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COLOMBIA

*This document offers information and puts forward recommendations about the situation in Colombia, in relation to the **Annual report of the United Nations High Commissioner for Human Rights (UNHCHR) on the situation of human rights in Colombia**ⁱ which will be presented before the Human Rights Council on March 20, 2013.*

The document looks at the following issues: [Peace process and armed conflict](#) ; [victims' and land restitution Law](#) ; [human rights defenders situation and freedom of expression](#) – including the issue of *illegal intelligence activities*; [persistent violations by the security forces and efforts to keep them in impunity](#) ; [continued sexual violence within the conflict](#) ; [alarming situation in relation to forced disappearance](#) ; [reforms which consolidate impunity and attacks to the independence of justice](#) (*Expansion of military jurisdiction ; "Prioritization" of cases ; Reform of the Justice and Peace Law ; Reforms to the justice system*) ; [economic, social and cultural rights – megaprojects – right to consultation](#).

PEACE PROCESS AND ARMED CONFLICT

The UNHCHR welcomes the dialogue between the Government and the Revolutionary Armed Forces of Colombia–People's Army (FARC-EP) as a **"significant positive sign"** (§1) and a **"Reason for hope"** that *"has the potential to transform Colombia in terms of its level of respect for and enjoyment of human rights"* (§6).

However, UNHCHR recalls that **"in the context of the ongoing armed conflict, human rights violations are committed daily, with a disproportionate impact on (different sectors of the civil population)"** (§6). These violations are committed by the different actors in the armed conflict (guerrilla, paramilitaries and State security forces): **"FARC-EP and ELN continued to systematically disregard international humanitarian and human rights law"** (§85). Despite their supposed demobilisation, paramilitary groups continue to act and commit serious and massive human rights violations. According to UNHCHR *"Post-demobilization groups are identified by all sectors as one of the greatest threats to public order and as responsible for the largest number of killings, rape, sexual exploitation, physical and psychological violence, forced displacement, extortion, harassment and threats"* (§86). In light of the violations committed by these actors, UNHCHR highlights the fact that *"inadequate official investigation has made it impossible to clarify or put an end to these threats"* (§86) and *"urges the State to take comprehensive and effective action against post-demobilization groups, to understand their political and economic origins and their links to State agents, and to strengthen the State's internal control mechanisms"* (§97.i). As described by UNHCHR, **the armed forces** also continue to commit human rights violations ([see below](#)). In this context, UNHCHR expresses its **"serious concern"** at *"possible military intervention in citizen security functions is of serious concern given the risks of human rights violations"* (§89).

UNHCHR emphasises the need ***“that truth and justice are served”*** for the victims (§7-9), and that the State *“provides a means to address structural problems, with a view to facilitating sustainable rural development, curbing poverty and inequality, and effectively and fully dealing with past human rights violations”* (§7) in order to guarantee the non repetition of violations and a lasting peace. UNHCHR *“exhorts the State and the Revolutionary Armed Forces of Colombia-People’s Army (FARC-EP) to confront past violations directly and fully in the peace process through innovative restorative justice mechanisms that maximize societal transformation and address historic inequalities”* (§97.a).

The UNHCHR also insists in **the need for the peace process to be inclusive**: *“The views of those most affected are pivotal. Only by adequately taking victims’ rights into consideration can Colombia lay the foundation for sustainable change”* (§9).

VICTIMS’ AND LAND RESTITUTION LAW

UNHCHR underlines the *“significant potential”* of the Victims’ and Land Restitution Law. Nevertheless, it emphasises some of the **gaps and limitations in the current system**: the vulnerability of the victims and the need to simplify procedures; *the risk that violations other than displacement and those violations committed by “post-demobilization groups” will not be taken into account*; and the need to improve the registration system. Moreover, UNHCHR expresses its concern about the burden of proof (§15). Indeed, the reversal of the burden of proof initially contained in the Law disappeared in decree 4829 of 2011 on the implementation of the Law, which leaves the victims unprotected.

