

## Colombia: the European Parliament can contribute to end the commission of international crimes and to respect the work of human rights defenders and trade unionists

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 3: Everyone has the right to life, liberty and security of person. Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5: No one shall be subjected to torture or to cruel,





## **Executive Summary:**

In the upcoming months the European Parliament will be called upon to vote on the ratification of the Free Trade Agreement with Colombia and Peru. The gravity of the humanitarian and human rights situation in Colombia and the insufficiency of the clauses related to the protection of human rights of the FTA, make the International Federation for Human Rights (FIDH) call European Parliamentarians to condition the vote on the ratification on compliance with essential conditions for the protection of human rights in Colombia.

Indeed, today Colombia continues to be devastated by internal armed conflict in which the Army and the paramilitaries oppose the guerrillas. Colombia continues to be the second country in the world with the greatest number of displaced persons and the country with the highest murder rate of trade unionists and indigenous every year 29 trade unionists were murdered in 2011, and five so far for 2012. In accordance with the Human Rights Observatory of the Office of the Vice-President of the Republic, the massacres increased by 29%, going from 17 in the first semester of 2010 to 22 in the first semester of 2011, and throughout the year 2011, it is estimated that almost 90,000 homes were displaced<sup>1</sup>.

The Lisbon Treaty gave the European Parliament the power to approve or deny treaties with third member states. The FIDH finds that this new power should be use to promote respect for human rights in countries with which treaties are concluded. The FIDH also recalls in that sense the joint communication of the EU's High Representative for Foreign Affairs and Security Policy and the European Commission, adopted on December 12, 2011 entitled "Human Rights and Democracy in the Centre of the EU's External Action – towards a more *efficient* focus", which emphasizes that the EU must defend the principles relative to human rights and democracy in a creative way and with a clear determination to obtain concrete results"

On these grounds the EP is asked to request Colombia to comply with the following essential human rights benchmarks:

### **The Colombian State should protect its citizens victims of forced displacement**

The problem of forced displacement is far from being solved. In fact, the CODHES organisation recorded 280,041 displaced persons in the year 2010 and approximately 89,750 persons (close to 17,950 families) in the first semester of 2011, through murders and acts of violence and intimidation against civilians, occurring in the middle of armed internal conflict and attributed to paramilitaries, guerrillas and occasionally to the National Security Forces' actions or failure to act

Between the governments of Álvaro Uribe Vélez and Juan Manuel Santos, there was no significant change in patterns of forced displacement. The Victims and Land Restitution Law, or Law 1448 of June 10, 2011 has been welcomed with hope as it recognizes the continuation of the armed conflict and it would be a way for the internally displaced people to get back their lands. However, it has many limitations and challenges, particularly regarding the implementation of an effective protection system for displacement victims that return to their lands, especially the community leaders and displaced persons' rights defenders. In 2011 alone, 28 persons linked to land restitution demands were murdered.

The Colombian Constitutional Court has repeatedly stated that it exists an unconstitutional state of affairs in the displaced population situation.

### **The State should not facilitate the continuation of paramilitarism**

Though the Colombian State has accepted that the armed conflict continues, it still denies that the so-called "BaCrims" are "criminal organisations emerged after the demobilisation of the United Self-Defence Forces of Colombia (AUC), (that) were formed as a new form of paramilitarism" as the Attorney General defined them in 2011<sup>2</sup>. Instead, the Government uses the term "BaCrim" seeking to deny the persistence of paramilitarism, lumping it with ordinary delinquency.

The report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia states that in 2011, the number of massacres and victims attributed to these groups continued

increasing, mainly in Antioquia and Cordoba reaching 32 massacres between January and November 2011, of which 15 took place in Antioquia. The report also recalls that 53% of the leaders of these groups captured or dead were demobilised paramilitaries.

This just emphasizes the failure of the successive demobilisation processes and the impunity of the crimes committed by paramilitaries. The implementation of the Justice and Peace Law has not been successful and the ineffective demobilisation processes have resulted in an expansion of paramilitary groups, not only failing in its peace objectives but also perpetuating the impunity of many international crimes committed in the conflict framework.

### **Colombian State should not favour impunity of the senior military officials liable for systematic extrajudicial executions**

The Observatory on Human Rights and International Humanitarian Law of the Colombia - Europe – United States Coordination Office (CCEEU) attributes 3,345 extrajudicial executions to the National Security Forces, including false positives cases, committed between 1996 and 2008. The 2011 report of the Office of the High Commissioner for Human Rights confirms that national security forces continue committing extrajudicial executions.

