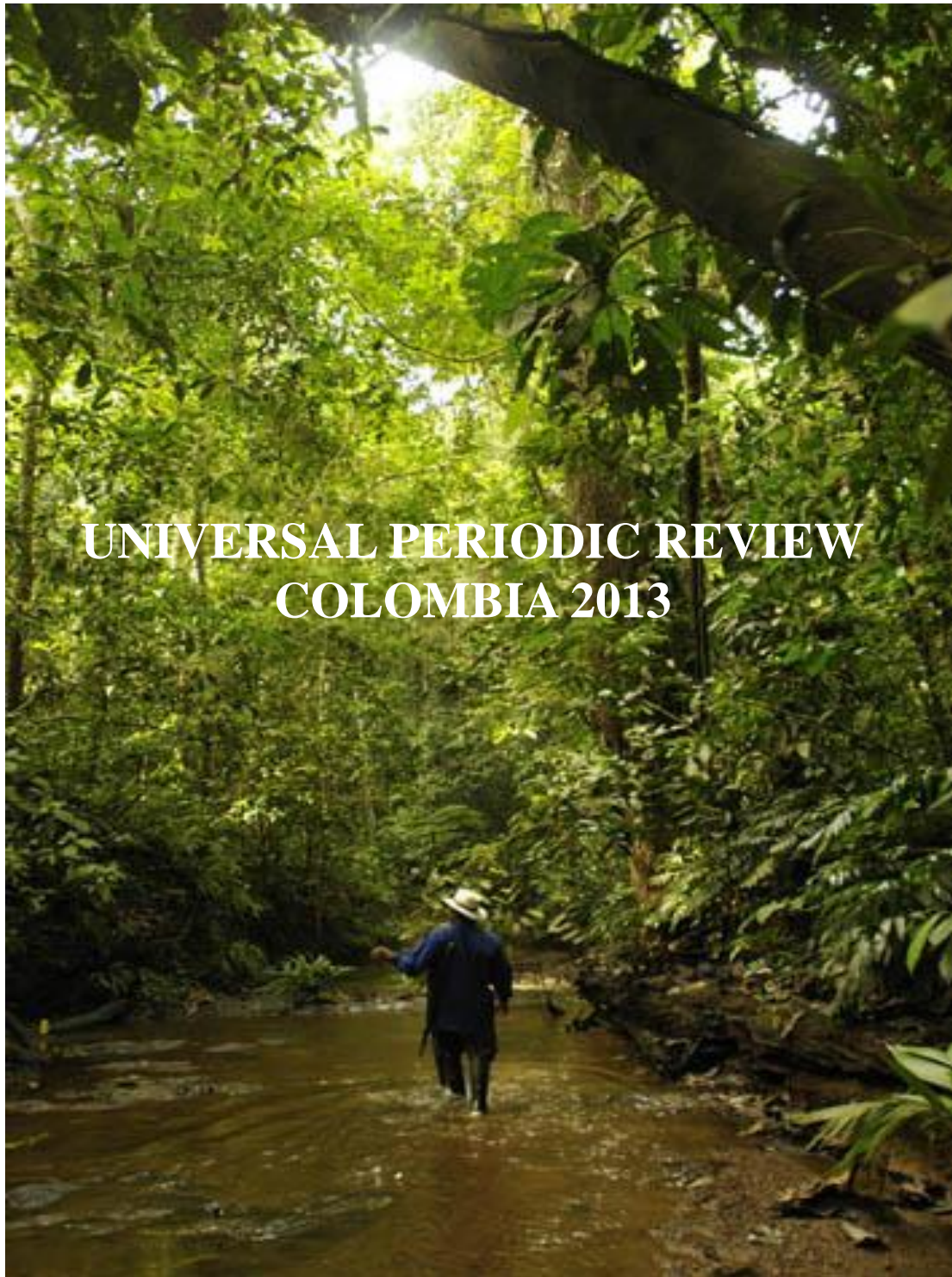


***Report on the Human Rights situation in Colombia  
2008-2013***

By international platforms and organizations



**UNIVERSAL PERIODIC REVIEW  
COLOMBIA 2013**

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**Universal Periodic Review  
Colombia**

**Cooperation with United Nations mechanisms and bodies**

1. Colombia agreed to the visit of several special procedures<sup>i</sup> since the previous UPR, which has been valued positively. Nevertheless, Colombia has not yet complied with most of the recommendations made by the various UN mechanisms<sup>ii</sup>.
2. It is of concern that despite its standing invitation, Colombia has not agreed to receive visits requested by various special procedures, including the visit of the Working Group on mercenaries and the Special Rapporteur on internally displaced persons, who both applied twice, and has not invited the United Nations Special Adviser on the Prevention of Genocide<sup>iii</sup> when the situation in Colombia with respect to these issues is dramatic.
3. Also, although the recent ratification of the International Convention for the Protection of All Persons from Enforced Disappearance has been noted as a positive step, it is important for Colombia to accept the competence of the Committee on Enforced Disappearances, which would allow for broader protective functions and the direct participation of victims. The same applies to the CERD, CMW and the CAT with regards to individual complaints procedures.
4. Of great concern are statements made by the Chancellor in July 2011 which questioned the work of the UN offices in Colombia<sup>iv</sup>. In the same vein, government questions regarding the latest annual report of the OHCHR<sup>v</sup> and the current government initiative to establish a national human rights system raise serious concerns that they may be seeking to supplant the work of the OHCHR office in Colombia.

**Armed conflict**

5. The recognition of armed conflict by the government of President Santos and the recent announcement of the opening of peace talks between the government and the FARC are positive steps forward. It is important that this process is built on a solid foundation of respect for human rights and international humanitarian law (IHL) and that it seeks to respond to the structural causes of conflict. It is crucial to look for mechanisms to ensure the effective participation of civil society including victims and those made most invisible by the conflict itself.
6. Gross and systematic violations of human rights and IHL continue to be reported, committed by all armed actors in the conflict (guerrilla, paramilitary and security forces). The conflict has intensified in combat zones, resulting in a continuous and intense victimization of the civilian population at the hands of armed groups seeking to strengthen geographical, social and political control over these areas. And violence and combat have intensified since the announcement of peace talks. Recurring violations of the principles of distinction, necessity and proportionality have been reported. Increasing militarization has been the source of numerous violations of human rights and international humanitarian law, in particular in the Consolidation Zones<sup>vi</sup> where militarization has been accompanied by an increase in violations<sup>vii</sup>. Civilians continue to be stigmatized by accusations of collaborating with one side or the other, which exposes them to enormous risks<sup>viii</sup>.
7. Some of the highest ranking FARC leaders have been killed in recent years<sup>ix</sup>. However, the guerrillas of the FARC and ELN continue to have an active presence in significant areas of the country where they continue to exercise control over territory, population and resources. The use of landmines and the forced recruitment of minors continue to be reported<sup>x</sup>. Guerrilla attacks continue to cause

death, injury, anxiety and loss of food for communities. Many young people are being displaced from their communities due to fear of forced recruitment by the guerrilla in retaliation to the presence of military troops<sup>xi</sup>.

