

UPR Submission  
Colombia  
October 2012

**I. Overview of the Human Rights Situation**

Colombia's internal armed conflict continues to result in serious abuses by irregular armed groups, including the guerrillas of the Revolutionary Armed Forces of Colombia (FARC) and National Liberation Army (ELN) and paramilitary successor groups such as the Urabeños and Rastrojos. Killings, threats, forced recruitment, and sexual violence are common abuses. More than four million Colombians have been internally displaced, and more than one hundred thousand persons continue to be displaced each year. Human rights defenders, community leaders, trade unionists, journalists, indigenous and Afro-Colombian leaders, and displaced persons' leaders face death threats and other abuses.

In 2011, the administration of President Juan Manuel Santos secured passage of the Victims and Land Restitution Law, which aims to return millions of acres of stolen and abandoned land to internally displaced persons. Implementation of the law has advanced slowly, and no land had been returned under the law as of September 2012. The Santos administration has also backed constitutional reforms that threaten to promote impunity for egregious abuses by guerrillas, paramilitaries, and the military.

**II. Legal Framework for Peace Amendment**

In July 2012, Colombia promulgated the "Legal Framework for Peace" constitutional amendment. Aimed at facilitating peace agreements with guerrilla groups, the amendment allows Congress, and subsequently justice authorities, to drop prosecutions and fully suspend prison sentences against guerrillas, paramilitaries and military members responsible for crimes against humanity and war crimes. The amendment directly conflicts with Colombia's obligations under international law to investigate, prosecute and punish grave violations of human rights and international humanitarian law.<sup>1</sup> In the words of Colombia's Attorney General Eduardo Montealegre, a proponent of the amendment, "Let's not lie to ourselves, let's talk frankly: the new framework for peace is a conditioned amnesty, including for grave violations of human rights."<sup>2</sup>

The amendment contains three fundamental problems:

- 1) The amendment empowers Congress to limit prosecutions of atrocities to those guerrillas, paramilitaries, and military members who meet Congress' criteria of "most responsible." Consequently, justice officials would exempt from prosecution others who were closely involved in the planning, execution and cover up of the same crimes, but not deemed "most responsible."<sup>3</sup>
- 2) The amendment empowers Congress to exempt entire cases of human rights violations and war crimes from criminal investigation, thus violating a basic right enshrined by international law: access to a judicial

<sup>1</sup> See, for example, Inter-American Court of Human Rights, Case of Velásquez-Rodríguez v. Honduras, Judgment of July 29, 1988, Inter-Am.Ct.H.R., Series C. No. 4, para. 166. Also see UN Human Rights Committee, "Nature of the General Legal Obligation on States Parties to the Covenant," General Comment No. 31, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), paras. 18, 15 and UN Principles to Combat Impunity, adopted February 8, 2005, E/CN.4/2005/102/Add.1, principle 19.

<sup>2</sup> Fiscal General: "Puede ocurrir que ningún guerrillero pague cárcel," Semana magazine, September 8, 2012, <http://www.semana.com/nacion/fiscal-general-puede-ocurrir-ningun-guerrillero-pague-carcel/184261-3.aspx> (accessed September 11, 2012).

<sup>3</sup> The amendment provides that Congress can "through statutory law determine the criteria for selection that will permit focusing efforts on the criminal investigation of those most responsible for crimes that acquire the connotation of crimes against humanity, genocide, or war crimes committed systematically...and authorize the conditioned dropping of criminal judicial persecution of all the cases that are not selected" (emphasis added).

remedy for violations of fundamental rights.<sup>4</sup> This is because the amendment enables Congress to limit criminal investigations of atrocities only to cases of crimes against humanity and war crimes “committed in a systematic way.” Consequently, cases of egregious abuses such as massacres, rapes, and enforced disappearances would only be subject to criminal investigation if they are found to form part of a widespread or systematic attack.

- 3) The amendment empowers Congress to suspend prison sentences or apply non-judicial punishments for all guerrillas, paramilitaries and military personnel convicted of atrocities, including those deemed “most responsible” for Colombia’s worst crimes.<sup>5</sup> Congress thus has the authority to guarantee that top FARC commanders convicted of egregious abuses do not spend a single day in prison.