On August 30, 2011, the Attorney General's Office publicly announced that it was investigating more than 3,400 members of the national security forces that had committed extrajudicial executions, among which 1,400 were detained. Other processes have been initiated, but they are mainly investigating material perpetrators of the executions, in general low ranking soldiers, while the intellectual military perpetrators remain in complete impunity. The new regulatory framework of military criminal jurisdiction that the current government is boosting will increase the risk of perpetuating impunity of crimes committed by militaries.

Besides extrajudicial executions, the number of victims of enforced disappearances continues increasing. The United Nations Working Group on Enforced or Involuntary Disappearances has expressed its concern about the continuation and persistence of this criminal practice.

### **Murder and harassment of trade unionists, indigenous people and human rights defenders should not remain in impunity**

The defence of human rights continues being a high risk activity in Colombia, which is still the most dangerous country in the world for trade unionists.

According to the "We are Defenders Programme", in 2011, 55 human rights defenders were murder or enforced disappearances victims, being the year with the largest number of records since 1996, which represents a 40% increase in comparison to 2010, in which 32 defenders were murdered<sup>3</sup>. Besides violations of the right to life, human rights defenders in Colombia have to face violations to their right of personal integrity, threats, defamation and judicial harassment. In 2011, of the 239 individual attacks on defenders recorded, 59% were threats. The level of impunity of attacks on defenders remains troubling.

In addition, between January and October 2011, 109 indigenous people were murdered and at least 34 Indigenous Peoples are at risk of extinction.

Also, it is untrue to claim that clauses contained in the Colombia and Peru Free Trade Agreement are sufficient and optimal to promote and protect human rights in those countries.

**Due to all the above, the FIDH believes that the human rights situation in Colombia does not currently permit the adoption of the Free Trade Agreement with the European Union. The latter must be conditioned on the implementation by the Colombian State of the necessary measures to end impunity of those responsible for international crimes and guarantee justice and reparation for victims, including the implementation of public policies aimed at the non repetition of the violations and full respect, protection and fulfilment of human rights as set below.**

### Some statistics on the human rights situation in Colombia:

- **Between 3,800,000<sup>4</sup> y 5,200,000<sup>5</sup> of internally displaced persons** between 1997 and 2011, that is 7.5 to more than 10% of the population, almost 90,000 displaced homes in the first nine months of 2011<sup>6</sup>
- 3,345 execution cases attributed to State agents, of which **1,622 are recognised by the Attorney General**, up to August 2010<sup>7</sup>
- More than **16,000 cases of enforced disappearances** recognised by the Office of the Attorney General from 1980<sup>8</sup>
- More than **1,000 murders of indigenous persons in ten years**, 54.9% more in 2011 than in 2010<sup>9</sup>, and 34 indigenous communities<sup>10</sup> in danger of being culturally or physically exterminated<sup>11</sup>. The **Special Rapporteur on the human rights situation and fundamental freedoms of indigenous people** declared: “The State is urged to invite the **United Nations Special Adviser on the Prevention of Genocide** to monitor the situation of indigenous communities that find themselves threatened with cultural or physical extermination”<sup>12</sup>.
- A total of about **2,500 graves found and more than 3,000 cadavers<sup>13</sup>** from 2004
- Almost **10,000 victims of anti-personnel mines** between 1990 and January of 2012 of which almost 40% are civil, and a quarter of them, children<sup>14</sup>
- The Prosecutor of the International Criminal Court has found that of every country analysed by his office, Colombia is one of the three countries where the most serious international crimes have been committed<sup>15</sup>.
- **55 human rights defenders murdered or disappeared** in 2011<sup>16</sup>
- **29 trade unionists murdered** in 2011 and 5 since the beginning of 2012<sup>17</sup>

<sup>4</sup> Colombia Registry of Displaced Population (RUPD-SIPOD). On line:

<http://www.accionsocial.gov.co/estadisticasdesplazados/DinamicaGeneral.aspx>

<sup>5</sup> IDMC: International Displacement Monitoring Centre. « IDP Population figures-Colombia. » September 2011. On line:

<http://www.internal-displacement.org/idmc/website/countries.nsf/%28httpEnvelop%29/A7E1B7BD7528B329C12575E500525165?OpenDocument#expand>.