8. Despite their supposed demobilization, paramilitary groups continue to operate and commit serious and massive violations of human rights, employing the same methods as before<sup>xii</sup>. The OHCHR has said that “the number of victims of massacres attributed to these groups continued to increase”<sup>xiii</sup>. They have a clear relationship with the “demobilized” paramilitaries<sup>xiv</sup>. Many of these groups are linked to drug trafficking and the illegal appropriation of natural resources<sup>xv</sup>. Since 2008, they have extended their presence, from 259 to 406 municipalities in 2011<sup>xvi</sup>.
9. Paramilitary groups continue to maintain links with authorities and members of the security forces<sup>xvii</sup>. This is in spite of the progress made in the investigations of politicians and officials related to their links with paramilitaries<sup>xviii</sup>, particularly in the Supreme Court<sup>xix</sup>. According to Human Rights Watch, the Colombian government “*It has failed to invest adequate resources in the police units charged with combating the groups, or in the group of prosecutors charged with investigating them. It has done far too little to investigate regular reports of toleration of the successor groups by state agents or public security forces*”<sup>xx</sup>. The denial of continued paramilitary activity by the Colombian authorities who term them “criminal gangs” or “BACRIM” also contributes to a lack of protection for the population due to the failure to adopt the necessary measures against these groups to prevent, investigate and punish their crimes.

## **Right to life, liberty and security of person**

### **Forced disappearance**

10. Enforced disappearance continues to be a widespread and systematic practice<sup>xxi</sup>. 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<sup>xxii</sup>. 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 were 2.11% of enforced disappearances (2 victims)<sup>xxiii</sup>.
11. As noted by the OHCHR, the impunity surrounding this crime is “*disturbing*” and the existing legal framework has failed to remedy this phenomenon<sup>xxiv</sup>. 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, the regulatory decree to bring the provision into law has still not been issued. Threats and accusations against those who report cases of enforced disappearances are of serious concern<sup>xxv</sup>.

### **Extrajudicial executions**

12. A reduction in extrajudicial executions has been reported since 2008; however, there continue to be reports of cases allegedly committed by the armed forces<sup>xxvi</sup>. Between 2002 and 2009, there were 2,180 violations of the right to life perpetrated directly by state agents (1,877 extrajudicial

executions and 303 forced disappearances)<sup>xxvii</sup>. In 2011, there were 38 cases reported of extrajudicial executions allegedly committed by state agents<sup>xxviii</sup>.

13. As noted by the Special Rapporteur, ongoing impunity and the lack of accountability faced by officials these developments represent a major concern. Of the 561 cases being heard by the Human Rights Unit, which correspond to events that occurred after October 29, 2008, only two (0.4%) have ended in judgment<sup>xxix</sup>.
14. The directives that provide incentives to members of the armed forces who present persons killed in combat as results are still valid, despite the Rapporteur's recommendation to eliminate them<sup>xxx</sup>. Moreover *"the policies that were subsequently enacted (...) on the contrary, establish defence mechanisms to protect the military against charges of committing these crimes. These policies also continue to violate the principle of distinction contained in the rules of humanitarian law, by confusing the civilian population with the guerrilla"*<sup>xxxi</sup>.

### Forced displacement

15. Forced displacement remains massive, with between 3.9 and 5.5 million internally displaced persons<sup>xxxii</sup>, including 259,146 additional cases in the year 2011<sup>xxxiii</sup>, or 155,692 cases, according to official records<sup>xxxiv</sup>. There was also an increase in mass displacement (those that affect more than 10 households or 50 persons) reported in 2011<sup>xxxv</sup>.
16. Through the new Law on Victims and Land Restitution in Colombia (Law 1448 of June 10, 2011) the government announced that it will recognize legal land titles to victims of forced displacement demanding the return of their lands, this law contains many limitations<sup>xxxvi</sup>, 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"*<sup>xxxvii</sup>.
17. Of utmost concern is the lack of security for the people leading processes for the restitution of stolen land: between 2006 and 2011 at least 71 leaders were killed<sup>xxxviii</sup>, including 28 in 2011<sup>xxxix</sup>. Also, between 2007 and March 2010, 1,499 displaced persons have been killed<sup>xl</sup>. As shown by these figures, there is no real system for protection and prevention.
18. 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<sup>xli</sup>. 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<sup>xlii</sup>.
19. Faced with the continuation of this dramatic situation and the multiple human rights violations arising from displacement, the Constitutional Court reconfirmed in 2011 the unconstitutional state of affairs<sup>xliii</sup> declared in Judgment T-025 of 2004<sup>xliv</sup>.
20. The armed conflict has also led to the forced exile of significant numbers of the population. The total Colombian refugee population in the region of the Americas is estimated at some 400,000 people<sup>xlv</sup>.

## **Violence against women**

21. All armed parties to the internal armed conflict in Colombia continue to use sexual violence as a strategy of war and terror. As stated by the Constitutional Court, there is a direct link between displacement and sexual violence; displaced women suffer the impacts of armed conflict disproportionately. Impunity continues to be almost total for these crimes<sup>xlvi</sup>. Of the 183 individual cases of sexual violence against women and girls for which the Constitutional Court ordered the Attorney General to pursue investigations (Auto 092, April 2008) *“to date only four of these cases have been brought to trial”*<sup>xlvii</sup>.
22. There is a vast underreporting of violence against women<sup>xlviii</sup> and a lack of visibility thereof. Nevertheless, in 2010, 69,713 cases of domestic violence against women were reported, 128 cases of femicide (130 in 2011<sup>xlix</sup>) and 16,916 cases of sexual violence<sup>l</sup>. An increase in sexual violence in mining extraction areas was also reported<sup>li</sup>.
23. As noted by the Special Rapporteur on violence against women<sup>lii</sup>, women defenders, particularly women leaders of communities and those who fight for land rights, indigenous peoples and ethnic or religious minorities, trade unionists and the LGBTI community are particularly vulnerable. In the first half of 2012, 18 women human rights defenders were the victims of attacks (including one killing and two victims of sexual assault)<sup>liii</sup>.

## **Conditions in detention centers**

24. Colombian prisons are characterized by overpopulation and a lack of access to rights, such as health. As of July 31, 2012, 31% of the 111,242 persons deprived of liberty (including 8418 women) were still awaiting judicial decisions. More than 66,906 persons are in jail for minor offenses, while only 564 persons are detained in relation to serious crimes committed in the context of the armed conflict - such as forced displacement, forced disappearances, sexual violence<sup>liv</sup>.
25. 120 of the 142 Colombian prisons are overpopulated. The global average of overpopulation is 47%, but it can reach 364% in some cases<sup>lv</sup>. The health system for detainees collapsed and no medical attention is currently being given. From January to July 2012, 80 people died due to a lack of medical care<sup>lvi</sup>; tuberculosis and chicken-pox epidemics were detected, which led to visits restrictions<sup>lvii</sup>. No plans have been designed to address risks such as fire and as a result at least four people died in 2012<sup>lviii</sup>. Several prisons lack of drinking water<sup>lix</sup>.
26. Isolation is often used<sup>lx</sup>, as well as other forms of torture and cruel, inhuman and degrading treatment. The government has not complied with the recommendation by UN mechanisms to ratify the OP-CAT<sup>lxi</sup>. The work of human rights organizations on cases of deprivation of liberty is obstructed through denial of access to the prison<sup>lxii</sup>.

## **Administration of justice, including the struggle against impunity, and the Rule of Law**

### **Generalized and persistent impunity<sup>lxiii</sup>**

27. Even though since 2008 there have been a number of important rulings<sup>lxiv</sup> and that Law 1448 of 2011 on victims and land restitution could represent a breakthrough for victims<sup>lxv</sup>, impunity continues for almost all crimes in cases of human rights violations, continues to pose a serious challenge<sup>lxvi</sup> and is one of the biggest causes of the persistence of violence.

