

COMMENTS TO THE ACTION PLAN PRESENTED BY COLOMBIA

I GENERAL COMMENTS	2
1. Regarding the “ <i>results</i> ” and “ <i>measures</i> ” presented	2
2. On mechanisms of dialogue and consultation processes	3
II COMMENTS ON TOPICS INCLUDED IN THE ACTION PLAN	4
1. Attention to the victims and land restitution	4
2. On mechanisms of dialogue and consultation processes	5
3. Labour rights	7
4. Fight against impunity in human rights	8
5. Forced disappearance	9
6. “ <i>Demobilization</i> ” of “ <i>illegal armed groups</i> ”	9
7. “ <i>Institutional strengthening of justice</i> ” – Attacks against the independence of justice	10
8. Indigenous peoples and afro-descendent communities – The right to consultation	11
9. Environment and biodiversity	12

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The International Office on Human Rights - Action Colombia, represents a network of more than 30 European organisations. From its headquarters in Brussels, Oidhaco accompanies Colombian civil society initiatives which work towards the full respect of human rights and international humanitarian law, and a negotiated solution to the internal armed conflict. Oidhaco has a Special consultative status with the United Nations Economic and Social Council since 2012.

I GENERAL COMMENTS

1. Regarding the “results” and “measures” presented

Many of the elements and actions presented in the Action Plan as “results” or “measures” should not be considered as such.

In relation to human rights, the environment and sustainable development, on a number of occasions the adoption of policies, methodologies and legislative or regulatory measures are presented as results (Annex 1, p.20 § 7 on “concrete results in human rights”; p . 20 and following on “Measures for environment and sustainable development”, etc). **While on occasions legislative or regulatory changes may be a step towards improving the situation, this does not mean that there have been concrete results.** The paper **presents very little information about the implementation of these measures and concrete results** in terms of combating the root causes of violations of human rights and international humanitarian law, labour rights, environmental damage and sustainable development.

For instance, a “*methodology to formulate contingency plans to deal with any type of victimizing situations*” (annex 1 p.20 §7.1 y 7.2), is not a result. The same applies for the mention of “*We’ve received 414 applications from the persons claiming land in request for protection*” (annex 1, p.20, §7.6), which should not be considered as a “*result*” but rather as a fact. There is no information about the measures taken following these requests, or about the measures taken to address the structural causes of these threats. This figure is in fact cause for concern, as it is representative of the high number of attacks and threats received by people demanding the return of their land (on this issue, see: **Attention to the victims and land restitution**). Similarly, although the granting of protective measures is considered important (Annex 1, p.20, § 7.4 and 7.5), the protection program suffers from numerous shortcomings and in its current configuration does nothing to remedy the structural causes of attacks (on the situation of human rights defenders, see **¡Error! No se encuentra el origen de la referencia.**). The same applies to the number of requests received for aid to victims (Annex 1, p.21, § 7.13)

With regards to the results regarding the **situation of trade unionists** (Annex 1, p. 21, § 7.8, 7.10-12), there has not been a significant change in relation to labour rights (see **¡Error! No se encuentra el origen de la referencia.**). It is symptomatic that even in the roadmap the Colombian authorities deny the link between attacks on trade unionists and their activities (Annex 1, p.21, § 7.10).

Regarding violence by paramilitaries, according to the Colombian government, “*crime has fallen by more than 70% in areas where illegal armed groups used to operate.*” (Annex 1, p.21, §7.9). However, despite their supposed demobilization, paramilitary groups continue to operate and commit serious and massive violations of human rights, employing the same methods as beforeⁱ. The OHCHR has said that “*the number of victims of massacres attributed to these groups continued to increase*”ⁱⁱ. They have a clear relationship with the “*demobilized*” paramilitariesⁱⁱⁱ. Since 2008, they have extended

their presence, from 259 to 406 municipalities in 2011^{iv}. (for more information see *“Demobilization” of “illegal armed groups”*).

A State presenting itself under the Universal Periodic Review (UPR) (p. 12 § 1.a) should not be considered to be a human rights measure or a result, because this is a mechanism that applies to all member countries of the UN Human Rights Council. It must be added that Colombia has not yet complied with most of the recommendations made by the various UN mechanisms^v, including UPR recommendations. This is reflected, for example, in the first recommendation of the various annual reports of the OHCHR in which *“The High Commissioner reiterates all her previous recommendations that have not been completely implemented and urges the Government of Colombia to strengthen the implementation of international recommendations, in order to contribute to the full enjoyment of all rights.”* (§ 117, Report of January 31, 2012, A/HRC/19/21/Add.3) and as reflected by the 2012 follow-up reports of the UN Working Group on Enforced Disappearances and the Special Rapporteur on extrajudicial executions.

2. On mechanisms of dialogue and consultation processes

In several sections of the road map, emphasis is placed on spaces for dialogue and agreement, and these meetings or forums for dialogue are presented as “results” or “measures”. However, **a meeting cannot be considered as an outcome in itself because it does not mean *per se* any effective progress** in the fight against impunity and in the situation of human rights, labour rights or environmental issues.

For instance, a meeting with Amnesty International, OMCT and ODHACO (annex 1 p. 20 §6.b and annex 2 p. 2) presented as one of the two *“Measures”* of an *“improved cooperation in human rights”* (p. 20 §6.b) can not be considered as a result as such. Moreover, the Embassy does not refer to the numerous concerns raised during the meeting, regarding impunity, military jurisdiction, lack of progress in the investigation of the crimes perpetrated by the DAS, the situation of human rights defenders, etc.

The same applies for the meeting that took place in the context of the National roundtable on guarantees (*Mesa Nacional de Garantías*), presented as a *“result”* (p. 20, §7.7) and a *“measure”* (p.18 §4.d); for *“information events on climate change and risk management”*, *“the XII Amazon Regional Round Table”*, *meeting of “the National Environmental Council”* and *“the seventh Inter-American Dialogue On Water Management”* (*“Measures”* - *“strengthening social dialogue regarding environment and sustainable Development”* p.30 §7); *“the dialogue with public servants and their trade unions”* (p.36 §1.d) and the reactivation of the *Special Committee for Resolving International Labour Organization Disputes* (CETCOIT) (p.37 §2.e) and of the Inter-institutional Human Rights Commission (p.38 §3.e) for labour rights, where no details are included on how concerns raised were taken into account. For example, regarding the National Roundtable on Guarantees, it is important to underline that despite the ongoing dialogue that human rights platforms and social sectors have maintained for three years with the state and the national government, attacks against human rights

defenders have seriously increased over the last two years (see **¡Error! No se encuentra el origen de la referencia.**).