<sup>6</sup> Colombia Registry of Displaced Population (RUPD-SIPOD). On line:

<http://www.accionsocial.gov.co/estadisticasdesplazados/DinamicaGeneral.aspx>

<sup>7</sup> Annual report of the United Nations High Commissioner for Human Rights, A/HRC/19/21/Add.3, January 2011, par. 33. On line:

<http://www.hchr.org.co/documentoseinformes/informes/altocomisionado/informes.php3?cod=15&cat=11>

<sup>8</sup> Figures from the National Institute of Legal Medicine and Forensic Science in the report on enforced disappearances in Colombia 2011-2012, Working Group on Enforced Disappearances, Colombia-Europe-United States Coordination Office, March 2012. On line: [http://www.ddhhcolombia.org.co/files/Documento%20de%20Cabildeo%20sobre%20DF\\_final.pdf](http://www.ddhhcolombia.org.co/files/Documento%20de%20Cabildeo%20sobre%20DF_final.pdf)

<sup>9</sup> Annual report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, A/HRC/19/21/Add.3, *Op. Cit.*, par. 98

<sup>10</sup> In its Order No 004 of 2009, the Constitutional Court ruled that the internal armed conflict could cause the cultural or physical extermination of many indigenous people and ordered the design and implementation of plans for ethnic preservation of 34 peoples. To date, and despite efforts undertaken by the government and indigenous organisations, these plans are still in design phase and need a significant boost to ensure that these peoples receive timely protection. Additionally, in its Order No 005 of 2009, the Court ruled that the fundamental rights of Afro-Colombian communities were being systematically and continuously ignored.

<sup>11</sup> Order 004 of Colombia's Constitutional Court

<sup>12</sup> Report of the Special Rapporteur on human rights and fundamental freedoms situation of indigenous people: Indigenous people's situation in Colombia: follow up on the recommendations made by said Special Rapporteur. May 2010 On line: <http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=biblioteca/pdf/8115>

<sup>13</sup> The Office of the Attorney General for Justice and Peace Support Sub-unit. On line:

[http://www.fiscalia.gov.co/justiciapaz/EXH/Exhum\\_Home.htm](http://www.fiscalia.gov.co/justiciapaz/EXH/Exhum_Home.htm)

<sup>14</sup> Presidential Programme for the Comprehensive Action against Anti-Personnel Mines. On line:

<http://www.accioncontraminas.gov.co/Paginas/victimas.aspx>

<sup>15</sup> “the office has identified situations in the DRC, Uganda and Colombia as having the most serious crimes within its jurisdiction”

<http://www.iccnw.org/?mod=prosecutor&idudctp=14&show=all>

<sup>16</sup> Non-Governmental Programme for the protection of human rights Defenders “We are Defenders”, 2011 Annual Report: Attacks on Human Rights Defenders in Colombia, Bogotá, February 2012, p. 20. On line: [http://www.somosdefensores.org/attachments/article/106/INFORME%20SOMOS%20DEFENSORES%202011\\_ESPA%C3%91OL.pdf](http://www.somosdefensores.org/attachments/article/106/INFORME%20SOMOS%20DEFENSORES%202011_ESPA%C3%91OL.pdf)

<sup>17</sup> Sinaltrainal, New Avalanche of Murders of Colombian Human Rights Defenders, February 6 2012

[http://www.sinaltrainal.org/index.php?option=com\\_content&task=view&id=2164&Itemid=48](http://www.sinaltrainal.org/index.php?option=com_content&task=view&id=2164&Itemid=48) and [http://www.sinaltrainal.org/index.php?option=com\\_content&task=view&id=2194&Itemid=1](http://www.sinaltrainal.org/index.php?option=com_content&task=view&id=2194&Itemid=1)

- the International Committee of the Red Cross (ICRC) in its 2011 report on the situation concluded that **international human rights violations have increased** in Colombia<sup>18</sup>

In the upcoming months the European Parliament will be called upon to vote on the ratification of the Free Trade Agreement with Colombia and Peru (hereinafter referred to as “the Treaty”). The objective of the present note is to explain why the International Federation of Human Rights (FIDH) finds that the gravity of the humanitarian and human rights situation in Colombia (section I) and the clauses related to the protection of human rights of the treaty (section II), call European Parliamentarians to condition the vote on the ratification on compliance with essential conditions for the protection of human rights in Colombia.

Indeed, today Colombia continues to be devastated by internal armed conflict in which the Army and the paramilitaries oppose the guerrillas. Colombia continues to be the second country in the world with the greatest number of displaced persons<sup>19</sup> and the country with the highest murder rate of trade unionists every year<sup>20</sup>: 29 trade unionists were murdered in 2011, and five so far for 2012<sup>21</sup>. In accordance with the Human Rights Observatory of the Office of the Vice-President of the Republic, the massacres increased by 29%, going from 17 in the first semester of 2010 to 22 in the first semester of 2011<sup>22</sup>, and throughout the year 2011, it is estimated that almost 90,000 homes were displaced<sup>23</sup>.

Since the intensification of the internal armed conflict in 1980, the member States of the European Union and the European Union have intervened numerous times, speaking with Colombian authorities and other actors in the conflict to encourage them to arrive at a solution and to respect their international obligations. Among these efforts, the declarations of the United Nations Commission on Human Rights President, the creation of a permanent office of the High Commissioner for Human Rights in Bogota and the appointment of a special envoy from the Secretary General of the UN are owed mainly to the action of the European Union and its member States.