With regard to violence against women and girls—a widespread<sup>6</sup> occurrence in the context of the Colombian conflict—the amendment contravenes binding UN Security Council Resolutions that “*stres[s]* the need for the exclusion of sexual violence crimes from amnesty provisions in the context of conflict resolution processes,” and “*emphasiz[e]* the responsibility of all States to put an end to impunity and prosecute those responsible for all forms of violence committed against women and girls in armed conflicts.”<sup>7</sup>

The Colombian government has invoked the failures of the 2005 Justice and Peace Law to justify and promote the Legal Framework for Peace amendment. There is no doubt that the Justice and Peace Law has produced severely limited results: as of July 2012, seven years since the law passed, special Justice and Peace prosecutors had obtained just eight convictions of paramilitaries. However, far from improving this situation of impunity, the proposed amendment would significantly worsen it. Indeed, the amendment directly contradicts several of the recommendations Colombia accepted during the previous Universal Periodic Review (UPR) cycle. These recommendations include to “[c]ontinue efforts to combat impunity,” and to “prevent anyone in the military, paramilitary or guerrilla forces who is accused of grave human rights violations and crimes against humanity from benefitting from the amnesty laws.”

### III. Military Justice System Reform

As of the writing of this submission in October 2012, the Santos administration is promoting a constitutional amendment to reform the military justice system that would ensure that cases of serious human rights abuses committed by the armed forces are investigated and tried by military justice authorities. The bill has passed five of eight required Congressional debates, and directly contravenes the jurisprudence of Colombia’s high courts and the Inter-American Court of Human Rights, which have repeatedly found that human rights violations should not be handled by the military justice system.<sup>8</sup>

The latest version of the proposed amendment<sup>9</sup> would provide that military courts handle all violations of international humanitarian law by the security forces, except for crimes against humanity, genocide, and

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<sup>4</sup> See, for example, American Convention on Human Rights (“Pact of San José, Costa Rica”), adopted November 22, 1969, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992), Art. 25; Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948), Art. 8.

<sup>5</sup> The amendment provides that Congress “can through statutory law...establish the cases, requirements, and conditions in which the suspension of the execution of the punishment would proceed; establish the cases in which the application of extra-judicial sanctions proceed.”

<sup>6</sup> In a 2008 decision the Constitutional Court recognized that sexual violence against women is “a habitual, extended, systematic and invisible practice in the context of the Colombian armed conflict.”

<sup>7</sup> United Nations Security Council, Resolution 1820 (2008), S/RES/1820 (2008) <http://womenpeacesecurity.org/media/pdf-scr1820.pdf> (accessed September 14, 2012), para. 4; Resolution 1889 (2009), S/RES/1889 (2009) <http://womenpeacesecurity.org/media/pdf-scr1889.pdf> (accessed September 14, 2012), para. 3.

<sup>8</sup> See, for example, Inter-American Court, Case de Radilla Pacheco v. Mexico, Judgment of November 23, 2009, Inter-Am.Ct.H.R., Series C No. 209, para. 274; Colombian Constitutional Court, Sentence C-358/97.

<sup>9</sup> Texto aprobado en primer debate (segunda vuelta) del proyecto de acto legislativo no. 192/12-Camara-16/12-Senado “Por el cual se reforman los artículos 116, 152, y 221 de la Constitución política de Colombia.”

enforced disappearances. As a consequence, military justice authorities would investigate and try many other types of violations, including extrajudicial executions, torture and rape. These types of abuses would only be considered crimes against humanity—and thereby excluded from military jurisdiction—if they were found to form part of a widespread or systematic attack.

The constitutional amendment would also create a commission composed partly of military justice system personnel that would intervene in cases of doubt as to the competent jurisdiction for alleged abuses. While the latest version of the bill says that the nature of the commission's intervention will be defined in a future law, the initial versions of the bill stated that it would immediately verify the facts of cases and decide whether they are referred to the military or civilian justice systems. If this mandate is ultimately established for the commission, it would represent a major setback as compared to Colombia's current policy and jurisprudence, which empowers civilian authorities to immediately take control over investigations of alleged human rights violations, even in cases of doubt. Indeed, any form of intervention by a commission containing military justice system personnel in the investigation of alleged human rights abuses would undermine current accountability mechanisms in Colombia. There would be no guarantees as to the independence of such a commission, given that the military justice system has repeatedly been found to lack the independence and impartiality necessary to handle human rights cases.<sup>10</sup>

The constitutional amendment could also lead to the transfer of current human rights investigations—including of cases of extrajudicial executions known as “false positives”—from civilian jurisdiction back to the military justice system. This is because security force members who have come under investigation for human rights violations will be able to argue that the law most favorable to them should be applied retroactively and that therefore they have the right to be investigated and tried by a military tribunal.