It is also **stated that prior consultation is guaranteed and that there are “multiple spaces for cooperation and consultation with ethnic groups”** (p.29 § 7.d y 7.h). This statement is inaccurate, and there is a lack of information on the extent to which the results of these consultations have been taken into account. (see also **Indigenous peoples and afro-descendent communities – The right to consultation**).

Constitutional Court rulings on the violation of the right to consultation of indigenous peoples and African descendant communities, as well as the violation of the right to participation, demonstrate lack of compliance with these rights.

One example is Constitutional Court judgment T-129/11 (3 March 2011) regarding the construction of road works which cross through legally-recognised indigenous territories, the electric interconnection project between Colombia and Panama, and procedures concerning the concession for gold mining that have fragmented the Embera indigenous territories Embera katio and Chidima-Tolo. In this judgment, the Court *“urges Congress to regulate and materialize the fundamental right to prior consultation and free, prior and informed consent of the ethnic groups that are part of the Nation” and “orders the suspension of works until the consultation takes place, and also orders the suspension of all activities of prospecting, legal and illegal exploration or similar in relation to mining in the area that may affect indigenous communities”*.

Another example is the judgment T-348/12 (15 May 2012) on *“the right to participation of local communities (farming and, fishing) in the construction of mega-projects that affect the environment and impact on communities living in its area of influence”* in which the Constitutional Court orders *“the guarantee of opportunities for consultation with stakeholders in which their views are taken into account”*.

II COMMENTS ON TOPICS INCLUDED IN THE ACTION PLAN

1. Attention to the victims and land restitution

An important part of the *“measures”* and *“results”* for human rights refer to attention to victims (p. 13 §1.b and p. 20), and in particular to the Law on Victims and Land Restitution (p. 13 §1.d-1.i – 6 of the 12 *“Measures”*).

The adoption of the Law on Victims and Land Restitution in Colombia is mentioned (Law 1448 of June 10, 2011), and the creation of specialized courts for restitution. However, **the Colombian government does not mention measures to ensure the non-repetition and punishment of this crime, nor the safe return of victims.**

Even though Law 1448 includes restitution measures, this law contains many limitations^{vi}, and if it is not implemented impartially and independently, could, as highlighted by the OHCHR *“have a re-victimizing effect”* and *“run the risk of legalizing illegal land appropriation, rather than providing justice for victims”*^{vii}.

The creation by the Attorney General of a Special Unit for Forced Displacement and Forced Disappearance is a positive step. Nevertheless, the high degree of impunity for the crime of forced displacement remains^{viii}. There is concern over remarks made by the authorities against victims of displacement and their representatives which, besides contradicting the duty of justice and reparation, delegitimize the victims and expose them to retaliation by armed actors^{ix}.

Forced displacement remains massive, with between 3.9 and 5.5 million internally displaced persons^x, including 259,146 additional cases in the year 2011^{xi}, or 155,692 cases, according to official records^{xii}. There was also an increase in mass displacement (those that affect more than 10 households or 50 persons) reported in 2011^{xiii}. Faced with continuing displacement and the multiple human rights violations that it causes, the Constitutional Court reconfirmed in 2011 the unconstitutional state of affairs^{xiv} declared in Judgment T-025 of 2004^{xv}.

As mentioned before, those involved in land restitution processes are under severe attack. Between 2006 and 2011 at least 71 leaders were killed^{xvi}, including 28 in 2011^{xvii}. Also, between 2007 and March 2010, 1,499 displaced persons were killed^{xviii}. As shown by these figures, there is no real system for protection and prevention. A special protection program for these people has yet to be created. Attacks against those directly and indirectly involved in land restitution processes are constant. This situation is reflected by the numerous threats from a paramilitary group calling itself "*The Anti-restitution Army*", such as the one received on 2 October 2012, just a day after the government widely offered rewards for information leading to anti-restitution groups^{xix}.

2. On mechanisms of dialogue and consultation processes

The Colombian government refers to different measures adopted in order to reinforce the protection of persons at risk (p. 15 §3), in particular trade unionists (§3.b-c) and people claiming the return of land (§3.e).

Despite major reforms in the state Protection Program^{xx}, the majority of these changes have not been effective to date. Particularly worrying are the slowness in risk assessment studies and the implementation of approved schemes; the lack of coordination in the measures taken; the lack of clear criteria for defining risk; the lack of a true differential focus; the lack of collective protection measures and the exclusion of family members from the schemes, which has particularly strong implications for women defenders. These deficiencies, and the occasional use of protection schemes to attack accompanied people or to conduct illegal intelligence activities, means that occasionally people reject these proposed measures, as mentioned by the government itself in the document submitted regarding land claimants ("*Some of the affected people do not accept certain kind of measures*", p. 17).

Beyond the Protection Program, also of concern is the lack of progress in the struggle against the structural causes of these attacks, such as impunity and the continued existence of paramilitary groups (often identified as the perpetrators of threats, assaults and murders).

So, despite the existence of a protection programme, threats against human rights defenders have seriously and constantly increased over the last two years. Between January and September 2012 there were 235 individual attacks against human defenders (including 37 killings and 3 disappearances). In the first half of 2012 the numbers of attacks represented an increase of 12% over the same period last year, while in 2011 there had been an increase of 36% of attacks compared to 2010 (with 239 individual attacks including 49 murders and 6 forced disappearances).