28. As of March 2012, 56,559 people had “demobilized”<sup>lxvii</sup>. Of these, approximately 3,600 made use of Law 975 of 2005 and by December of 2011, only six sentences had been passed<sup>lxviii</sup>. Although during this process progress was made with regard to the right to the truth<sup>lxix</sup>, this legal framework was really a “de facto” amnesty for almost all those who demobilized. Moreover, the extradition of 29 paramilitary leaders to the United States beginning in May 2008 hampered the already limited possibilities for victims to obtain justice. Law 1424 of 2010 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). Moreover, currently seeking reinforcement (draft amendment to the ‘Justice and Peace’ Law) and the extension of the provisions of the Justice and Peace Law to military personnel (Statutory Law for military personnel), which further impedes the right of victims to justice. 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.
29. Moreover, the constitutional reform on transitional justice (‘Legal framework for peace’, 19 June 2012)<sup>lxx</sup>, 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<sup>lxxi</sup>. 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.
30. The draft reform which seeks to expand military jurisdiction<sup>lxxii</sup> is also 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<sup>lxxiii</sup> 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<sup>lxxiv</sup>. The reform also provides for the creation of a special jurisdiction for the police. Moreover, of the few cases involving direct responsibility of the state which are under investigation, those brought against people in high ranking positions are rare<sup>lxxv</sup>.

### **Attacks against the independence of the justice system**

31. Justice officials and other stakeholders (victims, witnesses and lawyers) that contribute to justice continue to be victims of attacks, accusations and killings. The pressures are particularly strong when dealing with cases involving elements of the security forces, as reflected in the March 2011 murder of Judge Gloria Constanza Gaona<sup>lxxvi</sup>. Between January and April 2012, 11 lawyers were killed<sup>lxxvii</sup>.
32. The statements of 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<sup>lxxviii</sup> and declaring that it was the Colombian army who should receive an apology and not the victims<sup>lxxix</sup>.
33. 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<sup>lxxx</sup>, 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<sup>lxxxix</sup>.

34. 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<sup>lxxxii</sup> 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<sup>lxxxiii</sup>), 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<sup>lxxxiv</sup>.
35. In the same vein, if we analyse the withdrawal of the constitutional justice reform<sup>lxxxv</sup>, the process was a clear demonstration of the ongoing attacks on the independence of justice, both in its content and in its process. 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<sup>lxxxvi</sup>; later this strategy was changed and favourable provisions were introduced for current judges<sup>lxxxvii</sup>. The High Courts, which months earlier had expressed their rejection of the view that reform was damaging the independence and autonomy of the judiciary<sup>lxxxviii</sup>, changed their stance.
36. 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<sup>lxxxix</sup>.
37. As demonstrated by the introduction in Congress of a new proposal for constitutional reform, which aims to ensure that the Attorney General is appointed by the President of the Republic rather than the Supreme Court<sup>xc</sup>, new initiatives could herald a return to the “shelved” justice reform.

## **Freedom of expression, assembly, association and peaceful protest**

### **Human rights defenders**

38. Although there has been a partial change of tone in the Government of President Santos, as well as a greater openness to dialogue than its predecessor, concerns increased over the numbers of attacks against human rights defenders, trade unionists, journalists and social and community leaders and their families. 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).
39. In 2012 the situation went worse than in the previous years. During the first semester of 2012, 163 individual attacks against defenders were reported (including 81 threats, 29 murders, 3 forced disappearances, 17 arbitrary detentions and 1 case of sexual violence)<sup>xcii</sup>. Already in 2011 the attacks increased of 36% compared to 2010<sup>xciii</sup> as there were a total of at least 239 individual attacks against defenders (including 49 murders and 6 forced disappearances)<sup>xciii</sup>. Of the total reported cases, 50% were allegedly committed by paramilitary groups, 17% by members of the security forces, 4% by the guerrilla and 29% by unidentified aggressors. Particularly alarming are the attacks against those



directly and indirectly involved in land restitution processes<sup>xciv</sup>. Also of concern are attacks on peace activists<sup>xcv</sup>.

40. Stigmatization continues to be a significant risk factor. Particularly serious are the statements regarding the Mapiripán massacre<sup>xcvi</sup>. Also of concern are the repeated accusations against defenders made by members of the security forces<sup>xcvii</sup>. There is a lack of implementation of the provisions which order state officials to refrain from any form of accusations against defenders and reiterate the obligation to investigate all threats against them<sup>xcviii</sup>.
41. Smear campaigns persist against human rights defenders, particularly those linked to land restitution processes and in areas where there are large scale economic interests<sup>xcix</sup>. It is noteworthy that some of these campaigns are led or supported by former Colombian state officials<sup>c</sup>.
42. Despite major reforms in the state Protection Program<sup>ci</sup>, 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.
43. Human rights defenders continue to report surveillance, interceptions and other illegal activities carried out against them by the intelligence services<sup>cii</sup>, despite the recent dismantling of the Department of Administrative Security (DAS). 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<sup>ciii</sup>.
44. 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).

## Journalists

45. During 2011, there were 130 violations against 157 journalists, which was the highest figure in the last 6 years. Moreover, in the first six months of 2012, 85 violations were reported against 91 journalists, which represents an alarming increase. Members of the security forces and politicians or members of political parties were the sectors who levelled the most threats against the press in 2011<sup>civ</sup>. Of particular concern is the increase in attacks by illegal armed groups. In 2011 there were 17 cases of attacks (15% of all attacks) carried out by paramilitary groups, that is almost double compared to 2010. Impunity for these cases is widespread: of 139 cases of journalists murdered between 1977 and 2011, 57 have been closed (in 2011, 9 cases were closed) and there have been only 17 convictions (12% of the total number of cases).

## Trade Unionists

46. With 35 murders in 2011, Colombia is, "*once again, the most dangerous country for trade unionists*" in the world<sup>cv</sup>. 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*". Impunity for violence against trade

unionists is widespread: Colombia has obtained convictions in less than 10% of the more than 2,900 murders of trade unionists reported by the ENS since 1986<sup>cxvi</sup>. In only 25% of these cases the person who carried out the crime has been established, and in 7.8% the person who planned the crime. The perpetrators were paramilitary groups in 14% of homicides, guerrillas in 5.1% and state agents in 1.7%<sup>cxvii</sup>. This situation discourages union membership<sup>cxviii</sup> and helps to create an environment conducive to violations of labour rights.

47. Despite the constitutional recognition of the rights to freedom of expression, assembly and demonstration<sup>cxix</sup>, the criminalization of social protest and the practices of judicialization and arbitrary arrests, including mass arrests, continue. This situation highlights the lack of respect for due process and the use of military intelligence in the processes and testimonies of demobilized combatants, who have often been paid for their testimony<sup>cx</sup>. For its part, 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<sup>cxxi</sup> 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*”. Also there are continued reports of cases of excessive use of force to suppress legitimate protests<sup>cxvii</sup>.

### **Conscientious objection**

48. Conscientious objection has not been recognized as a right under Colombian law<sup>cxiii</sup>. Although conscientious objection was recognized as a right by the Constitutional Court in 2009<sup>cxiv</sup>, neither the Armed Forces nor the lower judicial bodies have nor respected this. In response to this situation, the Constitutional Court<sup>cxv</sup> stated that the right to conscientious objection must be respected even without being regulated by Congress and ordered the Ministry of Defence to undertake a massive information campaign about this right<sup>cxvi</sup>. However, according to information, as of July 2012 the Ministry of Defence had not yet complied with this request.
49. Moreover, in Colombia the national army continues to develop illegal recruitment practices<sup>cxvii</sup>, known as “*raids*”. This occurs despite the fact that these practices have been categorized as arbitrary detention by the UN Working Group on Arbitrary Detention<sup>cxviii</sup> and by the Constitutional Court<sup>cxix</sup>.

