

Forced disappearance in Colombia

Persistence of and impunity for this extremely serious crime

United Nations Declaration on the Protection of all Persons from Enforced Disappearance - Article 1

1. Any act of enforced disappearance is an offence to human dignity. (...)
2. Any act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, inter alia, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life.

As noted by the Working Group of the United Nations on Enforced Disappearances in its latest report on Colombia, *"enforced disappearance continues to be a persistent practice"* within the country.

In the month of January 2013 alone, according to the Institute of Legal Medicine, 950 cases of disappearance were reported. Of these, 474 correspond to events that occurred in the month of January (273 men and 201 women). "Most of these cases are related to kidnapping and forced disappearance"ⁱ.

According to figures from the National Institute of Legal Medicine, **by August 31, 2012, the cumulative total of missing persons was 74,361, of which 18,638 were victims of forced disappearance. Moreover, from August 7, 2010 until August 31, 2012, 486 cases of alleged forced disappearances were reported.** Of these cases, 40 people were found dead, 68 were found alive and the whereabouts of 378 remain unknownⁱⁱ. 104 cases involved women (25%), 382 men (57%) and 73 children (18% - 33 girls and 40 boys)ⁱⁱⁱ.

Therefore, as highlighted by **Amnesty International** in a press release of August 2012, **forced disappearance in the Americas, and in particular in Colombia, "is not an issue of the past"**^{iv}. There are even reports that this crime was on the increase in some areas of the country in 2012, as in the case of Barrancabermeja, an oil-rich area with an acute social and armed conflict.

It is important to note that **there is significant underreporting of this crime.** Thus, some 7,000 cases reported to the Justice and Peace Law (Law 975), have not been included in any official records due to a lack of pre-mortem data on the victims. In relation to the 950 disappearances reported in January, **Carlos Valdes, director of the Institute of Legal Medicine, said that it is of great concern that these figures are hugely underreported**^v.

International Convention for the Protection of All Persons from Enforced Disappearance

Article 1

1. No one shall be subjected to enforced disappearance.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance.

Article 5

The widespread or systematic practice of enforced disappearance constitutes a crime against humanity (...)

In 2010, 150 forced disappearances were documented, and in those cases in which the generic perpetrator was established (95 victims), **the responsibility in 97.89% was attributed to the State**: either through the direct perpetration by state agents (12 victims), or through its tolerance or support of violations committed by paramilitaries (81 victims). The guerrillas are deemed responsible for 2.11% of these forced disappearances (2 victims)^{vi}.

Human rights defenders and forced disappearance

In 2011, the multiple attacks registered against defenders included forced disappearance, with 6 recorded cases. Further cases were also reported in 2012.

- The most recent example is the forced disappearance of environmentalist Miguel Angel Pabón Pabón on October 31, 2012 in the Magdalena Medio region. Mr. Pabón was part of the “Rios Vivos” Colombian Movement for the Defence of Land and for those Affected by Hydroelectric Dams (*Movimiento Colombiano en Defensa del Territorio y Afectados por Represas “Rios Vivos”*). In the area where he was disappeared there is a military base and there are reports of paramilitary activity.
- Another example was the disappearance of Manuel Ruiz, a leader working on land restitution, and his 15 year-old son, on March 23, 2012. Their bodies were found 5 days later by their community. Manuel Ruiz and his son had been stopped by the police just before being disappeared by presumed paramilitaries.

In its November 2012 report, the **Office of the ICC Prosecutor determined that “there is a reasonable basis to believe that, since November 1, 2002”** (date of the start of ICC jurisdiction in Colombia), **disappearances constituting crimes against humanity have been committed by Colombian State organs**. The Office of the ICC Prosecutor considers that the situation needs to be analysed further in order to determine whether the paramilitaries and the guerrillas (FARC and ELN) have also committed forced disappearances in the manner defined by the Rome Statute.

As noted by UNHCHR, **impunity surrounding the crime of forced disappearance in Colombia is “disturbing” and the legal framework has failed to remedy this phenomenon**^{vii}. The current National Search Plan (*Plan Nacional de Búsqueda*) does not have the necessary legal force behind it. While some progress has been made with regards to the rights of victims of forced disappearance to information and participation under law 1408/2010, its regulatory decree has not yet been issued.

