



Aide-Mémoire

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Colombia

Although there have been positive developments in some areas, systematic and gross violations of human rights (HR) and International Humanitarian Law (IHL) persisted in 2009.

We welcome a series of positive developments such as: violations of the right to life are declining; specific judicial institutions have demonstrated their independence, thus strengthening the rule of law. We also welcome the fact that four Special Rapporteurs and one UN Working Group visited Colombia during 2009 and received full support from authorities.

Still, there are grave concerns in many areas.

Impunity continues to prevail in Colombia's human rights crisis. Philip Alston, Special Rapporteur on extrajudicial executions, expressed his concern about so-called *falsos positivos*, which are extrajudicial executions committed by members of state security forces who claim that the victims are guerrilla combatants killed in battle. After his visit in June 2009, Mr. Alston concluded that "the sheer number of cases, their geographic spread, and the diversity of military units involved, indicate that these killings were carried out in a more or less systematic fashion by significant elements within the military". The Colombian Attorney General's Office revealed that there were at least 1,200 cases of extrajudicial executions to be investigated, with more than 2,000 victims. The Special Rapporteur also identified "systematic harassment of the survivors by the military" and problems in the judiciary which explain the fact that "the number of successful prosecutions remains very low"¹. In January 2010, more than 30 of the military personnel detained after the *falsos positivos* scandal was disclosed were released because no investigation had been initiated against them within the legally established period. The failure to punish those responsible for these crimes exposed serious shortcomings in the judicial system.

After visiting Colombia in July 2009, Professor James Anaya, Special Rapporteur on Indigenous People, reaffirmed his predecessor's conclusions that "the situation of indigenous people in Colombia is grave, critical and of deep concern". He said the situation of violence and crimes against indigenous people,

¹ www.unhchr.ch/hurricane/hurricane.nsf/view01/C6390E2F247BF1A7C12575D9007732FD?opendocument

including forced displacement and confinement, was particularly troubling, as it threatens the physical and cultural survival of indigenous people in the country as "in general, laws, programs and government policies do not allow for effective protection and implementation of human rights of indigenous peoples in the country"².

The number of forced displacements remains high. Estimated to be 3.5 million, Colombia has one of the highest numbers of internally displaced people (IDP). Laws intended to protect their rights are not being enforced, and Constitutional Court decision T 025 to guarantee their rights has not been fully implemented. Families and communities who try to return to their lands face serious obstacles and threats. Hardly any of the lands seized by paramilitary commanders in forced displacements have been returned, and there is little hope that the demobilisation process will still change this situation. According to state authorities, between 4.5 and 6 million hectares of land has been redistributed through violent means.

"Patterns of harassment and persecution of human rights defenders, and often their families, continue to exist in Colombia", wrote Margaret Sekaggya, Special Rapporteur on human rights defenders (HRD), after visiting Colombia in September 2009. "Journalists, trade unionists, magistrates, lawyers, student and youth activists, women defenders, indigenous and Afro-Colombian leaders, and LGBT activists have been killed, tortured, ill-treated, disappeared, threatened, arbitrarily arrested and detained, judicially harassed, under surveillance, forcibly displaced, forced into exile, or their offices have been raided and their files stolen, because of their legitimate work in upholding human rights and fundamental freedoms"³. One of the main reasons that HRDs find their security threatened is because high-level government officials, including President Uribe, systematically brand them as guerrilla collaborators. In one positive development on 17 September, President Uribe declared that "the defence of human rights is a necessary and legitimate action for democracy". However, statements made by public officials should continue to be investigated and sanctioned by the Inspector General's Office as these statements threaten the work of HRDs.

In early 2009, the so-called DAS-scandal came to light. Civil and military intelligence services were charged with conducting surveillance on and wiretapping national and international HRDs, including judges from the Supreme Court of Justice, the former UN Special Rapporteur on Indigenous People in 2005, and the Special Rapporteur for the Rights of Women of the Inter-American Commission on Human Rights in 2005. Some 40 DAS officials are being prosecuted, and in September 2009 the agency was closed and a new agency opened. It remains unclear, however, how this new agency will be monitored to guarantee democratic control of its activities and to avoid a repeat of politically motivated wiretapping and surveillance in the future. A follow-up of the results of the investigations of the DAS scandal is highly recommendable.