In the context of European Union instruments capable of contributing to the strengthening and respect for the rule of law and human rights in third countries, the European Union and its member States have also had a broad development co-operation policy with Colombia as well as fluid dialogue, formalised in 2009, through human rights dialogue. Added to this, since 1990 a trade tariff policy (today GSP+) conditioned by the ratification and implementation of 27 United Nations conventions or the International Labour Organisation (ILO) was added. All these efforts have not achieved a great deal, as is demonstrated in the permanence of armed conflict, the gravity of crimes which continue to be committed today in Colombia and the responsibility of the State through action or omission in some of these violations.

The FIDH believes that the State of Colombia and the international community cannot consider that the weakness of the progress achieved is only due to external factors.

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<sup>18</sup> <http://www.icrc.org/eng/resources/documents/feature/2012/colombia-report-2012-04-18.htm>

<sup>19</sup> According to the Consultancy for Human Rights and Displacement (CODHES), approximately 280,041 persons (56,000 homes) were displaced in 2010 and approximately 89,750 in the first semester of 2011. The Attorney General's Office confirmed the registry of forced displacement totalling 77,180 communities.

<sup>20</sup> United Workers Trade Union CUT, “Colombia: 10 reasons to have a case before the Labour Standards Commission. Advance report on the 98th ILO Conference”, [http://www.csa-csi.org/index.php?option=com\\_content&view=article&id=5138%3Acolombia-10-razones-para-estar-como-caso-en-la-comisie-normas&catid=26%3AAgencia-de-noticias&Itemid=258&lang=es](http://www.csa-csi.org/index.php?option=com_content&view=article&id=5138%3Acolombia-10-razones-para-estar-como-caso-en-la-comisie-normas&catid=26%3AAgencia-de-noticias&Itemid=258&lang=es)

<sup>21</sup> Sinaltrainal, New Avalanche of Murders of Colombian Human Rights Defenders, February 6 2012

<sup>22</sup> Consultancy for Human Rights and Displacement (CODHES), about democratic security in the midst of conflict, CODHES Documents N°23, Bogota, October 2011, p.13. On line:

[http://www.codhes.org/index.php?option=com\\_docman&task=cat\\_view&gid=64&Itemid=50](http://www.codhes.org/index.php?option=com_docman&task=cat_view&gid=64&Itemid=50)

<sup>23</sup> Colombia Registry of Displaced Population (RUPD-SIPOD). On line:

<http://www.accionsocial.gov.co/estadisticasdesplazados/DinamicaGeneral.aspx>

Indeed, the **lack of will from the Colombian State to implement policies necessary to end the most serious human rights violations**, particularly in the last ten years under the mandates of Álvaro Uribe Velez and Juan Manuel Santos explain in part the seriousness of the situation. Initially, when his mandate began in August 2010, President Juan Manuel Santos gave a speech breaking away from the policies of President Álvaro Uribe, particularly underlining the importance of respecting the judicial power and of stopping verbal attacks against human rights defenders. The reality of this break away two years after he became President is questionable. Indeed, we believe that like its predecessor, the current government manages a double agenda, at the same time being a fire-fighter, reforming the regulatory framework in order to continue creating transition or post-conflict instruments, protection of human rights and its defenders, expressing its openness to the criticisms of the international community and on the other hand, a pyromaniac.

Then, like we will show in the following section, there remain serious omissions to international obligations of the State as well as human rights violations committed by the Colombian State. This demonstrates the important margin that may exist between legislative, lexical advancement and the permanence of serious human rights violations including those by State agents, as well as policies that facilitate the impunity of international crimes or which are inadequate or counter-productive to the cessation and guaranty of the non-repetition of crimes against humanity and serious human rights violations that continue to be committed in Colombia.

Also, the weak reaction of the international community and particularly the European Union regarding the responsibility of the State in the serious human rights situation which Colombia has faced for years has to be underlined. In this regard, the analysis of the study “*About global support policies regarding human rights of the European Commission*” carried out in December 2011 by the evaluation unit of the DG DEVCO is very useful; it deems that despite advancements achieved in the last two decades, the lack of results by the European Union in human rights matters in foreign affairs is due particularly to the lack of use of instruments at its disposal<sup>24</sup>.

In accordance with what was already indicated by the FIDH in its note “Bridges and Ladders”, the study corroborates the fact that the EU has not developed a coherent strategy that effectively puts to use the instruments at its disposition to promote the primacy of human rights and to integrate such concerns in its joint action externally<sup>25</sup>. The human rights issue remains disconnected from other sectors and has not achieved real progress on the ground. The EU tends to focus on financial or thematic instruments without using other instruments of external action, like for example commercial instruments.<sup>26</sup>

The Lisbon Treaty gave the European Parliament the power to approve or deny treaties which the European Union wants to conclude with third countries. The FIDH finds that this new power is the opportunity to promote respect for human rights in countries with which they conclude international treaties, as occurs in other big powers, like United States.

