highest internally displaced populations in the world, with between 3.3 and 5.5 million internally displaced persons, including nearly 260,000 newly displaced in 2011^{xxviii}. The magnitude of the crisis of dispossession of land in Colombia has reached between 6.8 and 10 million hectares^{xxix}. **Some cases have revealed the direct or indirect participation, by action or omission, of transnational corporations in human rights violations,** such as in the case of Nestlé for the murder of a trade unionist by paramilitaries in 2005^{xxx} and in the case of Chiquita for financing paramilitary groups^{xxxi}.

Although through the new **Law on Victims and Land Restitution in Colombia** (Law 1448 of June 10, 2011) the government has announced that it will recognize the legal ownership of land to victims of forced displacement who demand the return of their lands, **the law has many limitations, and if it is not implemented impartially and independently, could,** as highlighted by the Office of the High Commissioner for Human Rights (OHCHR) in its report of January 31, 2012, instead **"have a re-victimizing effect" and "run the risk of legalizing illegal land appropriation, rather than providing justice for victims"**^{xxxii}. Of extreme concern is the lack of security for the people leading processes for the restoration of stolen lands: **in 2011 28 people linked to processes of land restitution were murdered and of the 13 defenders killed between January and March 2012, 12 were leaders linked to territorial issues** (indigenous leaders, community leaders, or people struggling for the restitution of land)^{xxxiii}. **There are serious fears that the violent theft in Colombia of millions of hectares of land by way of human rights violations will be legalized through international investment.**

We therefore ask you to request that the Working Group on transnational corporations, which will present its report on June 21, visit Colombia so that they consider this situation first hand and thereby contribute to the prevention of further violations.

- ⁱ Report of the Secretary General on Conflict-Related Sexual Violence, January 13, 2012, A/66/657–S/2012/33
- ⁱⁱ SISMA Mujer in [Feminicide / Femicide – Mundubat Newsletter](#) June 2012
- ⁱⁱⁱ Ibid.
- ^{iv} [Press Release by Colombian organisations for the defence and promotion of human rights on the occasion of the visit of Ms. Wallstrom to Colombia “Sexual Violence within the armed conflict is not inevitable, it is and should be, avoidable”](#) May 26, 2012
- ^v Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, A/HRC/20/16, May 23, 2012
- ^{vi} <http://www.oidhaco.org/?art=1253&title=Enero+%96+Marzo+2012%3A+64+agresiones+contra+Defensores+y+Defensora+s+de+Derechos+Humanos+en+Colombia+&lang=en>
- ^{vii} Report of the Special Rapporteur on violence against women, prec.
- ^{viii} Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, May 21, 2012, A/HRC/20/27
- ^{ix} SIADDH, prec.
- ^x Fundación para la Libertad de Prensa - FLIP (Foundation for the Freedom of the Press) [Is regional censorship here to stay?](#) February 2012
- ^{xi} Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, A/HRC/20/17, June 4, 2012
- ^{xii} [Annual Report from the We Are Defenders Program](#) March 2012
- ^{xiii} El Tiempo, Consejo de Estado explica por qué se retira del debate de la reforma, (Council of State explains why it is withdrawing from the debate on the reform) May 9, 2012 and El Espectador, [Consejo de Estado confirmó su retiro definitivo del debate a la reforma a la justicia](#), (Council of State confirms its definitive withdrawal from the debate on the reform of justice) May 9, 2012
- ^{xiv} “In the previous government high State dignatories with strong links to the President dedicated themselves to the task of persecuting magistrates to discredit them, but now the dignatories do not use the same tolos, they have instead begun a judicial campaign via constitutional reforms to dismantle justice and, particularly, the Supreme Court of Justice” -El Espectador, [The new President of the Supreme Court says that the battle is now a legal one](#) January 30, 2012
- ^{xv} Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Colombia, A/HRC/19/21/Add.3, January 31, 2012
- ^{xvi} The Colombia Caravana UK Lawyers Group, Newsletter June 2012
- ^{xvii} [Proyecto de acto legislativo n° 07 de 2011 de Senado](#) (Senate Legislative Bill No. 07)
- ^{xviii} Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, Follow-up country recommendations: Colombia, May 15, 2012, A/HRC/20/22/Add.2
- ^{xix} By January 13, 2012, 486 cases of extrajudicial executions by State agents remained in the military justice system (ibid.)
- ^{xx} See El Tiempo, [Letter from Human Rights Watch to the President and the Congress](#), May 1, 2012
- ^{xxi} OHCHR report, prec.
- ^{xxii} Ibid.
- ^{xxiii} Comisión Colombiana de Juristas - CCJ (Colombian Commission of Jurists), Follow-up report on the recommendations of the Special Rapporteur on extrajudicial, summary or arbitrary executions, February 16, 2012
- ^{xxiv} CINEP/Programa por la paz / Peace Programme, Data Bank on human rights and political violence; July to December, 2011
- ^{xxv} CCJ, prec.
- ^{xxvi} Semana, [UNDP: Threats increase against trade unionists in Colombia](#) 12 March 2012
- ^{xxvii} This is particularly the case in the cultivation of oil palm destined for the production of agrofuels. For example, in the lands of the afrodescendant population, “In Curvaradó, municipality in the Chocó Department, because of the actions of paramilitary groups, communities have lost 29,000 hectares of land, of which 7,000 are sown with African palm” Alternative Report to the Fifth Report of the Colombian State to the Committee on Economic, Social and Cultural Rights, Colombian Platform for Human Rights, Democracy and Development, (Plataforma Colombiana de Derechos Humanos, Democracia y Desarrollo) June 2010.
- ^{xxviii} [Codhes, Newsletter, From Democratic security to democratic prosperity in the midst of armed conflict](#), March 2012
- ^{xxix} According to figures from state body *Acción Social* – Protection Project, the amount of land stolen from the displaced population is 6.8 million hectares; while according to the Movement of Victims of State Crimes, the figure stands at 10 million hectares (MOVICE - Catastro alternativo, estrategia contra la impunidad herramienta para la reparación integral, 2007) in [Área de Memoria Histórica, Comisión Nacional de Reparación y Reconciliación, Línea de Investigación Tierra y Conflicto, El Despojo de Tierras y Territorios. Aproximación conceptual](#), July 2009
- ^{xxx} For further information see [Business and Human Rights, caso Nestlé](#)
- ^{xxxi} For further information see [Business and Human Rights, caso Chiquita](#)
- ^{xxxii} Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Colombia, A/HRC/19/21/Add.3, January 31, 2012
- ^{xxxiii} SIADDH Newsletter, January - March 2012, prec.