Among these attacks, a number of them are the direct responsibility of the State:

- There were a **high number of arbitrary arrests**: between January and September 2012 there were 24 arbitrary detentions, **which exceeds the number for the previous twelve months** (23 arbitrary arrests in 2011). The OHCHR indicated in its latest annual report *“Of particular concern in 2011 were numerous cases of harassment, threats, and detention apparently without proper investigation”*.
- **Human rights defenders continue to report surveillance, interceptions and other illegal activities carried out against them by the intelligence services^{xxi}**. It is of concern that DAS officials have been transferred without prior clearance to bodies such as the Attorney General’s Office and its Technical Investigation Corps (CTI) (some 3,000 employees), the National Police (estimated to be around 4,000 employees), and even to the new National Protection Unit for defenders. While progress has been made in terms of justice related to the DAS scandal, the clearance of files has not been effective, and as indicated by the OHCHR, major challenges persist for the implementation of the new intelligence law^{xxii}. And the Colombian government has not yet allowed a rogatory mission to be carried out, as requested for months by the Belgian courts in order to investigate *in situ* the alleged actions of the DAS in Belgium.
- **Reports continue of smear campaigns conducted by the Colombian authorities, including from within the highest levels of government**. A recent example of this was the statement of the Minister of Defence against the demonstrations carried out by indigenous peoples in Cauca in July 2012. For example, when the Ministry of Defence stated that it was *“clear that there is some infiltration of the guerrillas in the protests”^{xxiii}*. This kind of accusation seriously increases the risk for protestors and their leaders. Several indigenous people have been murdered recently and there are continued reports of threats made against them.

These attacks do not reflect a real political will to protect human rights defenders. The above is occurring despite the numerous recommendations made by the various UN mechanisms and in particular under the previous UPR (R41 and R53 to 55).

As underlined by UNDP, **while the number of trade unionists killed has dropped in recent years, “since 2007 threats have increased”**. Therefore, it could be that **violence itself has not decreased, but that there has instead been “a transformation of its manifestations”**. Nevertheless, with 35 murders in 2011, Colombia is, *“once again, the most dangerous country for trade unionists”* in the world^{xxiv}. **By mid-October, 17 trade unionists had been murdered in Colombia^{xxv}**. Also, **by August 2012, the CUT had recorded 146 threats to workers this year^{xxvi}**.

On October 1, two trade unionists were killed, one of them being Jesus Arnulfo Ramirez Jaramillo, a teacher at the Institución Educativa María Reina in the Guática Municipality, Department of Risaralda. Mr. Ramirez was for many years an official delegate to the General Assembly of Delegates of the CUT, and Assembly Delegate of the Cooperative Coodelmar^{xxvii}.

According to the CUT, **“in the government of President Juan Manuel Santos 27 teachers affiliated to trade unions were killed, amid the greatest impunity, making Colombia the most dangerous country in the world, not only for union leaders, but for teachers”^{xxviii}.**

In addition to these attacks, the International Trade Union Confederation (ITUC) reported the imprisonment of 16 trade unionists in 2011. The ambiguity of some criminal laws and their misuse by justice officials, gives rise to this situation^{xxix} which could be exacerbated with the implementation of the recent *Public Safety Act* (Law 1453 of June 2011) which penalizes the different areas of public life and gives sentences of several years in prison for, among other things, acts such as the “*disruption of official functions*” and “*obstructing public roads affecting public order*”.

This situation discourages union membership^{xxx} and helps to create an environment conducive to violations of labour rights. At the beginning of 2012, only 4% of Colombian workers, about 600,000 people, are now members of trade unions. Some 400,000 workers have left unions over the last 8 years^{xxxi}.

3. Labour rights

With regard to labour rights (p.36 and following), as reported in an AFL-CIO report submitted in July 2012 which assessed the Action Plan developed under the U.S. FTA - Colombia, **while the creation of a Ministry of Labour (p 36, § 1.a) is positive, it has not lead to significant changes.** The trade unions point out that the Ministry is not proactive and that despite the willingness of some of its members, corruption remains widespread in the institution and therefore constitutes a major obstacle to workers who turn to the office for help. They also highlight the **lack of enforcement and implementation of the new legislative measures, which contribute to the continuity of the numerous violations of labour rights. Although the actions of the “worker cooperatives” (cooperativas de trabajo - CTA) were regulated (p 36, § 1.b), new forms of business organisation have appeared, which seek to evade labour laws and prevent the creation of trade unions,** such as the Societies for Simplified Actions (*Sociedades por Acciones Simplificadas* - SAS). According to Law 1258 of 2008, the SAS can be created even by a single individual, who only answers for the value of their contributions.

For example, in the case of the cane cutters in the department of Valle del Cauca, the mills and the sugarcane farm owners do not hire workers directly, but rather through “Harvest” companies (Providencia Cosecha S.A., Manuelita Cosecha S.A., Incauca Cosecha S.A.), as subsidiaries of the mills, which assume the same behaviour as the CTAs. Significantly, they do not hire workers who have previously been union leaders.

The roadmap highlights the training of officials on fundamental labour rights (p.36, § 1.c) however, besides this representing a small number within an economically active population of over 20 million Colombians, such training not been carried out with the support from and according to the vision of the unions.

Therefore, although the targets for labour and trade union rights (p. 11 § 3) are positive, they are also highly insufficient to exert real changes in the field. It is important to add that while there has been an increase in the employment rate (58.8% - an increase of 3.2%) since 2010, this **employment**

is mostly precarious: 43% of workers are self-employed, and 80% of them are part of the informal economy, and therefore have no protection of their labour rights^{xxxii}. **So measures such as “encouraging businesses to voluntarily take Pro-Human Rights actions”** (p. 18, §4.c) **are highly insufficient in order to tackle such a situation in which even basic labour rights standards protected by ILO Covenants are not respected.**

4. Fight against impunity in human rights

Several parts of the roadmap mention the fight against impunity and the prevention of human rights violations and breaches of international humanitarian law (p. 12 § 1b; p. 14 § I; p. 37 §2; etc.). It is noteworthy that under the title *“Fight against impunity in human rights”* – Measures (p.19 §5), there are only references to crimes against trade unionists, since the fight against impunity should address all violations of human rights and IHL, regardless of the victim or the perpetrator.

A study on violations against trade unionists committed between 1979 and May 2011, shows that *“the convictions against their killers are still scarce, although there have been important changes in recent years”* - the first sentence dates back to 1994. Even so, *“97% of cases of anti-trade union violence remain in impunity”*^{xxxiii}.

The situation is not different for other crimes. **Impunity continues for almost all crimes in cases of human rights violations, continues to pose a serious challenge^{xxxiv} and is one of the biggest causes of the persistence of violence.** For instance, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions expressed his concern over the ongoing impunity and the lack of accountability faced by officials for these crimes. Of the 561 cases being heard by the Human Rights Unit of the Attorney General Office, which correspond to events that occurred after October 29, 2008, only two (0.4%) have ended in judgment^{xxxv}.