The FIDH also finds that this is in the sense of joint communication of the EU’s High Representative for Foreign Affairs and Security Policy and the European Commission, adopted on December 12, 2011 entitled “Human Rights and Democracy in the Centre of the EU’s External Action – towards a more *efficient* focus”, which emphasizes that the EU must defend the principles relative to human rights and democracy in a creative way and with a clear determination to obtain concrete results<sup>27</sup>.

On these grounds the EP is asked to transform the adoption of the FTA with Colombia in an opportunity for this country to comply with its most essential international obligations with regard to human rights.

As we will see then in the first section of this note, these essential benchmarks for the adoption of this Treaty

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<sup>24</sup> Evaluation for the European commission, « Thematic evaluation of the European Commission support to respect Human Rights and fundamental freedoms (including solidarity with victims of repression », Final report, volume 1, December 2011, p. viii. On line: [http://ec.europa.eu/europeaid/how/evaluation/evaluation\\_reports/reports/2011/1298\\_vol1\\_en.pdf](http://ec.europa.eu/europeaid/how/evaluation/evaluation_reports/reports/2011/1298_vol1_en.pdf)

<sup>25</sup> FIDH, «Bridges and Ladders : restoring the primacy of human rights at all levels of EU-third countries relation », October 2010, [http://fidh.org/IMG/article\\_PDF/article\\_a8760.pdf](http://fidh.org/IMG/article_PDF/article_a8760.pdf)

<sup>26</sup> Evaluation for the European commission, «Thematic evaluation of the European Commission support to respect human Rights and fundamental freedoms (including solidarity with victims of repression », Final report, volume 1, December 2011, p. ix.

<sup>27</sup> COM (2011) 886 final, communication conjointe au Parlement européen et au Conseil «les droits de l'Homme et la démocratie au coeur de l'action extérieure de l'UE - vers une approche plus efficace», Bruxelles, 12 décembre 2011, p. 4.

are relative to the Colombian State's obligation to I) protect its citizens victim of forced displacement, II) prevent the continuation of massacres by different armed actors, III) not favour impunity of senior military officials who have been perpetrators of systematic extrajudicial executions, IV) duly fight against the murder and harassment of trade unionists, indigenous people and human rights defenders.

The second section adds that it is untrue to claim that clauses contained in the Colombia and Peru Free Trade Agreement are sufficient and optimal to promote and protect human rights in those countries.

## Section1: Essential benchmarks

### **The State should protect its citizens victim of forced displacement**

#### **An unconstitutional situation**

Colombia is the second country in the world with the greatest number of internally displaced persons, reaching, according to the Consultancy for Human Rights and Displacement (CODHES), 5,281,360 persons between January 1, 1985 y June 30, 2011<sup>28</sup> that is, more than 10% de of the total population.

This phenomenon is not in the past. The CODHES organisation recorded 280,041 displaced persons in the year 2010 and approximately 89,750 persons (close to 17,950 families in the first semester of 2011, through acts of violence and intimidation against civilians, occurring in the middle of armed internal conflict and attributed to paramilitaries, guerrillas and on occasion the National Security Forces' actions or failure to act<sup>29</sup>).

Between the governments of Álvaro Uribe Vélez and Juan Manuel Santos, there was no significant change in patterns of forced displacement. The conflict continues, characterised by numerous violations to human rights and to international humanitarian law, in a context marked by the continuation of the democratic security policy and the militarisation of the society<sup>30</sup>.

Although the displacement represents a major humanitarian crisis for more than two decades, its victims are not adequately protected by the State. Even the Colombian Constitutional Court declared in sentence T-025 of 2004 "the existence of an unconstitutional state of affairs in the displaced population situation due to the inconsistency between the serious impact on constitutionally recognised rights, developed by law on one hand, and the volume of resources effectively meant to ensure the effective exercise of such rights and the institutional capacity to implement the corresponding constitutional and legal mandates"<sup>31</sup>. Then, Order N° 008 of 2009 of the Constitutional Court found that "although systematic and comprehensive advancement has not been achieved in the effective exercise of all the rights of the population victim to forced displacement" and Order N° 219 of 2011 observed state persistence in unconstitutional affairs, considering that the changes in the legal and institutional framework to prevent and adequately address forced displacement were insufficient, the information on budgetary allocation did not permit the identification of resources meant for specific programmes for the displaced population; forced displacement preventative measures were not based on the guaranty of human rights; and emphasizing the government's omission in protecting against displacement of indigenous people and Afro-Colombian communities in cases of forced displacement<sup>32</sup>.

