



UNITED NATIONS HUMAN RIGHTS COUNCIL
16th Session of the Working Group on the Universal Periodic Review
22 April to 3 May 2013

**INTERNATIONAL COMMISSION OF JURISTS (ICJ) SUBMISSION
TO THE UNIVERSAL PERIODIC REVIEW OF COLOMBIA**

Submitted October 2012

Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952, in consultative status with the Economic and Social Council since 1957, and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

ICJ SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW OF COLOMBIA

1. The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the Human Rights Council's Universal Periodic Review (UPR) of Colombia. In this submission, the ICJ brings to the attention of the Human Rights Council's Working Group on the UPR (Working Group) and to the Human Rights Council (Council): (1) Colombia's responsibility to combat the persistent impunity of perpetrators of gross human rights violations; (2) the reforms affecting the access to justice of victims; (3) the intimidation of human rights defenders; and (4) international human rights mechanisms.

Impunity for Human Rights Violations

2. Impunity, including for gross human violations, is widespread.¹ Impunity has typically prevailed in respect of the prosecution of extrajudicial killings and of violence against trade unionists. Impunity generates a sense of abandonment by victims, and encourages the perception of immunity by perpetrators.

3. According to the Centre for Research and Popular Education (CINEP), there have been 1,741 victims of extrajudicial executions in Colombia from 1984 to 2011. Of those, 1,189 took place between 2002 and 2008.² Estimates quantify impunity at up to 98.5 percent in cases of extrajudicial killings committed by members of the security forces in the last years.³ According to the International Federation for Human Rights (FIDH), when prosecutions do occur, low-ranking soldiers are charged for these crimes while the highest-ranking commanders responsible remain unpunished.⁴ Frequently, prosecution authorities do not investigate the accessories to the commission of crimes, especially when they are powerful economic actors such as transnational corporations in the extractive sector.

4. According to information obtained by the Colombian Commission of Jurists and the Escuela Nacional Sindical, 2,903 homicides were committed against trade unionists between January 1986 and May 2011. Of those, only 214 have resulted in court judgments. Within that same period, just five judgments were made for the 157 alleged enforced disappearances of trade unionists. In cases of enforced internal displacement, 99 percent went without judgment; in cases of threats, the rate was 99.9 percent; for alleged torture and ill-treatment cases it was 98 percent. Overall, cases of violent crimes committed against trade unionists had 97.55 percent went unprosecuted.⁵ In several of these cases evidence points to the involvement of national and transnational business corporations in the extractive sector, dairy products and agro-export industries. However, authorities rarely investigate corporate actors due to the perceived complexity of the cases; technical and organisational shortcomings internal to the prosecutors' office that prevents it from being able to gather the evidence necessary for successful prosecution; and political pressure on police and investigative authorities sometimes coupled with credible threats. Colombia does not have a developed criminal law establishing direct criminal liability for legal entities, including corporations.⁶

Access to Justice for Victims

5. A series of projects aimed at reforming the National Constitution are – at the date of this submission – being debated in Congress. Of concern are the following main reforms:

(i) Military jurisdiction

6. The proposed revision of articles 116, 152 and 221 of the Constitution is aimed at the creation of a 'Guarantees Tribunal' responsible for the indictment of military persons accused of committing any type of crime. Retired military officials could participate as tribunal magistrates. There would be an additional mechanism in place to resolve any conflicts of jurisdiction between ordinary and military courts. A joint committee composed of members of the two court systems would decide on which system has jurisdiction over controversial cases and those decisions would not be subject to judicial review.

7. The ICJ opposes the creation of a new guarantees tribunal as undermining human rights protections and independence of the judiciary. According to the Criminal Procedural Code 2004, and the Military Code 2010, each of the relevant court systems has a judge responsible for controlling the indictment procedure of all such cases. Further, allowing retired military personnel to participate in the guarantees tribunal would undermine the independence of the tribunal and inappropriately expand military jurisdiction, including in the case of human rights violations. Under international standards, military courts should not have jurisdiction over the prosecution of serious

human rights violations. Under these amendments, the proposed committee responsible for determining jurisdiction would be a step backwards because it would undermine the presumption that in cases of human rights violations the ordinary courts have jurisdiction.