Impunity could become even worse with the recently adopted and on-going reforms.

The constitutional reform which is about to be adopted and seeks to expand military jurisdiction^{xxxvi} for public forces (the Army and the police) is extremely worrying. This proposal has been made at a time when more than 12,000 members of the military are being investigated by the justice system^{xxxvii} and some are being tried for gross violations of human rights. There is therefore serious pressure from the military in favour of the extension of military jurisdiction^{xxxviii}. This situation is occurring when already, of the few cases involving direct responsibility of the state which are under investigation, those brought against people in high ranking positions are rare^{xxxix}. This has occurred **despite the fact that different agencies have repeatedly expressed concern, among them the European Union under the human rights dialogue.** The United Nations has warned many times about the risks of this reform, the most recent example being a statement of 11 special rapporteurs and UN mechanisms in late October 2012^{xl}.

Moreover, **the constitutional reform on transitional justice** (*“Legal framework for peace”*, 19 June 2012)^{xli}, **includes the possibility of amnesty for human rights violations committed by the armed actors in the conflict** (guerrillas, paramilitaries and members of the Colombian armed forces). With the prioritization of cases there is a risk that even the most serious crimes such as crimes against

humanity will be amnestied^{xlii}. The reform also gives Congress the power to suspend the execution of sentences imposed by the courts against the guerrilla, paramilitaries or military personnel convicted of crimes against humanity or against internationally protected persons, or to grant them a pardon for these crimes. As stated by the representative in Colombia of the UN High Commissioner for Human Rights: *“Evading responsibilities for violations committed in a conflict through the manipulation of laws and procedures does not work in the long term and instead, it weakens the chances of achieving real and lasting positive change”*^{xliii}. *“Serious violations cannot be amnestied or forgotten, on the contrary confronting them will contribute to the transformation of Colombia”*, *“there is no contradiction between peace and justice”*^{xliv}.

The amendment to the Justice and Peace Law currently in the pipeline will also reinforce impunity (see **“Demobilization” of “illegal armed groups”**).

5. Forced disappearance

In its document, the embassy refers to the adoption of measures to locate and identify victims of forced disappearance (p. 15 §1.k-l).

As noted by the OHCHR, the impunity surrounding this crime is *“disturbing”* and the existing legal framework has failed to remedy this phenomenon^{xlv}. The current National Search Plan (Plan Nacional de Búsqueda) does not have the necessary judicial force. While some progress has been made with respect to the rights of victims of enforced disappearance to information and participation under law 1408/2010, according to the information we have, to date, the regulatory decree to bring the provision into law has still not been issued (*we are checking this information*). As raised by the Working Group on Enforced Disappearances in their latest report on Colombia, threats and accusations against those who report cases of enforced disappearances are of serious concern^{xlvi}.

Enforced disappearance continues to be a widespread and systematic practice^{xlvii}. According to the OHCHR, *“by October (2011), the total number of missing persons listed in the National Register of Missing Persons totalled 62,745 people”*, of which more than 16,884 are forced disappearances. There is significant underreporting of this crime. Between January 2011 and May 2012, 240 new disappearances were reported^{xlviii}. In 2010, 150 forced disappearances were documented, and in cases where the generic perpetrator was established (in cases related to 95 victims), some 97.89% (93 victims) are attributed as being the state's responsibility: through direct perpetration by state agents (12 victims), and tolerance or support of violations committed by paramilitaries (81 victims). Responsibility was attributed to the guerrilla in 2.11% of enforced disappearances (2 victims)^{xlix}.

6. “Demobilization” of “illegal armed groups”

The action plan presents the *“strengthening”* of *“the legislation to guarantee justice, truth, and reparations to victims of demobilized illegal armed groups”* (p.15 §1.j), and in particular the adoption of Law 1424 as a *“measure”*.

Law 1424 of 2010 actually further deepens impunity by declaring that information given by demobilized combatants “*can not under any circumstances be used as evidence in legal proceedings against the subject*” (art. 40). And nearly two years after its adoption, by emergency procedure, Law 1424 has not been implemented (has not progressed from the registration stage) and there is still no result which shows that it contributes to guaranteeing the rights of victims. Moreover, the draft amendment to the ‘Justice and Peace’ Law, adopted at the end of October 2012, which provides for the consolidation and extension of the provisions of the Justice and Peace Law, further impedes the right of victims to justice, when this Law has already shown to be inefficientⁱ. As of March 2012, 56,559 people had “demobilized”ⁱⁱ. Of these, approximately 3,600 made use of Law 975 of 2005 and by December of 2011, only seven sentences had been passedⁱⁱⁱ. Although during this process progress was made with regard to the right to the truthⁱⁱⁱⁱ, this legal framework was really a “*de facto*” amnesty for almost all those who demobilized. Of particular concern is the proposal to introduce a prioritization of cases and assign a preferential power to the attorney for Justice and Peace over the regular courts through the reform of the ‘Justice and Peace’ Law.

7. “Institutional strengthening of justice” – Attacks against the independence of justice

Institutional strengthening of the justice system and in particular the strengthening of the Attorney General's Office is mentioned as one of the measures (p. 15 § 2). **However, the attitude of the authorities towards justice and the reforms underway or recently adopted at the initiative of the Colombian government, show instead a desire to impose limits on justice and weaken it, particularly regarding violations of human rights and IHL committed by state agents.**

In late August 2012, a **proposal for constitutional reform** was introduced in Congress which seeks to change the responsible authority for the appointment of the Prosecutor General, from the Supreme Court to the President of the Republic^{liv}, and in late October 2012, the **Minister of Justice introduced a bill** “*By which extraordinary powers are given pro tempore to the President of the Republic to modify the structure and the staffing of the Attorney General's Office and issue its employment system and administrative situation*”. **Both projects of reform seriously threaten the independence of this institution.** It is important to highlight the fact that they are also conceived along the same lines as the shelved justice reform^{lv}, this attempt **was a clear demonstration of the ongoing attacks on the independence of justice**, both in its content and in its process^{lvi}. The process also demonstrated the continued attempts to undermine justice, and in particular the Supreme Court of Justice, on the part of the Colombian government^{lvii}.