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<sup>28</sup> Consultancy for Human Rights and Displacement (CODHES), About democratic security in the midst of conflict, CODHES Documents N°23, *Op. Cit.*, p.23

<sup>29</sup> *Idem*, p.18

<sup>30</sup> *Idem*, p.12

<sup>31</sup> Constitutional Court of Colombia, sentence T-025 of 2004 "public policies on care for displaced populations have not succeeded in counter-arresting the serious deterioration in vulnerability of the displaced, they have not ensured the effective exercise of their constitutional rights, neither have they favoured overcoming the conditions that cause the violation of such rights"

<sup>32</sup> Colombian Commission of Jurists, The unconstitutional state of affairs regarding human rights of internally displaced persons in Colombia, February 29, 2012. See Order 219 of 2011, Special Chamber for Monitoring Sentence T-025 of 2004 and its compliance orders, Constitutional Court of Colombia, October 2011



For these reasons we believe that effective public policies that ensure and provide opportunities for the displaced population to access the most basic social and economic rights and punish those responsible for their displacement, are not observed. Up to now the Santos Government has not implemented effective public policies on the matter. Additionally, the displacement and murder of leaders and defenders of displaced persons' rights continues. In this regard, the implementation of a post-conflict policy including the return of land concerns us, since it is made in a context of permanence and intensity of conflict<sup>33</sup>.

### **Land return: post-conflict measures in a continual conflict**

Of the displaced persons in the first semester of 2011, at least 10,088 were forced to collectively leave from their places of origin. The paramilitaries would be the first ones responsible for the massive displacements<sup>34</sup>.

While the Victims and Return of Land Law, or Law 1448 of June 10, 2011 is a significant advancement in recognising all conflict victims and the existence of armed conflict, there are many limitations and challenges, particularly regarding implementation:

- The main challenge is the implementation of this law in relation to the effective protection of the displaced that return, especially the community leaders and displaced persons' rights defenders. In 2011 alone, 28 persons linked to land restitution demands were murdered<sup>35</sup>. Especially worrying is the absence of mechanisms guaranteeing the right to life and personal integrity and the context of total impunity of those responsible for forced displacement during the implementation of this process.
- Additionally, as outlined by the United Nations High Commissioner for Human Rights, judges responsible for making decisions in the process of land restitution require protection and their integrity, independence and impartiality should be guaranteed. If not, instead of providing justice to victims, the law could become an instrument legalising expropriation<sup>36</sup>.
- Additionally, there is the risk that this law, although it reinstates property titles, does not guarantee the right of enjoyment of the land, which incidentally is in the hands of paramilitary groups, and/or is being used for single-crop agro-industrial megaprojects of the African palm or other items, turning victims into farm workers of companies on their own land. Since, according to Article 99 of the Law, when there are productive agro-industrial projects in the reinstated lands, the victim cannot stop that activity, but instead must rent the reinstated land and become a partner of the company responsible for the exploitation, facilitating the legalisation of single-crops even against his will;

Other problems with the law include:

- Hectares projected for reinstatement: the Emergency Plan proposed by the Minister of Agriculture, Juan Camilo Restrepo, and the Director of INCODER, Juan Manuel Ospina, aspire to reinstate 2 million hectares during the presidency of Juan Manuel Santos of which 500,000 would be reinstated in the first months. Despite this plan, the quantity seems insufficient since the estimated number of exploited hectares to displaced persons is 6.8 million<sup>37</sup>. For now there is only talk of reinstatement in eight of the 32 departments;

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<sup>33</sup> Annual report of the United Nations High Commissioner for Human Rights, A/HRC/19/21/Add.3, *Op. Cit.*, par. 37, 67, 81, 83, 90

<sup>34</sup> Consultancy for Human Rights and Displacement (CODHES), About democratic security in the midst of conflict, CODHES Documents N°23, *Op. Cit.*, p.21

<sup>35</sup> National and international campaign for the right to defend human rights in Colombia, Defenders reclaiming lands in Colombia, The topic of Land in Colombia, An evident and unknown reality, February 2012

<sup>36</sup> Human Rights Council, Annual report of the United Nations High Commissioner for Human Rights (ACNUDH) , A/HRC/19/21/Add.3, par. 54

<sup>37</sup> ABCOLOMBIA. CAFOD, Christian Aid, Oxfam GB, SCIAF, Trocaire, Working for Peace and Human Rights in Colombia. <http://www.abcolombia.org.uk/subpage.asp?subid=408&mainid=23>