Impunity in cases of forced abandonment and land grabbing is widespread. According to the Constitutional Court, for every 200 cases, less than one reaches the prosecution stage, in other words more than 99.5% remain in impunity.ⁱⁱ In its November 2012 report, the Office of the Prosecutor of the International Criminal Court (ICC) stated that there is a *“reasonable basis”* to believe that crimes against humanity have been committed by the actors in the armed conflict, including forced displacements.

UNHCHR recalls that ***“land restitution is one of the most important steps towards peace in Colombia”*** because *“Colombia has one of the highest levels of inequality in rural land ownership,¹ and approximately 10 per cent of the country’s population has been displaced by violence”* (§19). UNHCHR ***“notes that a pro-victim and non-formalistic application of the law cannot be underestimated”*** (§21) and ***“reiterates that reparations should not be limited to economic compensation”*** (§16). Indeed, if not implemented impartially and independently, it could, as highlighted by the UNHCHR in its previous report *“have a re-victimizing effect”* and *“become an instrument of legalized plunder, instead of providing justice to the victims”*.ⁱⁱⁱ

The Law has so far yielded few results. By December 2012, the Administrative Unit for Land Restitution had registered 31,111 requests for restitution, corresponding to 2,246,664 hectares of land^{iv}. However, according to the organisation Shaping the Future (*Forjando Futuro* - National Peace Prize winner in 2012), **in the year since Law 1448 was adopted, less than 1% of the land claimed by the victims in the country has been returned to them** (corresponding to 33 properties totalling 162 hectares)^v. It is important to note that the law only stipulates the return of 2 million hectares of land^{vi} when the full spectrum lies between 6.6 and 10 million hectares^{vii}.

UNHCHR *“underlines the importance of a rural development policy to ensure economic sustainability and access to markets for small and medium-sized producers in the context of the land restitution programme”*

(§22). However, **the current government's land restitution policy** lacks a clear concept of agrarian reform. Moreover, its development policy based on the 5 “engines” of the national development plan 2010-2014 (infrastructure, housing, agribusiness, mining/energy and innovation) **could consolidate and deepen further this dispossession.**

Finally, UNHCHR “*continues to record threats to and attacks on claimants and State authorities involved in land restitution processes*”. The Office states that “**improved security is needed and will require better coordination, as well as the strengthening of regional and national institutions and prosecutions of those undermining the process**” (§21).

HUMAN RIGHTS DEFENDERS SITUATION AND FREEDOM OF EXPRESSION

For UNHCHR, human rights defenders situation is “*caution and close attention needed*”. The report states that “**OHCHR-Colombia continued to document cases of threats, surveillance, information thefts, sexual violence and homicides against human rights defenders**”. In 2012, the ‘We are defenders Program’ (*Programa ‘Somos Defensores’*)^{viii}, recorded a total of 357 individual attacks on human rights defenders, which represents a 49% increase compared with 2011. For the ‘We are defenders Program’, this “**indicates that the conditions for work in the defence of human rights in the country have not improved**”. Of these attacks, 69 were killings, 20 more than in 2011. And already in the first weeks of 2013 numerous attacks, threats and killings of human rights defenders have been reported.

According to UNHCHR, “**the majority of cases observed are attributable to post-demobilization groups**” (§37). According to the cases registered by the ‘We are defenders Program’, in 2012 the presumed perpetrators of these attacks are classified as follows: paramilitary groups 41% (148 cases), unknown actors 37% (131 cases), members of the State security forces 13% (46 cases), guerrilla 9 % (32 cases).

UNHCHR in particular highlights **the attacks committed directly by State agents**, in particular in cases of violations committed against “*defenders who work on extrajudicial execution cases have received threats from State actors*”. “*Judicial officials sometimes face pressure by members of the military to prosecute defenders and leaders*” (§37). In 2012, 26 arbitrary arrests were registered (compared with 23 in 2011) and one case of unfounded criminal proceedings^{ix}.