Statements made by the highest authorities questioning judicial decisions in different cases seriously affect the independence of the judiciary and increase the risks for people who contribute to justice. Of particular concern was the reaction of President Santos disqualifying the ruling against retired Colonel Alfonso Plazas Vega (the Palace of Justice case) on forced disappearance^{lviii} and declaring that it was the Colombian army who should receive an apology and not the victims^{lix}.

The military justice system, which lacks the necessary independence, continues to claim jurisdiction over cases of human rights violations. This is particularly so in cases of extrajudicial executions, because the military courts consider these crimes to be acts committed in the course of legitimate operations. As highlighted by the Special Rapporteur on extrajudicial, summary or arbitrary executions^{lx}, pressures and reprisals have been reported, against military judges seeking to transfer cases to the ordinary justice system, and also against military personnel involved in extrajudicial executions so that they do not give their testimonies^{lxi}. Justice officials and other stakeholders (victims, witnesses and lawyers) that contribute to justice, continue to be victims of attacks, accusations and killings, which are particularly strong when they are dealing with cases involving elements of the security forces, as reflected in the March 2011 murder of Judge Gloria Constanza Gaona^{lxii}. Between January and April 2012, 11 lawyers were killed^{lxiii}.

The on-going reforms aimed at extending the jurisdiction of military justice (the extension of military criminal jurisdiction, and the creation a special jurisdiction for police officers), **the creation of a special administrative unit responsible for legally defending the State** (Decree 4085, 2011) **and the intention to place limits on justice in terms of intelligence**^{lxiv} **appear to respond to the desire to protect the State and in particular the security forces against claims that may arise against them for human rights violations.** They resonate with the statements of the highest authorities (including in the cases of the Palace of Justice and Mapiripán^{lxv}), and the accusations made by members of the security forces denouncing an alleged “*legal war*” waged by the judiciary and human rights organizations against them^{lxvi}.

8. Indigenous peoples and afro-descendent communities – The right to consultation

The action plan includes different references to consultations with indigenous and ethnic communities (p.29 §7.d y 7.h). Mega-projects (mining, infrastructure, etc.) are concentrated in particular in the territories of indigenous and afro-Colombian peoples^{lxvii}. However, **free, prior and informed consent has not been properly applied during the implementation of mining projects, while mining stocks have sharply increased over the last years.** (See above: ¡Error! No se encuentra el origen de la referencia.). In addition to the issue of consultation, the road map includes very few references to the situation of indigenous peoples and afro-descendent communities which continues to be dramatic. The progress of mega-projects in indigenous and afro-descendent territories also exacerbates their socioeconomic situation. The reduced availability of arable land, fumigation and pollution from the increased exploitation of natural resources and land affects crops, which in turn increases vulnerability in terms of food security^{lxviii}. Some 70% of indigenous children suffer from chronic malnutrition^{lxix} and between January and July 2012, the ONIC reported the death of 15 children due to a lack of medical care or linked to food security^{lxx}. The afro-Colombian population lives in extreme poverty: 80% of the population has their basic needs unsatisfied and rates of infant and maternal mortality double national levels^{lxxi}.

Indigenous peoples continue to face serious risks. As noted by the Constitutional Court, at least 35 indigenous peoples are in danger of extinction. The National Indigenous Organization of Colombia (ONIC) reported that **in the first nine months of this year, 78 indigenous people have been killed,**

10,515 have been forcibly displaced and 47 have received death threats^{lxxii}. This is reflected in particular in attacks against and killings of indigenous leaders. Thus, in the first half of 2012, of the 29 leaders who were killed, 13 were indigenous leaders (44.8% of the total). It is important to recall that already in 2011, of the 49 defenders killed, 19 were also indigenous.

9. Environment and biodiversity

The roadmap includes references to legislative and regulatory measures adopted concerning the environment. However, it does not explain how these measures are being implemented or how the Colombian State is controlling their proper implementation. Meanwhile, the situation in Colombia is alarming in this regard. At the end of 2011 the Colombian government warned that deforestation is advancing at an annual average rate of 238,000 hectares (data between 2005 and 2010), while according to experts "**there are no less than 470 hectares of forest cleared each year, a rate of destruction that could devastate the country's total forest cover in less than 146 years**"^{lxxiii}. There is an urgent need for the implementation of concrete measures in this respect, in particular because, as noted by the Impact assessment on trade sustainability between the EU and Andean Countries commissioned by the EU, the FTA could lead to an increase in pressure on the environment, lands and water, to greater deforestation, and to an increase in pollution (particularly water) due to these different activities^{lxxiv}. This is due to an increase in the exportation of raw materials (particularly sugar and fruits – mainly bananas), especially for the production of agrofuels (sugar cane and oil palm), and the development of the mining industry that will be deepened with the entry into force of the FTA.

Moreover, the community, indigenous, Afro-Colombian, and student leaders who have mobilized for the protection of the environment and other fundamental rights, have been subject to attacks and systematic stigmatizations, including to direct attacks by Colombian authorities, which shows a lack of will to act for the protection of the environment.

One example is the case of protests against the possible open-face gold mine in the *páramo* (mountain top) ecoregion of Santurbán (Department of Santander). In February of 2011, a march organized by an alliance of social organizations and unions, in particular students and professors, for the environmental protection of *páramo* water sources, in opposition to the mine, was severely repressed. A number of the participants of the "*Defend the Water*" march were injured and a large number of protesters were detained. For example, in the case of the Santander Industrial University (UIS) it is public knowledge that the university director was approached by a well known paramilitary leader, alias "*Félix*". The university director was asked to provide a list of names of left-leaning students and professors so that the "*pistol plan*" could be executed. It is important to note that only a few days before this conversation occurred the former director of DAS, Felipe Muñoz, claimed that the UIS was infiltrated by the guerrillas.

Another example is the violent eviction on February 14, 2012, of local fishermen, organisations and individuals who were carrying out a permanent protest against the construction of the El Quimbo hydroelectric dam (department of el Huila)^{lxxv}. Three people were seriously injured, including Mr. Luís Carlos Trujillo, who lost an eye. President Santos supported the action of public forces and discredited protesters^{lxxvi}. The construction of the hydroelectric dam, which began in 2011 and is due to be

completed in 2014 will imply the flooding of 7,400 hectares and the eviction of 1,755 people. The dam will also cause deforestation and make access to water difficult for the inhabitants of the area. The project is being implemented by the Colombian company Emgesa, subsidiary of the transnational companies Endesa (Spain) and Enel (Italy)^{lxxvii}.