8. Moreover, the Defense Minister, Juan Carlos Pinzón, has expressed his intention to include a provision in the Judicial Reform Bill that would establish the legal presumption that all crimes committed by active members of the security forces are acts of service. Military courts would thus take priority when active members of the armed forces and security services commit a crime.

9. These proposed reforms disregard international standards regarding the limitations of the military jurisdiction, and the exclusion of human rights violations from the competence of military justice systems.⁷

10. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has recently asserted that there are continuous attempts by the military justice system in Colombia to claim jurisdiction over extrajudicial killings cases. The Special Rapporteur has also expressed his concern over information indicating reprisals against military judges who have sought to collaborate with the ordinary justice system.⁸ Combined with the intended reforms mentioned, this further enhances impunity in Colombia and presents a serious obstacle to the prompt, independent and effective investigation of human rights violations committed by members of the armed forces.

(ii) Prioritization of investigations

11. The *Marco para la Paz* Bill aims to incorporate transitional justice mechanisms within the Constitution by providing tools to achieve peace and end armed conflict.⁹ The Bill establishes that certain crimes committed by armed actors who demobilize may be exempted from prosecution. Remaining investigations and prosecutions would be prioritized focusing on the most serious crimes. Non-prioritized cases would not be prosecuted but would instead be investigated by non-judicial mechanisms.

12. The Act 975/2005 reform will establish for the crimes by demobilized armed actors to be investigated according to the significance of the offenses, as well as the particular situation of the perpetrators and victims.¹⁰

13. The Attorney General's Office has announced a general policy of prioritization of investigations so as to reduce impunity in the ordinary justice system. This policy is said to allow prosecutors to consider the contexts within which violence has taken place.¹¹

14. Although the prioritization of investigations is not per se problematic, such prioritization must be proceed in a manner so as not impair the rights of victims', especially in cases of human rights violations. The responsibility to conduct prompt, independent and effective investigations in cases of human rights violations must be fulfilled by States in all cases.¹² The absence of investigations and prosecutions frustrates victims' rights to access justice and to an effective remedy and reparation, as well the right to truth. The use of any non-judicial mechanisms must be complementary rather than in place of judicial mechanisms. The Inter-American Commission on Human Rights has confirmed, in this regard, that the creation of non-judicial mechanisms does not exonerate the State from its obligation to bring to justice those responsible for violations of human rights.¹³

(iii) Justice reform

15. In the beginning of 2012, the Government proposed a Justice Reform Bill with the objective of improving access to justice. After Congressional debates, the Government objected to the revised Bill because it would benefit current members of Congress investigated for criminal offences. The Bill was consequently not enacted.

16. The ICJ believes that the Bill contains the following potential risks to the rule of law that must be addressed should they be taken up by a new legislature:

- With the view of reducing case backlog, notaries, arbitration centres, practicing lawyers, and court officials – other than judges and magistrates – would take part in judicial proceeding as judges. This reform could lead to the privatization of justice and undermine the independent and impartial administration of justice.
- The reform proposed the creation of a new Supreme Court section for prosecuting members of Congress as well as other high-level officials. It is unclear how those under prosecution by the current tribunal would be affected.

- The reform intended to prevent citizens from making anonymous complaints against members of Congress. It also intended to modify the loss of investiture processes and prevent the arrests of members of Congress before indictment.