UNHCHR notes that “**serious obstacles to the right to freedom of expression and opinion persist in Colombia**” (§38). In 2012 the Foundation for Press Freedom (FLIP) registered 158 direct attacks against journalists while in the exercise of their work^x. According to Reporters without Borders (RSF), Colombia is one of the most violent countries for journalists^{xi}. UNHCHR also informs that “*excessive use of force was observed repeatedly in the management of public demonstrations by police units, including the Mobile Anti-Riot Squad (ESMAD)*” (§54).

UNHCHR recognises the efforts made by the State with regards to protection (§39) but highlights some of the shortcomings of the national protection system, in particular the lack of information, lack of access to and inappropriateness of the measures offered to rural activists and leaders; the persistence of “*delays in the implementation of protection measures*”(§40). In light of this situation, UNHCHR “**calls upon the National Protection Unit to improve its access to and impact in rural areas, and to take urgent measures to protect human rights defenders, including journalists, indigenous leaders and people involved in land restitution processes**” (§97.e).

These crimes remain unpunished. As stated by UNHCHR, “*the vast majority of investigations into crimes*

against human rights defenders are in the preliminary stages in the Attorney General's Office" (§41).

➤ *Illegal intelligence activities and dismantling of the DAS: high risk of the repetition of crime*

Regarding **illegal intelligence activities**, for UNHCHR, *"considering the historical context and actions taken to date, the law and its pending regulations alone will not be sufficient to end the pursuit of illegitimate interests through the intelligence sector under the guise of national security"* (§57). Indeed, **the control of intelligence and counter-intelligence activities established in the Law on intelligence and counter-intelligence** (June 2011) **is extremely weak** as the Law attributed these functions primarily to internal control mechanisms and contains elements which could be obstacles to justice (for more information [see analysis of the Law by Oidhaco](#)).

UNHCHR *"is concerned that approximately 5,000 former DAS employees were transferred to other Government departments with no vetting process"* (§58). In light of this situation, UNHCHR *"calls upon the Government to give an in-depth public accounting of why and how the Department of National Security (DAS) was closed and to invite the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism to assist in intelligence sector reform processes"* (§97.j).

PERSISTENT VIOLATIONS BY THE SECURITY FORCES AND EFFORTS TO KEEP THEM IN IMPUNITY

Even though in 2012, OHCHR-Colombia received *"no reports"* of new *"false positives"* cases (§46), la UNHCHR informs that it *"continued to receive reports of violations of the right to life and personal integrity relating to excessive or improper use of force by the military"*. Among these violations, UNHCHR informs of the continuation of acts of sexual violence committed by members of the army (§49) ([see below](#)).

UNHCHR highlights **the denial or attempts to cover up incidents or to distort the truth in these cases**. In particular, *"the High Commissioner is concerned that while in a number of cases there is evidence that a human rights violation has been committed, senior officials are often too willing to accept a different version of events that undermines internal and criminal investigations"* (§47).

In relation to *"false positives"*, UNHCHR states that *"while progress has been made, significant challenges remain"* for the prevention of extrajudicial executions (§48). Echoing the International Criminal Court Prosecutor (November 2012 report), **UNHCHR warns about an "inadequate response to false positives" and impunity for these crimes**: *"Given the scope of the false positives crisis, too few of those responsible have been removed from service or prosecuted. High ranking officials linked to these human rights crimes remain in active service and continue to be promoted"* (§74). As mentioned previously, **people and defenders who work on these cases have been the victims of threats**.

UNHCHR notes the same problems regarding the National Police: continued violations of the right to life and to physical integrity, and other abuses, *"including against children"*; the persistence of problems related to covering up the facts (§ 53) and cases of threats against control mechanisms working on these cases (§ 52).

In light of this situation, **UNHCHR "Urges the State to take all needed measures to stop all threats designed to undermine investigations of military and police members for human rights violations. The Government should reinforce an understanding that human rights violations have been and are being**

committed and that, while different in scope and nature to those committed a few years ago, all violations require both legal and structural responses” (§97.g).