ⁱ [Human Rights Watch, Paramilitaries' Heirs: the new face of violence in Colombia, 2010.](#)

ⁱⁱ Report of the High Commissioner of the United Nations for Human Rights on the situation of human rights in Colombia, January 31, 2012, A/HRC/19/21/Add.0.3

ⁱⁱⁱ The OHCHR report itself states that "The Police reported that 53 per cent of the members of these groups who have been captured or killed to date were demobilized paramilitaries" (prec.)

^{iv} They are concentrated in particular in areas such as Montes de María, La Guajira, Bajo Cauca in Antioquia, Urabá, Pacific Coast, Catatumbo and the Eastern Plains [INDEPAZ – VII Informe sobre presencia de grupos paramilitares en el 2011 \(INDEPAZ - VII Report on presence of paramilitary groups in 2011\)](#)

^v This is reflected, for example, in the first recommendation of the various annual reports of the OHCHR in which "The High Commissioner reiterates all her previous recommendations that have not been completely implemented and urges the Government of Colombia to strengthen the implementation of international recommendations, in order to contribute to the full enjoyment of all rights." (§ 117, Report of January 31, 2012, A/HRC/19/21/Add.3).

^{vi} There are a number of constitutional challenges pending on various aspects of the 1448 law, for example on the exclusion of groups of victims.

^{vii} OHCHR Report, 2012, prec.

^{viii} Auto 219 of 2011, Monitoring the actions taken by the national government for overcoming the unconstitutional state of affairs, declared by judgment T-025 of 2004. M.P.: Luis Ernesto Vargas Silva, Bogotá. October 13, 2011

^{ix} Case of Las Pavas: in December 2011, the prosecutor assigned to the case announced that the investigation into forced eviction had been filed because of fraud in the process. The Minister of the Interior later publicly referred to "regrettable" fraud. Subsequently, the Attorney General's office reopened the case and assigned a new prosecutor. However, these statements led to a major smear campaign in the press, encouraged the stigmatization of victims and organizations that accompany them.

^x Data from respectively, Codhes and the Presidential Agency for Social Action and International Cooperation (*Agencia Presidencial para la Acción Social y la Cooperación Internacional*)

^{xi} Consultoría para los Derechos Humanos y el Desplazamiento, Boletín No 79, (*Consultancy for Human Rights and Displacement, Bulletin No 79*) Bogotá, Quito, March 2012. The 52.66% of the 142,963 people displaced by municipality of expulsion according to the Information System for the Displaced Population (SIPOD), come from the 86 municipalities in areas in which Centres for Coordination and Integrated Attention (CCAI) were initially defined, which represent 7.67% of the municipalities.

^{xii} Department of Social Prosperity (*Departamento de Prosperidad Social*), based on: Registry of Displaced Population, 2011

^{xiii} The government agency Social Action (*Acción Social*) reported 80 cases between January and early November 2011, in contrast to the 59 reported throughout 2010 (Department of Social Prosperity, based on: Registration of Displaced Persons, 2011)

^{xiv} Auto 219 of 2011, prec.

^{xv} Sentence T-025 makes reference to the rights associated with humanitarian attention, housing, generation of income and lands, prevention, non-repetition and to truth, justice and reparation.

^{xvi} Human Rights Ombudsman's Office, In Commemoration of the Day of Remembrance and Solidarity with Victims, the Ombudsman asked for investigations to be expedited and for those responsible to be punished, April 9, 2012.

^{xvii} These concerns were also expressed by Navi Pillay, United Nations High Commissioner for Human Rights at the meeting of the United Nations Human Rights Council in March 2012.

^{xviii} [Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, A/HRC/16/22 February 3, 2011](#)

^{xix} [MOVICE, Vuelve a hacer aparición el 'Ejército antirrestitución' de tierras Destacado, October 03, 2012](#)

^{xx} Decrees 4912 and 4100 of 2011

^{xxi} See [Oidhaco: Serious attacks against human rights defenders and people struggling for peace](#), prec., [Oidhaco, March 2012: Deep increase of attacks against human rights defenders](#) and The Observatory, COLOMBIA: Luego de varias amenazas, la defensora de derechos humanos Jahel Quiroga Carrillo devuelve el esquema de protección personal (*After several threats, human rights defender Jahel Quiroga Carrillo returns personal protection scheme*) June 6, 2012

^{xxii} OHCHR report, prec.

^{xxiii} [Caracol Radio, No vamos a aceptar que los indígenas vuelvan a golpear a los soldados en Cauca: Mindefensa, 18 de julio de 2012](#)

^{xxiv} International Trade Union Confederation, June 2012

^{xxv} [CUT, Conmemoración del 14 aniversario de la muerte de Jorge Ortega, October 19, 2012](#)

^{xxvi} [El Espectador, Denuncian asesinato de 13 sindicalistas en Colombia este año, August 17, 2012](#)

^{xxvii} [CUT, Asesinado educador en Risaralda, October 5, 2012](#)

^{xxviii} Ibid.

^{xxix} The offenses of rioting, violence against public servants, conspiracy, terrorism or rebellion are those most used to neutralize complaints made by communities and organisations.

^{xxx} The number of trade union members in Colombia is very low (600,000 workers representing 4% of total Colombian workers) and continues to decrease: about 400,000 workers left unions over the past 8 years (Letter from WOLA, SINTRAEMCALI, CUT and Senator A. Maya to the U.S. Congress, January 24, 2012).

^{xxxi} Letter from WOLA, SINTRAEMCALI, CUT and Senator A. Maya to US Congress, January 24, 2012.

^{xxxii} Escuela Nacional Sindical, Balance de los indicadores de empleo en los dos años del gobierno Santos, August 9, 2012.

^{xxxiii} [Comisión Colombiana de Juristas y Escuela Nacional Sindical, Imperceptiblemente nos encerraron: Exclusión del sindicalismo y lógicas de la violencia antisindical en Colombia 1979-2010, June 2012](#)

^{xxxiv} [“The most serious human rights problems were impunity and an inefficient judiciary, corruption, and societal discrimination. Impunity and an inefficient justice system subject to intimidation limited the state’s ability to prosecute effectively those accused of human rights abuses and to process former paramilitaries”](#). According to the Colombian Ministry of Justice, the probability of conviction in murder cases revolves around 3%. [Resumen ejecutivo, La impunidad en el sistema penal acusatorio en Colombia, por Sneider Rivera y Luis H. Barreto](#) (*Executive Summary, Impunity in the adversarial criminal justice system in Colombia, by Luis Rivera and H. Sneider Barreto*)

^{xxxv} CCJ, prec.