During the previous UPR cycle in 2008, Colombia accepted the recommendation to “adopt measures to ensure that the military justice system does not claim jurisdiction in human rights cases involving members of the security forces.” Since then, civilian prosecutors have advanced, albeit slowly, in investigations of alleged extrajudicial executions attributed to the military, and the number of cases reported annually has dramatically declined.<sup>11</sup> (However, there continued to be reported cases of extrajudicial killings attributed to state agents in 2011 and 2012.) It is troubling that rather than adhering to recommendations accepted during the last UPR cycle, the Colombian government has promoted a reform that would virtually guarantee impunity for military abuses.<sup>12</sup>

#### **IV. Anti-union Violence**

The number of trade unionists killed every year is less today than a decade ago, but it remains high: 47 were killed in 2009, 51 in 2010, 30 in 2011, and 12 between January and September 15 2012, according to the National Labor School (ENS), Colombia's leading NGO monitoring labor rights.<sup>13</sup>

No one has been held accountable for the vast majority of the more than 2,900 trade unionist killings reported by the ENS since 1986. As of May 2012, the Attorney General's Office's sub-unit of prosecutors dedicated to anti-union violence had opened investigations into 815 cases of trade unionists killings, and in combination with other prosecutors from the Human Rights Unit, reported having obtained convictions for 263 cases. This progress is largely due to confessions by paramilitaries participating in the Justice and Peace

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<sup>10</sup> See, for example, Inter-American Commission on Human Rights Report No. 43/08, Case 12.009, Leydi Dayán Sánchez, Colombia, July 23, 2008, paras. 76 and 77.

<sup>11</sup> As of August 2012 the Human Rights Unit of the Attorney General's Office was investigating 1,727 cases of alleged extrajudicial killings committed by state agents (affecting nearly 3,000 victims, since many cases include multiple victims), and had obtained convictions for 159 cases.

<sup>12</sup> It is worth noting that the current reform comes at the heels of another proposed constitutional amendment promoted and ultimately shelved by the government in 2012 that would have given the military justice system initial control over investigations of all abuses committed by the Colombian security forces during operations.

<sup>13</sup> The government's Human Rights Observatory reports 28 killings in 2009, 37 in 2010, 29 in 2011, and 10 between January and June 2012.

process, and there have been severely limited results in prosecuting crimes committed since 2007, which are not covered by the demobilization law.

## V. Land Restitution

The passage of the 2011 Victims and Land Restitution Law represented an important step in addressing the recommendation accepted by Colombia during the previous UPR cycle to “[t]ake measures to ameliorate the effects of the displacement of civilians...and adop[t] immediate measures for the restitution of lands.”

As of this writing, the Colombian government has advanced slowly in implementing its land restitution program under the law. The Santos administration estimated that there would be 2,100 judicial rulings in land restitution cases under the Victims Law in 2012, and 60,000 rulings by 2014;<sup>14</sup> however, as of mid-September 2012, just 197 claims had been brought before specialized land restitution judges, and no land had been returned under the law. Abuses against displaced land claimants and their leaders in recent years—including threats, forced displacements, and killings—have created a climate of fear for those seeking restitution in several areas of the country.

## VI. Gender-based Violence and Displacement

Gender-based violence is a widespread problem in Colombia. A 2010 government-supported survey found that 37 percent of the women surveyed had suffered violence at the hands of their intimate partners and about 16 percent reported sexual violence.<sup>15</sup>

Displaced women and girls face even higher risks of gender-based violence.<sup>16</sup> Many displaced women and girls live in poverty and in communities with high levels of violence, which contribute to their risk of abuses.<sup>17</sup>

Human Rights Watch interviewed more than 80 displaced women and girls in 2012 about gender-based violence. They described being subjected to individual and gang rapes, as well as death threats and beatings by intimate partners. Some became pregnant from rape, suffered from sexually transmitted infections, and could not access timely medical care. Perpetrators in gender-based violence crimes are rarely brought to justice.