CONTINUED SEXUAL VIOLENCE WITHIN THE CONFLICT

UNHCHR informs of *the continuing of sexual violence by military members (§49), guerrilla groups (§85) and paramilitaries (“Post-demobilization groups”) (§86).* In 2011, 71 cases of sexual violence directly related to the armed conflict were reported. For the cases in which the presumed aggressor is known, responsibility is distributed in the following way: members of the Armed Forces - 47 cases; paramilitaries - 15 cases; guerrilla - 2 cases (National Institute of Legal Medicine (*Instituto Nacional de Medicina Legal – INML*) and – Forensic Sciences (*Ciencias Forenses – CF*)).

Almost all of these cases have gone unpunished. According to figures from the Attorney General’s Office, by April 2011, only 842 incidents of sexual violence committed within the context of the armed conflict, were being heard by the ordinary justice system, and of these, 98.6% were in a situation of impunity (with only 11 convictions). As UNHCHR underlines, *“there have been relatively few convictions for sexual violence involving members of the security forces” (§50)* and recalls that during her visit to Colombia in May 2012, the Special Representative of the Secretary-General on Sexual Violence in Conflict *“emphasized the **need for the Ministry of Defence to revise its zero tolerance policy on sexual violence as previously recommended by the High Commissioner**” (§51).*

ALARMING SITUATION IN RELATION TO FORCED DISAPPEARANCE

According to official data in the UNHCHR report, **as of 30 September 2012, 75,345 persons were registered as disappeared or missing, out of which it is estimated that 18,527 cases are enforced disappearance (§66).** The situation continues to worsen. **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”^{xii}.* And as Carlos Valdes, director of the Institute of Legal Medicine said, **it is of great concern that these figures are hugely underreported^{xiii}.**

In its November 2012 report, the Office of the ICC Prosecutor determined that *“there is a reasonable basis to believe that”* **disappearances constituting crimes against humanity have been committed by Colombian State organs.**

As noted by UNHCHR in its previous report, **impunity surrounding the crime of forced disappearance in Colombia is “disturbing” and the legal framework has failed to remedy this phenomenon^{xiv}.** In its new report, UNHCHR once again highlights failings related to the investigation, sanction and prevention of this crime (§68 and 70). **Impunity could be further reinforced by the recent reforms ([see below](#)).**

In light of this situation, **UNHCHR calls upon the Colombian State to adopt different measures:** UNHCHR *“urges the State to resolve the multiplicity of procedures and institutional conflicts that currently exist in the search for and identification of missing persons, which constitute an obstacle to the realization of victims’ rights” (§97.f); “urges, given the ongoing nature of the crime of enforced disappearance, the construction of mechanisms to facilitate coordination and proper distribution of competences among institutions in order to guarantee victims’ rights to participate in the proceedings and to receive information on their cases ”*

(§97.k); and “invites the Government to accept the competence of the Committee to receive and examine individual communications and inter-State complaints” (§67).

REFORMS WHICH CONSOLIDATE IMPUNITY AND ATTACKS TO THE INDEPENDENCE OF JUSTICE

2012 saw the approval of several reforms which could consolidate impunity, which is already widespread. The UNHCHR report makes reference to these reforms and warns of their possible impacts.

➤ *Expansion of military jurisdiction*

UNHCHR reiterates concerns already expressed by a number of different organisations in relation to the constitutional reform to expand the jurisdiction of military courts. The report recalls that this “*violates the basic separation of powers needed for an independent judiciary*” and “*the right of access to justice of the victims and the right to a competent, independent and impartial judge are violated*” (§79). For UNHCHR, **this reform “reflects the lack of trust and respect between the different State institutions, which undermines the rule of law as well as the legitimacy of the State itself”**. UNHCHR “*is seriously concerned by assertions by senior military officers*” which seek to discredit the ordinary justice system, including by linking it to the guerrilla (§82).

Moreover, UNHCHR expresses “**serious concern**” about the fact that cases under investigation or on trial in the ordinary justice system could pass over to military jurisdiction, “*in particular those involving alleged false positives*”, which “*would amount to a serious violation of the right to an appropriate judge and a violation of the principle of due process and the right of access to justice*” (§83).