^{xxxvi} [Proyecto de acto legislativo n° 07 de 2011 de Senado](#): (Draft Legislative Act No. 07 of 2011, Senate): *“It will be presumed that all cases are related to the service 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”*. This reform was promoted by the Government of President Santos, and initially included in the proposed constitutional justice reform and later in the proposed reform of the military code. At the beginning of June 2012, this reform had been approved in four of eight debates ([El Espectador, Fuero militar, a una vuelta](#) and [El Espectador, Aprueban reforma a Justicia Militar con cárceles especiales para uniformados](#) (*Military jurisdiction, round one, and Military Justice Reform Passes with special prisons for soldiers*) June 6, 2012

^{xxxvii} [El Tiempo, Hay más de 12.000 militares empapelados con la justicia \(There are more than 12,000 soldiers under prosecution\) May 26, 2012](#)

^{xxxviii} [Letter from the Corps of Generals and Admirals to President Santos, Bogota DC, October 19, 2011](#)

^{xxxix} The Human Rights and IHL Unit of the FGN reported that, in February 2012, investigations were being carried out into killings attributed to state agents against 2,624 soldiers, 629 officials and 427 NCOs, investigations against sub-lieutenants, lieutenants, captains and majors being exceptional. There is only one against a colonel. (Human Rights Unit of the Attorney General's Office Memorandum No. UNDH-IHL 000669, of February 27, 2012).

^{xl} Office of the United Nations High Commissioner for Human Rights, Colombia: UN experts call on the authorities to reconsider the constitutional reform of military criminal justice, October 22, 2012

^{xli} See [El Tiempo, Carta de Human Rights Watch \(HRW\) al Presidente y Congreso](#) (*Letter from Human Rights Watch (HRW) to the President and Congress*), May 1, 2012

^{xlii} *“The present proposal focuses on the need for alternatives to criminal investigation, in order to make it feasible to prioritize the investigation of certain cases, or with the intention of forgoing the criminal prosecution of others”* [Comisión Colombiana de Juristas \(CCJ\), Comentarios al proyecto de “marco jurídico para la paz”](#), Colombian Commission of Jurists (CCJ), Comments on the draft “framework for peace”, November 23, 2011

^{xliii} For Todd Howland, *“Neither prioritisation nor selection can nor should be interpreted or applied as mechanisms for impunity for cases which are not prioritised or selected. There must be a complementary application of judicial and non-judicial mechanisms, and the reasonable use of resources and capacities to gain results”*. Todd Howland on how to treat human rights violations while seeking peace in [Semana, “Lo que exigen los derechos humanos es que los colombianos hagan la paz y no la guerra”, May 14, 2012](#)

^{xliv} [OHCHR, Oficina de la ONU para los Derechos Humanos saluda “conversaciones exploratorias de paz”, August 29, 2012](#)

^{xlv} OHCHR report, 2012, prec.

^{xlvi} The Working Group on Enforced Disappearances expressed concern about this in their latest report on Colombia.

^{xlvii} In this regard, see [United Nations Working Group on enforced or voluntary disappearances, February 13, 2012, A/HRC/19/58/Add.4](#) *“enforced disappearance continues to be a persistent practice”*.

^{xlviii} Figures from the Legal Institute of Forensic Medicine (Instituto Legal de Medicina Legal) for the period between January 2011 and May 22, 2012. In addition to the 240 people still missing, in the period of 48 others were reported as disappeared, of which 15 were found dead and 33 reappeared.

^{xlix} Ibid.

ⁱ See [la Ley y su trámite en la página web de la Cámara de representantes](#); and, among others, [Noticias Caracol, Aprueban en último debate reforma a la Ley de Justicia y Paz, October 17, 2012](#). These comments are based on the reform bill presented in May 2012 for the third debate, given that we have no Access to the final version of the reform.

ⁱⁱ Between August 2002 and March 2012 the following data was recorded: individual paramilitary demobilizations: 3,747; mass paramilitary demobilization: 31,664; individual guerrilla demobilizations: 20,994; mass guerrilla demobilization: 154 ([Data from the Group on Humanitarian Assistance to the demobilized - Defense Ministry - Gahd and Office of the High](#)

[Commissioner for Peace – Presidency](#) in *Verdad Abierta*, April 3, 2012). The demobilizations were carried out using the legal framework (Decree 128 of 2003 and Law 975 of 2005 and its regulatory decrees) that granted legal benefits, among others. Law 975/2005 is directed mainly towards paramilitary groups, but was also opened to the guerrilla.

^{lii} Noticias Caracol, prec.

^{liii} As of January 2012, 3,610 mass graves had been found containing 4,462 bodies ([Verdad Abierta, estadísticas](#)), and the extent of paramilitary infiltration in the political administration of the country (para-politics) had been partially revealed. Informe 2011 de Unidad Nacional de Fiscalías para la Justicia y la Paz (2011 Report of the National Prosecution Unit for Justice and Peace).

^{liiv} For the project and its debate in Congress, see [página web de la Cámara de Representantes](#) and [El Espectador, Presidente de la República quedaría facultado para elegir Fiscal General, August 24, 2012](#)

^{liv} See [el proyecto de ley y su trámite en el Congreso en la página web de la Cámara de Representantes](#)

^{lvi} Indeed, the proposed reform would have allowed escape mechanisms which would weaken the powers of the judges in their judicial functions; it sought to protect members of Congress and other officials from potential investigations and penalties for crimes; and it seriously interfered with the independence of the Attorney General. The reform process clearly showed the fragility of the balance of powers and the capacity for co-optation of the High Courts by the other branches of power: first, the reform tried to introduce a strong political control over the High Courts; later this strategy was changed and favourable provisions were introduced for current judges. The High Courts, which months earlier had expressed their rejection of the view that reform was damaging the independence and autonomy of the judiciary, changed their stance.