Human Rights Defenders

17. Frequently, human rights defenders (HRDs) in Colombia are threatened, harassed, and subjected to illegal surveillance. Recent incidents include:

- According to Amnesty International, more than 45 HRDs and community leaders, and at least 29 trade union members, were killed in 2011.¹⁴
- Between January and July 2012, 16 HRDs were killed in Colombia. The most recent case is that of Luz Neida Gomez on 1 August 2012. Luz Neida Gomez was a member of the Community Council of the village of Buenos Aires in the department of Cauca. Her husband, Oscar Diaz, is a community leader member of the Comité de Integración del Macizo Colombiano (CIMA). Mr. Diaz has been continuously harassed since June 2011 and was the victim of an assassination attempt in June 2012.
- On 7 May 2012, shots were fired into the Bogota office of the women's rights organization Women's Link Worldwide (WLW). According to Amnesty International, these attacks are suspected to be in retaliation for their work on women's sexual and reproductive rights.¹⁵
- On 8 May 2012, three human rights defenders of the National Movement of Victims of State Crimes (MOVICE), and a lawyer from the Permanent Human Rights Committee (CPDH) received death threats. All four have been supporting peasant farmer families, who had been forcibly displaced, to get back land seized by forces involved in the internal armed conflict.¹⁶
- On 1 June 2012, a paramilitary group left a death threat at the home of Juan Díaz Chamorro, a member of MOVICE in Sincelejo, Northern Colombia. The death threat referred to a number of HRDs campaigning for land restitution.¹⁷
- On 20 June 2012, HRDs received death threats through an SMS text message mentioning human rights organizations and trade unions, accusing them of being members of guerrilla groups.¹⁸
- On 4 July 2012, 13 Colombian HRDs were declared "military targets" by the paramilitary that had accused them of being "guerrillas camouflaged in the role of human rights defenders".¹⁹

18. The protection of human rights defenders is fundamental for the promotion and protection of human rights. Together with measures to guarantee the life, security and integrity of HRDs, the criminal justice system must act to apprehend those responsible. As recently observed by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, these investigations must be prioritized.²⁰ The lack of investigations has frustrated the possibility of avoiding new threats and intimidation.

International Human Rights Instruments and Mechanisms

19. The Government of Colombia is a party to several of the core human right treaties, but it is yet to become party to the Optional Protocol (OP) to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the OP to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), and the Third OP to the Convention for the Rights of the Child (CRC).

20. The Government of Colombia has adhered to the periodic reporting deadlines to the treaty bodies. Although the Government has extended a standing invitation to the Special Procedures, since March 2003, it has four pending requests for visits by the Special Rapporteur on adequate housing, the Special Rapporteur on the right to food, the Special Rapporteur on extreme poverty and the Working Group on mercenaries.²¹

Recommendations

21. The ICJ calls upon the Working Group and the Council to recommend to the Government of Colombia to:

Concerning impunity and access to justice

- i). Take concrete measures to end impunity for gross human rights violations, in particular those implicating State agents in cases of alleged extrajudicial killings and violence against trade union members and business corporations;
- ii). Consider a reform of its national criminal law to develop corporate criminal liability in cases involving serious human rights abuses;
- iii). Increase technical capacity within the police and the public prosecutor's office to investigate complex crimes involving corporate actors;
- iv). Reject any reform proposal that would serve to eliminate or reduce investigation or prosecutions of serious human rights violations, or impede access to effective remedies;
- v). Reject any reform proposal that would expand the jurisdiction of the military justice system to cover allegations of serious human rights violations;

Concerning human rights defenders

- vi). Conduct prompt, independent and effective investigations into allegations of threats, intimidation and violence against human rights defenders;

Concerning international instruments and mechanisms

- vii). Become party to: the OP to the ICESCR, the OPCAT, and the Third OP to the CRC;
- viii). Accept the requests of the Special Rapporteur on adequate housing, the Special Rapporteur on the right to food, the Special Rapporteur on extreme poverty and the Working Group on mercenaries to undertake official missions in Colombia at the earliest possible opportunity, and extend to them all reasonable cooperation and assistance to facilitate a timely and effective country mission;
- ix). Present to the Council, as soon as possible after adoption of the outcome document for the UPR of Colombia, a national plan of action for the implementation of accepted recommendations and voluntary pledges and commitments; and
- x). Present to the Council, two years after adoption of the outcome document, a mid-term progress report on the status of implementation of recommendations and voluntary pledges and commitments.