➤ *“Prioritization” of cases*

In relation to the current policy of “*prioritization*” of the Attorney General’s Office for the investigation of human rights violations, UNHCHR emphasises that this is a characteristic of the international criminal justice system and warns of the “**potential risks of distorting the national criminal justice system**” and recalls the function of the national criminal justice system which “*must not only prioritize but also deter crime*” (§59). The prioritization of cases is of concern since there is a risk that this leads to impunity and a lack of respect for victims’ rights to truth, justice and reparation for cases which are not prioritized. “*Prioritization*” has also been included in the **constitutional reform known as the “Legal framework for peace”** on transitional justice^{xv}, adopted on June 19, 2012, and in the reform of the Justice and Peace Law, of December 3, 2012.

The “*Legal Framework for Peace*” includes the possibility of **amnesty for human rights violations committed by the actors in the armed conflict (guerrillas, paramilitaries and state security forces), even in cases of crimes against humanity**. In its report, the Office of the Prosecutor of the ICC announced that “*from this point onward, the preliminary examination of the Situation in Colombia will focus (among others) on: follow-up on the Legal Framework for Peace and other relevant legislative developments*”, a clear warning to Colombia.

➤ *Reform of the Justice and Peace Law*

On December 3, 2012 the reform of law 975 of 2005, otherwise known as the “*Justice and Peace Law*”, was adopted (Law 1592)^{xvi}. Except for the introduction of provisions for the completion of the process defined by the Justice and Peace Law and the revocation of alternative sanctions and legal benefits, the reform does not correct the deficiencies of Law 975. On the contrary, **it reinforces and expands the scope of the Justice and Peace Law, and makes it harder for victims to access their right to truth, justice, reparation and guarantees of non-repetition**. This is of concern, as it relates to a system whose failure to meet standards on justice, the fight against impunity and the rights of the victims has been widely documented. As recalled by the UNHCHR, seven years after being adopted, “*as at September 2012, out of thousands of possible defendants, only 14 people have been sentenced*” (§60). **The High Commissioner “again draws attention to the wide range of problems that have arisen in the implementation of the Justice and Peace Law (No. 975 of 2005) and the limited results achieved in both quantitative and qualitative terms” (§60).**

➤ *Reforms to the justice system*

As UNHCHR recalls, “*Congress approved three constitutional reforms promoted by the Government*”, among those **the justice sector reform** that was “*rejected by the President of Colombia, due to outrage from the population and inconsistencies with the original purpose*” (§2). The reform proposed mechanisms which would have weakened and/or permitted the avoidance of judges’ legal powers; it sought to protect members of Colombian Congress and other officials from potential investigations and penalties for offences^{xvii}; and it seriously interfered with the independence of the Public Prosecutor’s Office.

Since then, there have been new reform initiatives to extend the powers of the President with regards to the Attorney General’s Office. Such a reform would result in direct intervention and interference by the executive in the judiciary and would thus **affect the independence of the judiciary**. One such initiative is currently being approved^{xviii}.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS – MEGAPROJECTS – RIGHT TO CONSULTATION

As UNHCHR recalls, “*Colombia is a middle-income country with high indices of inequality. Mineral exploitation is used as an engine for development, but there are significant problems with regard to respect for the right to informed prior consultation. More needs to be done to achieve the progressive realization of economic, social and cultural rights*” (§4). In Colombia, 34.1% of the population live in poverty and 10.6% in extreme poverty^{xix}. The proportion of people facing hunger is 12.6% (higher than the average rate for countries in Latin America and the Caribbean, which stands at 8.3%), and the figure did not improve from 2007 to 2012 despite economic growth which was greater than 4%.^{xx}

UNHCHR also highlights the fact that megaprojects and mineral exploitation present “*additional risks*” for the indigenous, Afro-Colombian, and other ethnic groups of Colombia who have already been severely affected by the armed conflict (§90). And “*draws attention to the negative impact that the change of land use, provoked by extractive industries, has on the social structure of communities*” (§93). UNHCHR also informs that after a “*broad participatory process*” **on the right to consultation, “not a single best practice was identified”** (§92), which is of deep concern. UNHCHR recalls that “*in the case of groups at risk of extinction, the right to prior consultation constitutes not only a right to participation but also a veto*

mechanism to guarantee their survival” (§94). In light of this situation, UNHCHR “exhorts the Ministry of the Interior to apply a differential approach in the process of regulating the exercise of indigenous authority, and calls upon the State to carry out prior consultation not as a formality but based on protocols created with each ethnic community to ensure the fulfilment of their rights” (§97.b).