^{lvii} At the time, the President of the Criminal Chamber of the Supreme Court stated that the government of Alvaro Uribe Vélez “persecuted judges in order to discredit them”, and that the current government “undertook a legal campaign through constitutional reforms to dismantle the justice system”, [El Espectador, Dice el nuevo presidente de la Sala Penal de la Corte Suprema 'La batalla ahora es jurídica'](#) (*The new president of the Criminal Chamber of the Supreme Court says 'The battle is now a legal one'*), January 30, 2012. It is important to recall that the reform had been introduced by the government, and was backed by the same until the moment of its final approval. President Santos only questioned the final stage of the adoption of the reform and reiterated his support for the initial project, when many troubling aspects of the reform already existed at this late stage. The Minister of Justice had to resign a few days later because of the heated controversy that led to the reform, after congratulating the Congress for approving it.

^{lviii} Magistrates Court of Bogotá, January 2012 - judgment on appeal: the Court upheld the conviction of retired Colonel Plazas Vega Army and asked the defense minister and top military leaders to apologize to the community for the enforced disappearances during the storming of the Palace of Justice.

^{lix} See [CCEEU - El perdón se le debe pedir a las víctimas, no a los victimarios, \(They should ask the victims for forgiveness, not the perpetrators\), February 6, 2012](#)

^{lx} Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, Follow-up to the recommendations to Colombia, May 15, 2012, A/HRC/20/22/Add.2

^{lxi} *Ibid.* By January 13, 2012, 486 cases of extrajudicial killings by government agents remained with the military justice system. These elements are contrary to recommendations 24, 25, 28, 29 and 30 of the previous UPR.

^{lxii} Judge Gloria Constanza Gaona was murdered on March 22, 2011 in Saravena, Arauca department. She was in charge of the case of the rape and murder of a girl and the murder of her two brothers, all three of whom were minors, by a second lieutenant in the Army. Strong pressure against the relatives of the children was also reported.

^{lxiii} The Colombia Caravana UK Lawyers Group, Newsletter, June 2012.

^{lxiv} Via the Law on intelligence and counterintelligence, adopted in June 2011 (Law No. 263/2011 of the Senate, No. 195/2011 of the House of Representatives), currently pending before the Constitutional Court for review before its approval by the President. Among other things, the law exempts officials from the duty of reporting and the duty to testify (Article 39). While the law includes exceptions, it is unclear how they would be implemented. Furthermore, these exceptions to the unenforceability of the reservation to the judicial authorities (Article 34), such as the fact that they could jeopardize national security, leave ample room for interpretation that could detract from the unenforceable effect. These may be obstacles to justice.

^{lxv} President Santos said that “*There are dark economic interests that use that system, and make fun of it, to profit from the resources of the State*” [El Tiempo, Es aberrante situación que reveló la Fiscalía sobre Mapiripán: Santos](#). (*Aberrant situation in Mapiripán is revealed: Santos*) 27 October 2011. The Minister of Justice also made statements to the same effect. ([El Tiempo, "Hubo un evidente fraude procesal en caso de Mapiripán": Minjusticia, 26 de octubre de 2011](#) (*There was an obvious procedural fraud in the Mapiripán case*) Minjusticia, October 26, 2011.

^{lxvi} [La guerra invisible. Los derechos humanos como arma de guerra y lucrativo negocio, Revista de las Fuerzas Armadas 218](#) (*The invisible war. Human rights as a weapon of war and lucrative business, Armed Forces Journal 218*) June 2011

^{lxvii} [Observatorio Pacífico y Territorio \(OPT\), La minería en el pacífico colombiano](#) (Mining in the Colombian Pacific region)

^{lxviii} Working group on Indigenous Peoples, Indigenous Observatory DESC and Public Policy Development and Ethnic Rights (*Mesa Pueblos Indígenas, DESC y el Observatorio Indígena de Políticas Públicas de Desarrollo y Derechos Étnicos*), in ABColombia, Caught in the Crossfire, 2010

^{lxix} UNICEF in ONIC, “*sweet words, breath of life*” *Forging Paths for the Survival of Indigenous Peoples at risk of extinction in*

Colombia, 2010, p.37.

^{lxx} ONIC, Human rights violations and breaches of international humanitarian law committed against Indigenous Peoples in Colombia, Report between January and July 2012, p11

^{lxxi} Report of the UN independent expert on minority issues, Ms. Gay McDougall, Mission to Colombia, January 25, 2011, A/HRC/16/45/Add.1

^{lxxii} [Pnud, PNUD condena el asesinato del líder indígena Leovigildo Cunampia, 25 de octubre de 2012](#)

^{lxxiii} El Tiempo, La deforestación en Colombia se está convirtiendo en epidemia (*Deforestation in Colombia reaches epidemic proportions*), December 2, 2011, http://www.eltiempo.com/vida-de-hoy/ecologia/ARTICULO-WEB-NEW_NOTA_INTERIOR-10877084.html (in Spanish)

^{lxxiv} Extracts from the impact study: “Deforestation is an additional potential area of environmental pressure”. “The expansion of production and trade in agricultural and agricultural processed products that results from the proposed EU-Andean trade agreement will have potentially adverse biodiversity impacts”. “Where the proposed trade agreement facilitates further land transformation for development of biofuel feedstocks and greater infrastructural investments in biodiverse regions, it is expected that it will have a negative impact on the level of biodiversity in Colombia”. “If the expansion of commercial agriculture involves the use of GMO and intensified use of scarce natural resources (land and water), the impact of the EU-Andean trade agreement is predicted to be potentially negative for the rich biodiversity of Andean country members”

^{lxxv} [Fundación Territorios Por Vida Digna \(Foundation for Dignified Life\) and Censat-Agua Viva – Amigos de la Tierra Colombia \(Friends of the Earth Colombia\), El Esmad desaloja protesta contra el desvío del río en El Quimbo \(The ESMAD evict protest against the deviation of the river in El Quimbo\), February 14, 2012](#) (in Spanish)

^{lxxvi} [El Espectador, Santos defiende desalojo hecho por la Policía en El Quimbo, 27 February 2012](#)

^{lxxvii} See: [El Espectador, Preocupaciones por la construcción de Hidroeléctrica El Quimbo, 25 de febrero de 2011](#) ; [El Espectador, La mala energía del Quimbo \(I\), 14 March 2009](#) ; [El Espectador, La mala energía del Quimbo \(II\), 21 March 2009](#) ; [El Tiempo, Presidente Santos pone la primera piedra de hidroeléctrica El Quimbo, 27 February 2012](#)