ENDNOTES:

¹ See, for example, U.S. Department of State (2012), "Country Reports on Human Rights Practices for 2011 - Colombia", in <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>.

² CINEP Human rights and Socio-political Violence Database (2011), "Deuda con la Humanidad 2: 23 años de falsos positivos (1988-2011)", Bogotá.

³ Amnesty International, "Impunity - Colombia" (2012), at <http://www.amnestyusa.org/our-work/countries/americas/colombia/impunity>.

⁴ International Federation for Human Rights, "La Guerra se mide en litros de sangre" (2012), at <http://www.fidh.org/IMG/pdf/colombie589e.pdf>.

⁵ Comisión Colombiana de Juristas and Escuela Nacional Sindical, "Imperceptiblemente nos encerraron: Exclusión del sindicalismo y lógicas de la violencia antisindical en Colombia 1979-2010" (2012), Bogotá.

⁶ Comisión Internacional de Juristas, *Acceso a la Justicia: Casos de Abusos de Derechos Humanos por parte de Empresas- Colombia*, Ginebra 2010, p. 12.

⁷ *Draft Principles Governing the Administration of Justice Through Military Tribunals*, UN Doc E/CN.4/2006/58 (2006), Principle 9.

⁸ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns", UN Doc A/HRC/20/22/Add.2 (2012), para 72.

⁹ "Por medio del cual se establecen instrumentos jurídicos de justicia transicional en el marco del artículo 22 de la Constitución Política y se dictan otras disposiciones. [Marco Jurídico para la Paz, Marco Legal para la Paz]".

¹⁰ "Por la cual se dictan disposiciones para la reincorporación de miembros de grupos armados organizados al margen de la ley, que contribuyan de manera efectiva a la consecución de la paz nacional y se dictan otras disposiciones para acuerdos humanitarios".

¹¹ Fiscalía General de la Nación, "Priorización para la investigación puede reducir impunidad" (2012), at <http://www.fiscalia.gov.co/colombia/noticias/priorizacion-para-la-investigacion-puede-reducir-impunidad/>.

¹² Juan Méndez, "Derecho a la Verdad frente a las graves violaciones a los derechos humanos" in *La aplicación de los tratados de derechos humanos por los tribunales locales* (1997), CELS, Editores del Puerto, Buenos Aires, p.526.

¹³ Inter-American Commission on Human Rights, Report N° 28/92 (1992), Cases 10.147, 10.181, 10.240, 10.262, 10.309, and 10.311 (Argentina), paragraph 52.

¹⁴ Amnesty International, "Annual Report. Colombia" (2012), at <http://www.amnesty.org/en/region/colombia/report-2012>.

¹⁵ Amnesty International, "Women Rights Defenders' Lives in Danger", Colombia, Doc. AMR 23/020/2012.

¹⁶ Amnesty International, "Human Rights Defenders Threatened", Colombia, Doc. AMR 23/021/2012.

¹⁷ Amnesty International, "New death threats in Colombia", Colombia, Doc. AMR 23/022/2012.

¹⁸ Amnesty International, "Colombian activists receive death threats", Colombia, Doc. AMR 23/023/2012.

¹⁹ International Federation for Human Rights,, "Colombia: death threats against human rights defenders" (2102), at <http://www.fidh.org/Colombia-death-threats-against>.

²⁰ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, above note 7.

²¹ Requests for country visits were made by the following Special Procedures in the year provided for in parenthesis: Special Rapporteur on the human rights of internally displaced persons (requests in 2011 and 2012), Special Rapporteur on adequate housing (request in 2006), the Special Rapporteur on the right to food (request in 2008), the Independent Expert on human rights and extreme poverty (request in 2008) and the Working Group on mercenaries (requests in 2006 and 2010).