### **Economic, social and cultural rights**

50. The situation in Colombia regarding ESCR continues to be critical in all its dimensions. Despite the recommendations of the CESCR of 2010<sup>cx</sup>, no systematic follow-up has been done and the country lacks adequate policies to overcome poverty, inequality and the crisis in different key sectors such as rights to food, social security, labour rights and health.
51. With a GINI index of almost 0.56 (2010), Colombia is among the most unequal countries in the world<sup>cxxi</sup> and wealth concentration has not changed substantially over the last 10 years. 37.2% (50.3% in rural areas) of the population in poverty and 16% in extreme poverty (27.6% of the population lives on less than \$ 2 per day)<sup>cxvii</sup>.
52. In relation to the right to food, an increase has been reported in the number of Colombian homes that are in a situation of food insecurity (42.7% of the total in 2010, against 40.8% in 2005<sup>cxviii</sup>), a situation which particularly affects rural households (57.5% of rural households) and Afro-descendants (56.4% of Afro-descendant households)<sup>cxviii</sup>. The concentration of productive land

continues to be very high: 0,4% of landowners have control of 62,6% of the land surface area<sup>CXXV</sup>. Between 6.8 and 10 million hectares have been grabbed<sup>CXXVI</sup>. State strategies lack a clear concept of agrarian reform. The government land restitution policy lacks of a clear concept of agrarian reform that would also include farmers who have not been direct victims of the armed conflict. Moreover, this situation could be further aggravated by the current policy which gives priority to industries such as mining and oil extraction and limits the access to land for *campesinos*, afro-descendants and indigenous peoples<sup>CXXVII</sup>.

53. The current Social Security system<sup>CXXVIII</sup> is based on an insurance system based on market logic which do not allow to guarantee the right to social security for the whole Colombian population. Public resources have been handed over to private stakeholders, who *“have become intermediaries who manage the administration, membership and provision of social security services”*<sup>CXXIX</sup>. This, when added to the lack of control by the state, has generated a *“growing problem of quality”*, high levels of corruption, and obstacles to access basic rights, which particularly affects people of low income and rural, informal and household workers, who are not recognized for occupational hazards. And while there has been an increase in the employment rate (58.8% - an increase of 3.2%) since 2010, the majority of this employment is precarious: 43% of workers are self-employed, of whom 80% are part of the informal economy and among these, 91% have no social protection<sup>CXXX</sup>.
54. Regarding the right to health, increased morbidity and mortality from contagious diseases occurs; low vaccination coverage; poor quality and restricted medicines; increase in barriers and costs for citizens of access to health services and information are reported<sup>CXXXI</sup>. Rising costs and corruption related to intermediation by private companies has led to the serious crisis within the Colombian health system and which has in fact caused its collapse<sup>CXXXII</sup>, causing closures and the privatization of hospitals<sup>CXXXIII</sup>. For example, in May 2012, hospitals in Bogotá warned about their inability to operate after 20 days due to this critical situation<sup>CXXXIV</sup> and there were proposals by local authorities to *“declare bankruptcy to the public in Bogotá (...); to cancel the contract of 200 Metrosalud workers in Medellín; or to cut the budget of the public hospital network (...) in Cali”*<sup>CXXXV</sup>. The answers proposed by the current government (allocation of additional resources to the EPS who were largely responsible for the crisis<sup>CXXXVI</sup>) and reforms<sup>CXXXVII</sup> do not respond to this situation. It is also noteworthy that in the National Development Plan there is no provision for a review of the social security system as a whole.

### **Indigenous peoples<sup>CXXXVIII</sup> and afro-descendent peoples**

55. Indigenous peoples and peoples of African descent continue to suffer attacks by the different armed actors in the conflict, who put pressure on their territories due to their richness in natural resources and their geostrategic characteristics.
56. At least 34 indigenous people are at risk of extinction<sup>CXXXIX</sup>. The Colombian government has yet to comply with Auto 004 of the Constitutional Court which requires the development, in consultation with the indigenous peoples concerned, of *“safeguarding plans”* and the implementation of a National Guarantee Program<sup>CXL</sup>. The number of murders of indigenous people rose by 9% between 2010 and 2011<sup>CXLI</sup>, and between January and July 2012, 54 indigenous people were killed<sup>CXLII</sup>. Sexual and gender-based violence against indigenous women and girls continues<sup>CXLIII</sup>. Communities report that they are not able to continue with their traditional hunter-gatherer lifestyles for fear of leaving women unaccompanied<sup>CXLIV</sup>.
57. Displacement continues to disproportionately affect indigenous peoples and peoples of African descent, compared with the rest of the population<sup>CXLV</sup>, due to several cross-cutting factors - identified by the Constitutional Court<sup>CXLVI</sup> - including structural exclusion, the pressures generated by mining and agricultural processes and poor legal protection of their collective territories. The

ONIC reports that between January and June 2012 there were 24 mass displacements, representing a total of 8,845 displaced indigenous people (including 3,275 in Chocó and 3,036 in Cauca) “as a result of fighting between government forces and armed insurgent groups, violent actions by paramilitary groups, bombardments, accidents caused by the presence of landmines and UXO, restrictions to mobility, stigmatization and armed incursions”<sup>cxlvii</sup>. The Colombian State has not yet complied<sup>cxlviii</sup> with the prevention, protection and care ordered by the Constitutional Court (Auto 005 of 2009)<sup>cxlix</sup> with respect to the afro-descendent population in a situation of forced displacement. The findings of the Court that “prevailing fundamental rights are being continuously and massively ignored” continue with full force: according to the IACHR, 30% of the afro-descendent population are suffering the impacts of displacement<sup>cl</sup>, and 96.4 % of displaced Afro-Colombians live below the poverty line<sup>cli</sup>. Nor has the Colombian State complied with the recommendations of the United Nations related to the dramatic situation of afro-descendent people<sup>clii</sup>.

58. Mega-projects (mining, infrastructure, etc.) are concentrated in particular in the territories of indigenous and afro-Colombian peoples<sup>cliii</sup>. Free, prior and informed consent has not been properly applied during the implementation of a single mining project since 2005, while mining stocks have increased by 300%. In this sense the recent decision of the Constitutional Court (C-317/12, May 3, 2012) is cause for concern, since denied the right to prior consultation of indigenous peoples with respect to Legislative Act 05 of 2011, which regulates the General System of Royalties (*Sistema General de Regalías*). 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<sup>cliv</sup>. Some 70% of indigenous children suffer from chronic malnutrition<sup>clv</sup> 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<sup>clvi</sup>. 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<sup>clvii</sup>. Some efforts by local authorities have been reported, for example in Casanare<sup>clviii</sup>, however, the delivery of emergency food aid is not a long-term solution. The situation is also dramatic in terms of education: the illiteracy rate rises to 17.9% for the afro-Colombian population and to 14.4% for the indigenous population, while the national average is 6.3%<sup>clix</sup>.

<sup>i</sup> Rapporteurs on extrajudicial executions, indigenous peoples, human rights defenders, independence of judges and lawyers, independent expert on minority issues

<sup>ii</sup> 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).

<sup>iii</sup> In accordance with the recommendation of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people: “*The State is urged to invite the United Nations Special Adviser on the Prevention of Genocide to monitor the situation of the indigenous communities that, according to Decision 004 of the Constitutional Court, are under threat of cultural or physical extermination.*” (§ 64), Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, The situation of indigenous peoples in Colombia: follow up to the recommendations made by the former Special Rapporteur, May 25, 2010, A/HRC/15/37/Add.3

<sup>iv</sup> [El Tiempo, Contra la ONU, Columna de opinión](#). (*El Tiempo, Against the UN, Opinion*) These statements were made in the context of the discussion taking place in the Security Council of the United Nations on the monitoring mechanism for the forced recruitment of minors in conflict zones.