- Compensation through administrative channels: Article 132 of the Law stipulates that when victims accept administrative compensation more than that referred to in the regulation, which shall be similarly defined by the National Government, they shall have to give up claiming judicial compensation. It is important to clarify the concept of “administrative compensation” because this is done through housing and other subsidies which in reality must be included in humanitarian attention which the Government must grant since it is unable to guarantee its population’s security. This mechanism makes access conditional upon justice and goes against one of the stipulations of the Constitutional Court in which comprehensive redress is a fundamental right and cannot be the subject of a transaction.
- Exclusive compensation: despite the fact that the Law refers to comprehensive redress, it ignores displacement caused by the new BaCrim<sup>38</sup>;
- Exclusive and arbitrary dates: victim recognition is done from January 1, 1989 and compensation from January 1, 1991 without any historical support. However, victims before January 1, 1985 shall receive symbolic compensation measures and guarantees of non-repetition;

The murder of displaced persons and their leaders, as well as the presence of the guerrilla and the survival of paramilitary structures that threaten and murder indigenous and Afro-descendant communities called into question the sustainability of the implementation of the Law of Victims, since it demonstrates that conflict continues, far from being resolved. This law is not adapted to the current situation which Colombia faces, being a post-conflict measure applied in a context of armed conflict, and while new paramilitary structures that operate in lands usurped in the process of reinstatement are not dismantled, there will not be enforceable rights for victims.

**FIDH calls on the European Parliament to condition the adoption of the Free Trade Agreement with Colombia on the fulfilment of the following recommendations formulated for example in the framework of the Universal Periodic Review, as well as by the United Nations High Commissioner for Human Rights, asking the Colombian State to:**

- Increase its efforts to address the serious problem of internal displacements and strengthen the full enjoyment of their human rights, as well as intensify the security measures for these communities<sup>39</sup>; done in a way that the Constitutional Court confirms that an unconstitutional state of affairs has ended.*
- Implement effective measures to dismantle new armed groups that have emerged since the demobilisation of paramilitaries<sup>40</sup> so that displaced persons can effectively return and remain on the lands safely;**
- **Take the measures necessary to end impunity of those responsible for forced displacement<sup>41</sup>;**
- Guarantee comprehensive redress of victims;**
- Have a rural development policy which makes a land reinstatement programme that guarantees access to land and food sovereignty sustainable<sup>42</sup>.**

## **The State should not facilitate the continuation of paramilitarism**

### **The advancement represented by the acceptance by the State of the existence of an armed conflict through the law of victims, is in part**

<sup>38</sup> Criminal gangs (“Bandas criminales”), see below.

<sup>39</sup> Recommendation N°39, accepted by Colombia in the framework of the Universal Periodic Review (EPU) carried out in December 2008. See <http://upr-epu.com/ENG/country.php?id=75>

<sup>40</sup> Recommendation N°106, *Idem*. See also Human Rights Council, Annual report of the United Nations High Commissioner for Human Rights, A/HRC/19/21/Add.3, *Op. Cit.*, p.9, par. 118i)

<sup>41</sup> Recommendation N°39, *Idem*.

<sup>42</sup> Human Rights Council, Annual report of the United Nations High Commissioner for Human Rights, A/HRC/19/21/Add.3, *Op. Cit.*, p.9, par. 118 c)

## **marred by negating the character of paramilitarism to the so-called criminal gangs (Bacrim)**

Those mainly responsible for the crimes committed during the conflict have historically been guerrillas, paramilitary groups and the national security forces. To this known criminal framework, in 2011 the Attorney General added a so-called new actor that qualifies as “criminal gangs” (BaCrim) and defines it as “criminal organisations emerged after the demobilisation of the United Self-Defence Forces of Colombia (AUC), (that) were formed as a new form of paramilitarism, considered the third generation of paramilitary groups in Colombia whose initial aim was the conservation of territorial domain that had been left by the AUC fronts. The main objective of these structures has been regaining not only territorial but also economic, logistical and social control in the influential zones in which the AUC continues to commit crimes, besides looking to expand to other regions in which other paramilitary fronts interfered”<sup>43</sup>.

On its side, the Government by using the term “BaCrim” seeks to deny the persistence of paramilitarism, lumping it with ordinary delinquency.

In reality, the “Bacrim” are paramilitary groups that were not demobilised or that emerged after the process of demobilisation; they established themselves in a good part of the national territory and are consolidating a control and intimidation strategy towards the civil population aimed at reinstating exploited lands to the displaced, while they ensure their presence and expansion in mining and single-crop zones, coca plantations, processing areas and trafficking routes of illicit drugs<sup>44</sup>. While the demobilisation of the AUC ended officially on August 15, 2006, many successor groups closely linked to the AUC appeared in the majority of the departments of the country, joined under the control of former supposedly demobilised paramilitaries.