RECOMMENDATIONS

We ask you, in line with the recommendations of the UNHCHR report, to:

- express concern about these violations
- insist on the need to respect the victims’ rights to truth and justice
- emphasise the need for the current peace process to include civil society, in particular the victims, and to seek a solution for the structural causes of the conflict

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 A/HRC/22/17/Add.3, released on February 19, 2013

ⁱⁱ Report of the Prosecutor of the International Criminal Court, Preliminary Report on Colombia, November 2012

ⁱⁱⁱ UNHCHR Annual Report 2012 on the situation of human rights in Colombia, 31 January 2012, A/HRC/19/21/Add.3

^{iv} [Unidad de restitución de tierras – Ministerio de agricultura y desarrollo rural, Solicitudes de ingreso al registro de tierras despojadas y abandonadas forzosamente, December 27, 2012](#)

^v Shaping the Future (*Forjando Futuros*), “[En un año de vigencia de la ley 1448 se ha restituido menos del 1% de la tierra reclamada](#)” (*One year on since the approval of law 18 less than 1% of the claimed land has been returned*), December 2012

^{vi} Amnesty International, “The law on victims and land restitution”, 2012

^{vii} Data by, respectively, Monitoring Commission for public policy on forced displacement and Movement of Victims of State Crimes (quoted 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](#), (Historical Memory, National Commission for Reparation and Reconciliation, Land and Conflict Research, dispossession of lands and territories. Conceptual Approach), Kimpres Editorial Ltda, Bogotá, 2009, p. 21)

^{viii} [Sistema de Información sobre Agresiones contra Defensores de DDHH en Colombia \(SIADDH\) – Programa Somos Defensores, El efecto Placebo, February 2013.](#)

^{ix} Somos Defensores, prec.

^x [FLIP, De las balas a los expedientes. Informe sobre el estado de la libertad de prensa en Colombia durante 2012, February 9, 2013](#)

^{xi} [RSF, Press Freedom Index 2013](#)

^{xii} [El Tiempo, 474 personas desaparecieron en el primer mes del 2013, February 5, 2013](#)

^{xiii} El Tiempo, prec.

^{xiv} UNHCHR Report, 2012, prec.

^{xv} See [El Tiempo, Carta de Human Rights Watch \(HRW\) al Presidente y Congreso, May 1, 2012](#)

^{xvi} See [the law and its procedure for adoption \(Congreso de la República\)](#)

^{xvii} It is important to recall that in late 2011 the Supreme Court had opened more than 160 investigations and / or criminal proceedings against members of Congress for parapolitics (UNHCHR Report, 2012, prec.). The Court has played a key role in safeguarding democracy and the rule of law in Colombia, particularly with respect to the parapolitics scandal. To date about 38 congressmen have open processes for removal from office (Ibid.).

^{xviii} Draft law “*Por el cual se otorgan facultades extraordinarias pro tempore al Presidente de la República para modificar la estructura y la planta de personal de la Fiscalía General de la Nación y expedir su régimen de carrera y situaciones administrativas*”, presented by the Ministry for Justice at the end of October 2012. To see the draft law and its procedure in Congress, see [website of the Cámara de Representantes](#)

^{xix} [DANE, Pobreza monetaria y multidimensional en Colombia \(Economic and multidimensional poverty in Colombia\), May 2012](#) – figures from 2011

^{xx} [Panorama of food and nutrition security in Latin America and the Caribbean 2012 - FAO](#)