<sup>v</sup> The government denied the continuation of extrajudicial executions and illegal intelligence activities, identified in the report submitted in February 2012. ([El Tiempo, En cuatro zonas del país persisten los 'falsos positivos': ONU, 27 de febrero de 2012](#); [El Espectador, Gobierno pide a la ONU precisar sobre supuestos nuevos casos de 'chuzadas', 27 de febrero de 2012](#)) (*El Tiempo, 'false positives' persist in four areas of the country: UN, February 27, 2012, El Espectador, government asks UN to clarify on alleged new cases of wiretapping, February 27, 2012*).

<sup>vi</sup> Presidential Directive 001 on the Coordination of the National Government to implement the National Plan of Territorial Consolidation, issued March 20, 2009. It covers the following areas: Montes de Maria, Nudo de Paramillo (South of Cordoba),

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Buenaventura, Nariño, Sierra Nevada de Santa Marta, eastern Antioquia, Cordillera Central (South of Tolima and Valle), Macarena and Río Caguán.

<sup>vii</sup>“In the 86 CCAI zone municipalities 19 massacres were committed with a tragic toll of 92 people killed. 176 more were victims of selective killings. In addition 87 civilians were injured or killed in the course of hostilities. Another 81 civilians were wounded, maimed or killed by landmines. 15 people were kidnapped. 5 attacks were perpetrated and clandestine groups made at least 6 death threats against social organizations and human rights defenders ...” Codhes Informa: Boletín Informativo de la Consultoría para los Derechos humanos y el Desplazamiento Número 77, Bogotá 15 de febrero de 2011. ¿Consolidación de Qué? Informe sobre Desplazamiento, Conflicto Armado y Derechos Humanos en Colombia en 2010 - *Codhes Reports: Newsletter of the Consultancy for Human Rights and Displacement Number 77, Bogota February 15, 2011. What Consolidation? Report on Displacement, Armed Conflict and Human Rights in Colombia in 2010.*

<sup>viii</sup>[CINEP/ PPP, Armed conflict in Colombia in 2011. Special Report. June 2012](#)

<sup>ix</sup>As in the case of the highest commander of the FARC, Guillermo León Saenz Vargas, aka 'Alfonso Cano', who was killed during a military operation in November 2011.

<sup>x</sup>[Geneva Call, Annual Report 2011, August 2012](#)

<sup>xi</sup>Report of the National and International Campaign “For the Right to Defend Human Rights in Colombia”, July 2012.

<sup>xii</sup>[Human Rights Watch, Paramilitaries’ Heirs: the new face of violence in Colombia, 2010.](#)

<sup>xiii</sup>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

<sup>xiv</sup>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.)

<sup>xv</sup>[CINEP/ PPP, Armed conflict in Colombia in 2011. Special Report. June 2012](#)

<sup>xvi</sup>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 \(INDEPAZ - VII Report on presence of paramilitary groups in 2011\)](#)

<sup>xvii</sup>In its 2012 report, the OHCHR said, “OHCHR-Colombia continues to be concerned about indications that these groups benefit from the collusion of some local authorities and members of security forces, due primarily to corruption, intimidation and threats. In May, agents of the Technical Investigation Unit and the Attorney General’s Office arrested 37 officials in Nuquí and Bahía Solano, Chocó, including members of the Police, the judicial system and local administrations, for collaborating with these groups.” (UNHCHR, prec.)

<sup>xviii</sup>OHCHR, Annual Report of the High Commissioner of the United Nations for Human Rights on the situation of human rights in Colombia, March 4, 2010, A/HRC/13/72.

<sup>xix</sup>In late 2011 the Supreme Court had opened more than 160 investigations and/or proceedings against members of Congress for para-politics (OHCHR 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 para-politics scandal. To date there are currently legal proceedings against some 38 members of Congress who face removal from office (Ibid.). This situation prompted attacks by other powers against the Supreme Court, and attempts to limit its jurisdiction (see section on justice reform).

<sup>xx</sup>[Human Rights Watch, Colombia - Herederos de los paramilitares: la nueva cara de la violencia en Colombia, 2010.](#)

<sup>xxi</sup>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”.

<sup>xxii</sup>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.

<sup>xxiii</sup>Ibid.

<sup>xxiv</sup>OHCHR report, 2012, prec.

<sup>xxv</sup>The Working Group on Enforced Disappearances expressed concern about this in their latest report on Colombia.

<sup>xxvi</sup>Both NGOs ([Colombian Commission of Jurists: Monitoring report on the recommendations of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, February 16, 2012](#)) and the United Nations (Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, Addendum, Follow-up country recommendations: Colombia, May 15, 2012, A/HRC/20/22/Add.2) confirm this trend. Suspected cases are reported in Arauca, Bogotá, Cauca and Cesar (OHCHR Report, January 31, 2012, prec.). See also Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, 2010, A / HRC / / 14/24/Add.2

<sup>xxvii</sup>Colombian Commission of Jurists (Comisión Colombiana de Juristas - CCJ), Informe de seguimiento a las recomendaciones del Relator Especial sobre Ejecuciones Extrajudiciales, Sumarias o Arbitrarias (*Monitoring Report on the recommendations of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*) February 16, 2012.

<sup>xxviii</sup>CINEP/Programa por la paz, Banco de datos de derechos humanos y violencia política, (*Data base on human rights and political violence*) July-December 2011

<sup>xxix</sup>CCJ, prec.

<sup>xxx</sup>In particular, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, prec. and recommendation 19 of the previous UPR - not accepted by the Colombian government.

<sup>xxxi</sup>CCJ, prec.

<sup>xxxii</sup>Data from respectively, Codhes and the Presidential Agency for Social Action and International Cooperation (*Agencia Presidencial para la Acción Social y la Cooperación Internacional*)

<sup>xxxiii</sup>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 (CCA) were initially defined, which represent 7.67% of the municipalities.

<sup>xxxiv</sup> Department of Social Prosperity (*Departamento de Prosperidad Social*), based on: Registry of Displaced Population, 2011

<sup>xxxv</sup> 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)

<sup>xxxvi</sup> There are a number of constitutional challenges pending on various aspects of the 1448 law, for example on the exclusion of groups of victims.

<sup>xxxvii</sup> OHCHR Report, 2012, prec.

<sup>xxxviii</sup> 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.

<sup>xxxix</sup> 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.

<sup>xl</sup> [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](#)

<sup>xli</sup> 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

<sup>xlii</sup> 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.

<sup>xliii</sup> 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. The situation continues despite several follow-up Autos.

<sup>xliv</sup> Decision T-025 refers to the rights associated with humanitarian assistance, housing, income and land generation, prevention, non-repetition and truth, justice and reparation.

<sup>xlv</sup> [UNHCHR, Global trends 2011, A year of crises, 18 June 2012](#)

<sup>xlvi</sup> Margot Wallström, UN Special Representative on sexual violence in armed conflict, insisted after her visit to Colombia in May 2012, that "Colombia should increase its efforts to combat impunity for crimes of sexual violence."

<sup>xlvii</sup> Report of the Secretary-General on sexual violence related to conflict, January 13, 2012, A/66/657-S/2012/33

<sup>xlviii</sup> SISMA Mujer in [Feminicidio/femicidio - Realidad silenciada - Boletín de Mundubat](#) (Femicide, a silenced reality Mundubat Bulletin) June 2012.

<sup>xlix</sup> SISMA Mujer, based on the report of the National Institute of Legal Medicine and Forensic Sciences (INML) Forensis 2011. Comportamiento del homicidio (*Forensis 2011. Behaviour of murder*), Colombia 2011

<sup>l</sup> Ibid.