Between 2003 and 2006 a much criticised demobilisation process of 37 paramilitary groups (AUC) was implemented. The Colombian government claims that this process was successful because more than 30,000 persons were demobilised, pledged to cease criminal activity and entered reintegration programs. The government insists that paramilitary groups no longer exist. Still, successor groups emerged, the majority of their leaders being mid-level AUC commanders. As of July 2009, those groups were present in at least 173 municipalities in 24 departments. They have an estimated 4,000 to 10,000 active members who frequently target civilians, engage in murder, rape and forced displacement. The government has yet to fulfil its duty to provide protection and hold the perpetrators accountable. "The emergence of the successor groups was predictable, in large part due to the Colombian government's failure to dismantle the AUC's criminal networks and financial and political support structures during the demobilisations"⁴. The government has also failed to verify whether those who demobilised were really paramilitaries, and whether all paramilitaries in fact demobilised. Thus, the rights of victims to truth,

² http://www2.ohchr.org/english/issues/indigenous/rapporteur/docs/PR_11jan10_en.doc

³ <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/1F7B4D313A4CD130C1257636002794F5?opendocument>

⁴ See Human Rights Watch, Paramilitaries' Heirs, 03.02.2010

justice and reparation are neither guaranteed nor fulfilled, and many civilians still live in conditions of fear and violence.

Both guerrilla groups (FARC and ELN) continued to commit breaches of the IHL, including kidnappings, random killings of civilians, the use of antipersonnel landmines, and the recruitment of minors. No serious peace talks took place during 2009. The largest guerrilla group (FARC) has not released hostages, despite an announcement that it would, and kidnapped and killed the governor of the Department of Caquetá, Luis Francisco Cuéllar, in December 2009.

Non-state actors are primarily blamed for the high numbers and increasingly lower ages of children being recruited. The recruitment of children and young people continues to go largely unpunished under the "Justice and Peace Law", and social policies for children and young people are inadequate. These are important factors in the failure of the Colombian state to prevent this type of recruitment. The Colombian military is recruiting young people for information services and frequently demonstrates a lack of respect for civilian institutions, such as schools. It is therefore undermining children's rights and disregarding their best interests, as stipulated in the UN Convention on the Rights of the Child.

Unfortunately, many of the recommendations made by the UNHCHR to Colombia have still not been fully implemented. Work on a National Action Plan on Human Rights is still far from being completed, but some agreements have been reached and should be implemented.

We call on the Council to:

- Urge the Colombian Government to implement immediately and without exception all recommendations made by UN bodies, including the UNHCHR. The Colombian Government should present a plan and a timeframe for implementation.
- Urge the Colombian Government to take effective steps to guarantee HR defenders the right to carry out their legitimate work without fear of reprisals. Follow-up of the recommendations of the upcoming report of UN Special Rapporteur Margaret Sekaggya.
- Urge the Colombian government to fully apply the *Guiding Principles on Internal Displacement* at the local, regional and national level, asking the Representative of the UN Secretary-General on Internally Displaced Persons to follow up on a visit conducted in 2006.
- Request that the Colombian Government and member states establish a reliable mechanism for verifying the demobilization of the AUC, using the authority of the OUNHCHR. Guarantee the prosecution of newly formed criminal groups. Illegal assets, primarily expropriated property/land of (ex-) paramilitary groups, must be returned to the millions of displaced persons.
- Urge the Colombian Government to develop a comprehensive peace strategy for all armed actors and ensure that any negotiations with illegal armed actors, as well as demobilisation processes, guarantee the rights of victims to truth, justice and reparation, and guarantee the effective dismantling of the respective illegal group.
- Urge the Colombian Government to implement social reforms in order to fully comply with the standards of the Treaty on Economic, Social and Cultural Rights, particularly the development of genuine agrarian reform to guarantee the right to food.
- Urge guerrilla groups to respect IHL, stop recruiting minors and seek a negotiated solution to the armed conflict.
- Continue to monitor the situation in Colombia and follow up each year on the implementation of the UNHCHR's recommendations, and UN special mechanisms. Request that the UN High Commissioner issue a public report which includes an analysis by her office of the HR situation in Colombia, and to present it to the Council at one of its sessions the following year.
- Call on member states not to provide political or economic support to any demobilization process that does not guarantee the rights of victims to truth, justice and reparation.