The Colombian government, to its credit, has ambitious laws, policies, and programs to address gender-based violence and the particular risk to displaced women and girls.<sup>18</sup> Human Rights Watch has documented, however, that displaced women and girls continue to lack access to health and justice services after being victimized by gender-based violence.

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<sup>14</sup> Ministry of Agriculture and Rural Development of Colombia, “Informe de avances proceso de reglamentación e implementación de la Ley 1448 de 2011, en materia de restitución de tierras a las víctimas del desplazamiento forzado,” February 13, 2012, pp. 12.

<sup>15</sup> Profamilia, Ministry of Social Protection, Bienestar Familiar, and USAID, *Encuesta Nacional de Demografía y de Salud 2010* (Bogotá, 2011), p. 370.

<sup>16</sup> Some studies suggest they may suffer higher rates of gender-based violence. In 2011, a Profamilia and the United States Agency for International Development (USAID) survey found that 45 percent of ever-married or partnered women in the marginalized groups (including displaced women) suffered violence at the hands of their intimate partners. USAID/Profamilia, *Encuesta en Zonas Marginadas 2011: Salud Sexual y Salud Reproductiva, Desplazamiento Forzado y Pobreza 2000-2011* (Bogotá, 2011), pp. 67, 71, 153 and 162.

<sup>17</sup> See, for example, Comisión de Seguimiento a la Política Pública sobre Desplazamiento Forzado, “Tercer Informe de Verificación sobre el Cumplimiento de Derechos de la Población en Situación de Desplazamiento,” December 2010, <http://mesadesplazamientoydiscapacidad.files.wordpress.com/2011/01/iii-informe-de-verificac3b3n-cs-2010.pdf> (accessed August 7, 2012), pp.171-186.

<sup>18</sup> See Law 1257/2008, 2008, [http://www.secretariasenado.gov.co/senado/basedoc/ley/2008/ley\\_1257\\_2008.html](http://www.secretariasenado.gov.co/senado/basedoc/ley/2008/ley_1257_2008.html) (accessed July 3, 2012); Law 387/1997, <http://www.alcaldiaBogotá.gov.co/sisjur/normas/Norma1.jsp?i=340> (accessed July 17, 2012); and, Constitutional Court of Colombia, Auto 092 of 2008, <http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=biblioteca/pdf/6321> (accessed July 7, 2012).

In the health sector, Human Rights Watch found a daunting array of obstacles to medical services for victims of gender-based violence. These include the failure of health facilities to properly implement the relevant laws and policies, resulting in inadequate screening for signs of gender-based violence, mistreatment of victims, and arbitrary denials or delays in providing essential services.

Barriers to justice for displaced women and girls after gender-based violence include mistreatment by authorities, evidentiary challenges, and fear of retribution. Moreover, some officials told Human Rights Watch they felt Colombia has not dedicated sufficient resources for staff and training of personnel in the justice sector. Women's rights advocates and victims themselves told Human Rights Watch that women and girls, especially those who are displaced and living in unfamiliar cities, lack knowledge about victims' rights under laws on gender-based violence, including where and how to access the services to which they are entitled.

## **VII. Recommendations**

The Colombian government should:

1. Ensure that victims of crimes against humanity and war crimes are guaranteed access to an effective judicial remedy, and that those responsible for atrocities are criminally investigated and prosecuted and receive punishments after a court conviction that are proportionate to the gravity of the crime.
2. Ensure that civilian, rather than military, authorities investigate, prosecute and try all alleged human rights violations by the security forces.
3. Significantly increase personnel—particularly lawyers—in the national land restitution office, and create a special prosecutorial unit dedicated to investigating threats and violence against land claimants and illegal land seizures (*despojo*), with offices in all the regions where land restitution is taking place.
4. Implement its current laws regarding gender-based violence, including the Constitutional Court Order of 2008, Auto 092/2008; ensure all government employees are trained about their obligations under these laws; institute a robust monitoring system for maximum accountability; and undertake public awareness campaigns tailored to the unique needs of marginalized groups, including displaced women and girls.
5. Vigorously investigate and prosecute officials who are credibly alleged to have collaborated with or tolerated paramilitary successor groups.