<sup>li</sup> Communiqué of Colombian organisations for the defence and promotion of the rights of women on the occasion of the visit of Ms. Wallström "La violencia sexual en el marco del conflicto no es algo inevitable, es y debe ser evitable" (Sexual violence in armed conflict is not inevitable, it is and should be avoidable), 26 May 2012

<sup>lii</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, A/HRC/20/16, 23 de mayo de 2012

<sup>liii</sup> [Boletín trimestral del Sistema de Información sobre Agresiones contra Defensores de Derechos Humanos en Colombia – SIADDHH, Agresiones contra Defensores y Defensoras de Derechos Humanos en Colombia, Enero – Marzo 2012](#) (SIADDHH, *Quarterly Bulletin on Attacks against Human Rights Defenders in Colombia, January-March 2012*), May 2012

<sup>liv</sup> Data presented by the Representative Iván Cepeda at a debate on politics monitoring in the House of Representatives on 15 August 2012.

<sup>lv</sup> Data presented by the INPEC at a debate on monitoring of politics in the House of Representatives on 1<sup>o</sup> September 2012.

<sup>lvi</sup> Situation denounced by the member of the Parliament Gloria Estela Díaz. See [Caracol, Ante crisis carcelaria, insisten al Gobierno en permitir comisión internacional de mediación, 17 August 2012](#).

<sup>lvii</sup> [El Espectador, Detectan dos casos de tuberculosis en cárcel La Modelo de Bogotá, 30 de agosto de 2012](#) ; [RCN Radio, En al menos 20 días, se prolongará restricción de visitas en Cárcel Modelo](#)

<sup>lviii</sup> [Caracol, Murió tercer preso que resultó quemado en incendio en cárcel de Bucaramanga, 19 September 2012](#) ; [El Herald, Recluso acuchillado y quemado había firmado pacto de convivencia, 11 September 2012](#)

<sup>lix</sup> See, among others: [Noticias Caracol, Cárcel de Valledupar, sin agua y a punto de cierre, 7 June 2012](#) ; [RCN Radio, Sin agua, la cárcel de La Mesa, 9 August 2012](#) ; [El País – Colombia, Cárcel de Jamundí sin agua potable, 20 July 2012](#) ; [Youtube - Noticias televisivas, Sin agua en 6 pabellones de cárcel el Pedregal de San Cristobal](#) ; [Caracol, Hay cárceles sin pisos y sin agua: Minjusticia, 20 September 2012](#)

<sup>lx</sup> [FSCPP, Muere preso en Guaduas luego de tres meses de aislamiento prolongado y fuertes golpizas como castigo impuestos por el INPEC, 12 July 2012](#)

<sup>lxi</sup> See OHCHR, annual report, 2012, prec.

<sup>lxii</sup> [El Espectador, Denuncian continuos bloqueos para entrar en las cárceles colombianas, 7 September 2012](#). Between June and September 2012, over 70 requests for visit to the prison were denied to the NGO Committee of Solidarity with Political Prisoners (Fundación Comité de Solidaridad con los Presos Políticos – FCSP).

<sup>lxiii</sup> Related to recommendations 7, 26, 31, 39 and 41 of the UPR of 2008 recommending to tackle impunity, human rights violations and to ensure a genuine demobilization of paramilitary groups.

<sup>lxiv</sup> Among them the conviction of former Colonel Plazas Vega for forced disappearances and the judgment against former DAS

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director Jorge Noguera Cotes. These judgements were exemplary because they were made against senior officials from important state institutions: Plazas Vega for enforced disappearance in the case of the Palace of Justice and Noguera Cotes, former director of the DAS for aggravated conspiracy, the murder of Professor Alfredo Correa De Andreis, the destruction, suppression or concealment of public documents and the disclosure of restricted information, [Semana, Jorge Noguera, condenado a 25 años de cárcel](#) (Jorge Noguera, was sentenced to 25 years in prison), September 14, 2011.

<sup>lxv</sup> If it is implemented in an impartial and independent manner. However, as mentioned above, this law has structural problems. On this subject see Amnesty International, Colombia: The Victims and Land Restitution Law, an Amnesty International analysis, April 2012.

<sup>lxvi</sup> [“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)

<sup>lxvii</sup> 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.

<sup>lxviii</sup> OHCHR Report, 2012, prec. The current discussion on the reform of Law 975 also shows that, after seven years, this framework has not provided the announced results.

<sup>lxix</sup> 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).

<sup>lxx</sup> 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

<sup>lxxi</sup> *“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

<sup>lxxii</sup> [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

<sup>lxxiii</sup> [El Tiempo, Hay más de 12.000 militares empapelados con la justicia](#) (There are more than 12,000 soldiers under prosecution) May 26, 2012

<sup>lxxiv</sup> [Letter from the Corps of Generals and Admirals to President Santos, Bogota DC, October 19, 2011](#)

<sup>lxxv</sup> 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).

<sup>lxxvi</sup> 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.

<sup>lxxvii</sup> The Colombia Caravana UK Lawyers Group, Newsletter, June 2012.

<sup>lxxviii</sup> 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.

<sup>lxxix</sup> 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

<sup>lxxx</sup> 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

<sup>lxxxi</sup> 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.

<sup>lxxxii</sup> 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.

<sup>lxxxiii</sup> 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.

<sup>lxxxiv</sup> [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

<sup>lxxxv</sup> The reform was approved and immediately “shelved” by Congress in June 2012 after President Santos questioned its final version and convened the Congress to meet in special sessions.

<sup>lxxxvi</sup> To increase the power of the House of Representatives and to replace the Supreme Judicial Council currently responsible for disciplinary functions, for a National Judicial Administration (art. 18 and following) in which state executive members would also be present. [El Espectador, Senado aprueba reforma judicial con 'revolcón' a administración de Justicia, \(Senate approves judicial reform 'rump' to Administration of Justice\)](#) May 10, 2012.

<sup>lxxxvii</sup> Emphasis was placed on the provisions relating to the mandate of the judges of the High Courts (extension of term of 8 years to 12 years and of the age for compulsory retirement from 65 to 70 years (Article 15)), by including the current judges as beneficiaries thereof (art. 15, § transient). Therefore the strategy was changed from one of confrontation to a co-optation of the High Courts. As one judge of the High Courts stated this reform was indeed “*a pact of favours*” ([Semana, Reforma a la Justicia, hecha a la medida \(Justice Reform, tailored to fit\)](#) June 9, 2012.

<sup>lxxxviii</sup> In early May 2012, the State Council left discussions with the government and the Congress ([El Tiempo, Consejo de Estado explica por qué se retira del debate de la reforma \(the State Council explains why it is leaving the reform debate\)](#), May 9, 2012 and [El Espectador, Consejo de Estado confirmó su retiro definitivo del debate a la reforma a la justicia \(State Council confirmed their definitive withdrawal from the debate on the justice reform\)](#) May 9, 2012.

<sup>lxxxix</sup> At the time, the President of the Criminal Chamber of the Supreme Court stated that the government of Alvaro Uribe Velez “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.

<sup>xc</sup> [El Espectador, Presidente de la República quedaría facultado para elegir Fiscal General, \(President of the Republic would be entitled to elect Attorney General\)](#) August 24, 2012

<sup>xc<sup>i</sup></sup> Programa Somos Defensores, “Un camino solitario”, Colombia, July 2012.

<sup>xc<sup>ii</sup></sup> “2011: cada 8 días fue asesinado un defensor de derechos humanos en Colombia” (2011: Every 8 days a human rights defender was assassinated in Colombia), Programa Somos Defensores - March 2012

<sup>xc<sup>iii</sup></sup> Of these 239 aggressions, 77% were against men (185 cases) and 23% against women (51 cases).