Impunity could be further reinforced by the recent constitutional reforms such as the extension of military criminal jurisdiction, approved in December 2012, and the Legal Framework for Peace, adopted in June 2012, which includes the possibility of amnesty for human rights violations committed by all actors in the armed conflict.

As noted by the UN Working Group on Enforced Disappearances in its latest report, threats and accusations against those who report acts of forced disappearance are of particular concern. Organisations of family members of disappearance victims suffer constant threats and attacks.

- On January 24, 2013, Martha Elena Díaz Ospina, founder and president of the Association of Families United in the Same Grief (*Asociación de Familias Unidas por un Solo Dolor* - AFUSODO), an organisation that supports mothers of people who have been forcibly disappeared by the armed forces, and member of the Atlántico regional branch of the Movement of Victims of State Crimes (*Movimiento de Víctimas de Crímenes de Estado* - MOVICE), received a death threat signed by the paramilitary group "Los Rastrojos".
- Between July and September of 2012 several threats, surveillance and the taking of photographs were reported against the Association of Relatives of the Disappeared (*Asociación de Familiares de Detenidos Desaparecidos* - Asfaddes) and its members.
- The Nydia Erika Bautista Foundation for Human Rights (*Fundación Nydia Erika Bautista para los Derechos Humanos* - FNEB), which was awarded the Franco German Human Rights Prize in December 2012, reported repeated acts of illegal intelligence against the organisation and its directors. For example, in late November 2012, the FNEB reported surveillance of their offices by the police and an unknown individual who was travelling in an official car. Despite that fact that these incidents have been documented and reported, they have not been investigated. The Attorney General's Office closed one of the cases in September 2012. The FNEB has been the recipient of state protection measures since mid-2011.

Although we welcome the recent ratification of the International Convention for the Protection of All Persons from Enforced Disappearance, it is important that Colombia accepts the competence of the Committee on Enforced Disappearances, which would allow for broader protective functions, and the direct involvement of victims.

So we kindly request you to:

- Express your concern at the persistence of forced disappearance in Colombia and its impunity and urge Colombia to adopt efficient measures to prevent and sanction this crime;
- Encourage Colombia to accept the competence of the Committee on Enforced Disappearances;
- Request Colombia to ensure the protection of those who report and mobilize against the crime of forced disappearance;
- Highlight the importance that the ongoing peace process in Colombia includes a commitment to the search for disappeared persons and access to victims and their families to truth, justice and reparation.

For further information see:

- Report of the United Nations Working Group on Enforced Disappearance, February 13, 2012 A/HRC/19/58/Add.4
- *Fundación Nydia Erika Bautista para los Derechos Humanos* - FNEB, Report on the Situation of forced disappearances, given to the Inter-American Commission on Human Rights on the occasion of their in situ visit to Colombia, November 3, 2012 (In Spanish)
- International Criminal Court – Prosecutor’s Office, Situation in Colombia – Interim Report, November 2012
- <http://www.nydia-erika-bautista.org/> (In Spanish)
- <http://www.asfaddes.org/> (In Spanish)

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 [El Tiempo, 474 personas desaparecieron en el primer mes del 2013, 5 de febrero de 2013](#)

ⁱⁱ Figures from the National Register of Missing Persons (*Registro Nacional de Desaparecidos* – SIRDEC) administered by the National Institute of Legal Medicine

ⁱⁱⁱ Response on figures recorded in the National Register of Missing Persons, administered by the National Institute of Legal Medicine and Forensic Sciences, National Network on Unidentified Persons (*Grupo Red Nacional de NNs*) and the National Search Group for Missing Persons (*Búsqueda de Personas Desaparecidas*) -. October 30, 2012.

^{iv} [Amnesty International, Enforced Disappearances in the Americas are a crime of the present, 29 August 2012](#)

^v El Tiempo, prec.

^{vi} Figures from the National Institute for Legal Medicine for the period between January 2011 and 22 May 2012

^{vii} UNHCHR Report, 2012