<sup>xc<sup>iv</sup></sup> An emblematic case is that of communities of Jiguamiandó and Curbaradó where 45 leaders (“*Continúan hostigamientos a líderes de tierras*”, Comisión Intereclesial de Justicia y Paz – “*harassment continues against land leaders*”, Inter-Church Justice and Peace Commission, April 4, 2012) and their families are under threat and where in March 2012 Manuel Ruiz and his son Samir were disappeared and murdered (“*Asesinados el líder, reclamante de tierras Manuel Ruiz junto con su hijo*” - “*Land claimant leader Manuel Ruiz is murdered together with his son*” – Inter Church Justice and Peace Commission, April 2, 2012)

<sup>xc<sup>v</sup></sup> [Oidhaco: Serious attacks against human rights defenders and people struggling for peace](#), May 15, 2012

<sup>xc<sup>vi</sup></sup> “Concerns about the stigmatisation and discrediting against CCAJAR and about doubts expressed over the credibility of the Inter American Human Rights System”, International Federation for Human Rights (FIDH) – World Organisation against Torture (OMCT), November 2011.

<sup>xc<sup>vii</sup></sup> A significant example is the information posted on the [Colombian army website “las ONGs amigas de las FARC”](#), (“*NGOs are FARC friendly*”) in December 2009

<sup>xc<sup>viii</sup></sup> Presidential Directives 07 and 09 of 1999 and Public Prosecutor’s Directive 012 of 2010.

<sup>xc<sup>ix</sup></sup> Examples are smear campaigns against the Inter Church Justice and Peace Commission (related to their work in the Jiguamiandó and Curbaradó river basins) and Father Javier Giraldo (formerly of the CIJyP and accompanier of the Peace Community of San José de Apartadó).

<sup>c</sup> This is the case for example of José Obdulio Gaviria (former advisor of former President Álvaro Uribe Vélez) and Fernando Londoño Hoyos (former Minister of the Interior)

<sup>c<sup>i</sup></sup> Decrees 4912 and 4100 of 2011

<sup>c<sup>ii</sup></sup> 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

<sup>c<sup>iii</sup></sup> OHCHR report, prec.

<sup>c<sup>iv</sup></sup> Foundation for Freedom of the Press (*Fundación para la Libertad de Prensa - FLIP*), “La censura en las regiones llegó para quedarse”, (*regional censorship is here to stay*) 2011 Report.

<sup>c<sup>v</sup></sup> International Trade Union Confederation, June 2012

<sup>c<sup>vi</sup></sup> [Human Rights Watch, World Report 2012](#)



<sup>cvii</sup> [Semana, Aumentan amenazas contra sindicalistas en Colombia: Pnud, \(threats increase against trade unionists in Colombia: UNDP\) March 12, 2012](#)

<sup>cviii</sup> 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).

<sup>cix</sup> Articles 20 and 37 of the Political Constitution of Colombia.

<sup>cx</sup> See cases of Carmelo Agamez (MOVICE Sucre), Carolina Rubio (FCSPP), Príncipe Gabriel (FCSPP), David Ravelo Crespo (CREDHOS), Winston Gallego (Sumapaz Foundation).

<sup>cxii</sup> The offenses of rioting, violence against public servants, conspiracy, terrorism or rebellion are those most used to neutralize complaints made by communities and organisations.

<sup>cxiii</sup> See for example the case of El Quimbo: on February 14, 2012, fishermen, organisations and individuals who are in permanent mobilization against the proposed construction of the El Quimbo hydroelectric dam in Huila Department, Southern Colombia, were violently evicted by the Mobile Anti-Riot Police Squadron (ESMAD) in a joint operation between the police and army. Three people were seriously injured, including Mr. Luis Carlos Trujillo, who lost an eye. [Fundación Territorios Por Vida Digna y Censat-Agua Viva – Amigos de la Tierra Colombia, El Esmad desaloja protesta contra el desvío del río en El Quimbo](#) (*Esmad evicts protest against the diversion of the river in El Quimbo*), February 14, 2012]

<sup>cxiiii</sup> This is contrary to R37 of the previous UPR, despite the debates and legislative efforts that have taken place: in mid-2012, a legislative bill on this issue was shelved (bill [246/2012 C](#), filed June 20, 2012 ) while a draft statutory law was also shelved (bill [022/2011 C](#), removed and filed May 22, 2012)

<sup>cxv</sup> Decision C-728/09, of October 14, 2009.

<sup>cxvi</sup> Decision T-018 of 2011

<sup>cxvii</sup> The Constitutional Court, in a further attempt towards the recognition and respect of the right to conscientious objection, ordered the Ministry of Defense in “a term not exceeding four (4) months, to undertake a campaign to publicize decision C -728 2009 addressed to all members of the security forces, particularly those with responsibilities for recruitment for compulsory military service” (Decision T-018/12, Wilmar Dario Gallo Alcaraz v. Fourth Brigade and others, January 20, 2012). See also Decision T-357/12 (Nicanor Mendoza Monroy Vs Ministry of Defence and others) of 15 May 2012.

<sup>cxviii</sup> See, for example, [La Vanguardia, “Comandante del Batallón se refirió a verificaciones de libretas militares”](#) (*Battalion Commander checks referred to military cards*), March 11, 2012

<sup>cxix</sup> Opinion No. 8/2008

<sup>cxix</sup> According to this “the practice of raids, with the aim of stopping young people in streets and public places who can not prove their military situation has no legal basis or argument” and “these imply arbitrary arrests prohibited by Article 28 of the Constitution”. It also noted that the procedure for checking the military situation of young people should lead to registration which initiates the recruitment process and not the violation of their rights”. (Case C-879/11, of 22 November 2011).

<sup>cxx</sup> Committee on Economic, Social and Cultural Rights (CESCR), Concluding Observations, Colombia, 21 May 2010, E/C.12/COL/CO/5

<sup>cxxi</sup> According to the [World Bank GINI index, period between 2006-2010](#)

<sup>cxxii</sup> [World Bank data](#). This situation contradicts recommendations 63 and 64 of the previous UPR on poverty reduction.

<sup>cxxiii</sup> ICBF. Encuesta Nacional de la Situación Nutricional en Colombia 2005 (*National Survey of the nutritional situation in Colombia 2005*). Bogotá. 2005. p: 335; ICBF. Encuesta Nacional de la Situación Nutricional en Colombia 2010. (*National Survey of the nutritional situation in Colombia 2010*), Bogotá. 2010. p: 382. Ibid. Bogotá. 2005. p: 335; ICBF. Bogotá. 2001. p: 382.

<sup>cxxiv</sup> Ibid.

<sup>cxxv</sup> International Center for Transitional Justice (ICTJ) and Center of Law, Justice and Society Studies (*Centro de Estudios de Derecho, Justicia y Sociedad - DeJusticia*), Reparar en Colombia: los dilemas en contextos de conflicto, pobreza y exclusión, August 2009.

<sup>cxxvi</sup> According to Acción Social (*Social Action*) figures - project for land and heritage protection of the displaced population, 2005, the figure stands at 6.8 million hectares, while the figure is placed at 10 million according to the National Movement of Victims of State Crimes (MOVICE - Alternative Cadastre - strategy against impunity as a tool for reparation, 2007) 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, julio de 2009](#) (*Historical Memory, National Commission for Reparation and Reconciliation, Land and Conflict Research, dispossession of lands and territories. Conceptual Approach*), July 2009

<sup>cxxvii</sup> [National Development Plan 2010-2014 - “Prosperidad para todos” \(Prosperity for all\)](#)

<sup>cxxviii</sup> Law 100 of December 23, 1993, and reforms of laws 1122 of January 2007 and 1438 of January 2011. Includes various components, including health, pensions, occupational hazards, etc.

<sup>cxxix</sup> National campaign - Health and social security, fundamental right - Eighth ballot: Raise your voice and vote for your rights!

<sup>xxx</sup> National Union School (*Escuela Nacional Sindical*), de los indicadores de empleo en los dos años del gobierno Santos (*Balance of employment indicators in the two years of the Santos*), August 9, 2012.

<sup>xxxi</sup> National Campaign, prec. In Judgment T-760/08 of 31 July 2008 the Constitutional Court “revealed the existence of general, severe and recurrent problems in the system of protection of the right to health, affecting the possibility of enjoyment by people in specific concrete situations”. And recently, an official investigation revealed the existence of agreements made by the Health Promotion Companies (EPS) to “deny the provision of health services” to “hide or distort information and prevent adequate transparency in the health services market” and for price fixing. ([Carlos Pablo Márquez, Superintendente Delegado para la Promoción de la Competencia Informe motivado, Radicación No. 09-021413, 2011](#))

<sup>xxxii</sup> The Constitutional Court stated in May 2012 “The system seems to collapse. (...) It is imperative that the country decisively addresses the redesign of the structure and a change in procedures designed to safeguard the right to health (...)”. Second follow-up hearing to Case 760, May 10, 2012 in Letter from Bogotá Hospitals to President Juan Manuel Santos, “Evidenciar la crisis de la

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salud y advertir de sus consecuencias, es una obligación y actitud responsable” (*To show the health crisis and warn of the consequences, is an obligation and responsibility*) - [SOS Hospitals in Bogota, May 2012](#).

<sup>cxiii</sup> National campaign – Health and social security, prec.

<sup>cxiv</sup> Hospitals in Bogota said that the debt of EPS with hospitals in Bogotá exceeds 260 million dollars, making it impossible to pay wages and benefits to workers and supplies to providers. Consequently, they reported that this forced them to discontinue providing health services at 20 days. (Letter from Bogota Hospitals, prec.)

<sup>cxv</sup> Given the measures taken by the national government to solve the crisis in health, social organisations created the National Alliance for a New Model of Health ([Alianza Nacional por un Nuevo Modelo de Salud](#)), March 8, 2012

<sup>cxvi</sup> Ibid.

<sup>cxvii</sup> See for instance creation of the “fundamental right” to economic macro-stability - Legislative Act 016/10, known as the “Fiscal Rule”.

<sup>cxviii</sup> R59, 60 and 61 of the previous UPR

<sup>cxix</sup> The National Indigenous Organisation of Colombia (*Organización Nacional Indígena de Colombia - ONIC*) has mapped 30 additional peoples, who are also at risk of extinction.

<sup>cl</sup> One example of this is the case of the Awá people, one of the indigenous people most at risk of extinction, for which the Constitutional Court found that “the state response (...) had been merely formal” and concluded that the Colombian government had breached its constitutional duties (Auto 174, 2011)

<sup>cli</sup> 8% according to official figures.

<sup>clii</sup> ONIC, *Violaciones a Los Derechos Humanos e Infracciones al DIH Perpetradas Contra Los Pueblos Indígenas en Colombia (Violations to Human Rights and Infractions of IHL committed against the Indigenous Peoples of Colombia)*, Report January-July, 2012

<sup>cliii</sup> 2011 began and ended with sexual violence against indigenous girls: a 13 year old Sikuani girl was kidnapped and raped in January, and in December a 12 year old girl was the victim of sexual violence by paramilitaries. ([ONIC: Denouncing Sexual Violence against Women and Mother Earth, April 12, 2012](#))

<sup>cliv</sup> Interview by ABColombia in June 2011 with members of the Awá People

<sup>clv</sup> Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, *The situation of indigenous peoples in Colombia: follow up on the recommendations made by the previous Special Rapporteur*, May 25, 2010, A / HRC/15/37/Add.3

<sup>clvi</sup> Auto 005/09

<sup>clvii</sup> ONIC, *Violaciones a Los Derechos Humanos e Infracciones al DIH Perpetradas Contra Los Pueblos Indígenas en Colombia, (Violations to Human Rights and Infractions of IHL committed against the Indigenous Peoples of Colombia)*, Report January-July, 2012

<sup>clviii</sup> Working group of Afro-Colombian organisations (*Mesa de organizaciones afrocolombianas*), Informe de evaluación de la respuesta del gobierno nacional a las órdenes de protección de la población afrocolombiana, emitidas por la Corte Constitucional de Colombia en el Auto 005 de enero de 2009 (*Assessment Report of the national government's response to the orders for protection of the Afro-Colombian population issued by the Constitutional Court of Colombia in Auto 005 January 2009*), 2012

<sup>clix</sup> Auto 005/09 on “protection of the fundamental rights of the afro-descendent population victim of forced displacement in the context of overcoming the unconstitutional state of affairs declared in Judgement T-025/04”

<sup>cl</sup> 10% according to official figures; 22.5% in 2010 according to Codhes, 37% according to Global Rights and AFRODES – Working group of Afro-Colombian organizations, prec.

<sup>cli</sup> Working group of Afro-Colombian organizations, prec.

<sup>clii</sup> Recommendations of the CERD, August 2009 and of UN independent expert Mac Dougall, 2011 – Working group of Afro-Colombian organizations, prec.

<sup>cliii</sup> [Observatorio Pacífico y Territorio \(OPT\), La minería en el pacífico colombiano](#) (Mining in the Colombian Pacific region)

<sup>cliv</sup> 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

<sup>clv</sup> 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.

<sup>clvi</sup> ONIC, Human rights violations and breaches of international humanitarian law committed against Indigenous Peoples in Colombia, Report between January and July 2012, p11

<sup>clvii</sup> Report of the UN independent expert on minority issues, Ms. Gay McDougall, Mission to Colombia, January 25, 2011, A/HRC/16/45/Add.1

<sup>clviii</sup> The commitment of “no child will die from lack of food and healthcare in Casanare”.

<sup>clix</sup> Working group of Afro-Colombian organizations, prec.

## Signing organizations

ABColumbia  
ASK - Grupo de trabajo Suiza  
Asociación Paz con Dignidad - España  
BMI - Bethlehem Mission Immensee  
Brot Fuer die Welt  
Caritas Norway  
CCFD - Comité Catholique contre la Faim et pour le Développement - Terre Solidaire  
CETRI - Centro tricontinental  
Church of Sweden  
Civis - Asociación Civis  
CNCD-11.11.11  
Cooperaccio  
Cordaid  
Diakonia Suecia  
DIAL - Diálogo Interagencial en Colombia  
Diözesanrat der Katholiken im Bistum Aachen  
Federación Luterana Mundial  
FOKUS – Forum for Women and Development  
FOS - Socialistische Solidariteit  
ISI - Iniciativa Solidaria Internacionalista  
Justicia por Colombia  
KOLKO - Menschenrechte für Kolumbien  
Kommission Gerechtigkeit, Frieden und Bewahrung der Schoepfung der Deutschen Franziskanerprovinz  
Misereor  
MMM - Mensen met een Missie  
OIDHACO - Oficina Internacional de Derechos Humanos - Acción Colombia  
OMCT - Organisation Mondiale Contre la Torture  
PBI Colombia - Peace Brigades International  
Rete Italiana di Soliadrieta Colombia Vive!  
RIDH - Red Internacional de Derechos Humanos  
SOLSOC - Solidarité Socialiste  
SweFOR - The Swedish Fellowship Of Reconciliation  
SWISSAID  
The Swedish Foundation for Human Rights  
Trocaire  
WOLA - Washington Office on Latin America