According to the police figures, in mid-2009 there were eight active successor groups<sup>45</sup>, among them the Black Eagles, the People’s Revolutionary Anti-Terrorist Army of Colombia (ERPAC), the Paisas, the Rastrojos and the Urabeños. As outlined in the report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, at present “these illegal armed groups [...] demonstrate high recruitment capacity, including girls, boys and adolescents and use delinquency structures and hit men to support their activities. As a means of developing their criminal activities, these groups exercise territorial control, restrict the population’s freedom of movement and exercise “social control”, imposing their behavioural norms and public sanctions and “resolving” social conflicts, brutally on many occasions.” In 2011, the number of massacres and victims attributed to these groups continued increasing, mainly in Antioquia and Cordoba reaching 32 massacres between January and November 2011, of which 15 took place in Antioquia<sup>46</sup>; the report also recalls that 53% of the leaders of these groups captured or dead were demobilised paramilitaries.

La FIDH believes that these groups, the so-called “BaCrim”, are the continuity of paramilitaries and that through their objectives and actions they transcend simple criminal delinquent gangs<sup>47</sup>.

This just emphasizes the failure of the successive demobilisation processes and the impunity of the crimes committed by paramilitaries. Indeed a main factor in this new paramilitary expansion in Colombia is the realisation of ineffective demobilisation processes, not only failing in its peace objectives but also perpetuating the impunity of many international crimes committed in the conflict framework.

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<sup>43</sup> Attorney General’s Office, Management Report, August 2009- November 2010, Bogota, 2011

<sup>44</sup> Consultancy for Human Rights and Displacement (CODHES), About democratic security in the midst of conflict, CODHES Documents N°23, *Op. Cit.*, p.12

<sup>45</sup> Consultancy for Human Rights and Displacement (CODHES), About democratic security in the midst of conflict, CODHES Documents N°23, *Op. Cit.*, p.12

<sup>46</sup> Human Rights Council, Annual report of the United Nations High Commissioner for Human Rights, A/HRC/19/21/Add.3, *Op. Cit.*, p.9, par. 38-39<sup>1</sup>

<sup>47</sup> Protocol II additional to the Geneva Conventions of 1949 relating to the protection of victims of non-international armed conflicts defines armed actors as: “dissident armed forces or organised armed groups that, under responsible command, exercise control over part of said territory which permits the realisation of sustained and concerted military operations”.

According to Professor Philip Alston, United Nations Special Rapporteur on Arbitrary Executions: “*Other non-State armed actors, including groups composed of formerly demobilized paramilitaries, have also carried out many killings and the numbers are rising. The groups’ existence and growth are largely due to demobilization and transitional justice processes that have resulted in impunity for paramilitaries’ human rights violations. Neither victims nor the nation at large have seen justice done. The truth of why tens of thousands died and who was responsible remains hidden, and victims and their loved ones have been deprived of reparations.*”<sup>48</sup>

## **The perpetuation of impunity for crimes against humanity committed by paramilitaries**

Between August 7, 2002 and April 15, 2012, the demobilisation of 56,665 persons belonging to irregular armed groups was carried out, of which more than 35,411 were paramilitaries (31,664 collective demobilisations and 3,747 individual) and 21, 254 guerrilla members<sup>49</sup> as well as the detention of important paramilitary leaders. However, such a process has not led to the end of violations committed by “demobilised” groups, as was evidenced in the case of the mainly affected paramilitaries. Thus the demobilisation process did not guarantee the non-repetition of crimes; on the contrary it facilitated impunity. It is also important to underline that la Fiscalía General de la Nación has in February issued a detention order against Luis Carlos Restrepo, the Peace commissioner during Álvaro Uribe Vélez’s mandate for its presumed responsibility in a fake demobilisation of the FARC front “Cacica La Gitana”, he is also being investigated for other possible fake paramilitaries demobilizations.

### ***86% of demobilised paramilitaries granted de facto amnesty***

The demobilisation provided, in a first legal framework<sup>50</sup>, the suspension of all persecution against persons who were not subject at the time of their demobilisation, to prosecutions for crimes against humanity or war crimes. The procedure carried the provision of legal and financial benefits in exchange for rendering of arms and expressing willingness to leave one’s armed group. A Committee was charged with the mandate of verifying compliance with these two conditions<sup>51</sup>, and that the person not be implicated in the commission of war crimes or crimes against humanity. In reality, that Committee had neither the means nor the will to make such verifications. Carrying out those demobilisations was transformed into an administrative process managed mainly by entities of the National Executive Branch permitting persons who may have been liable for crimes against humanity to benefit from great financial and legal advantages, including the guarantee of escaping criminal prosecution for the crimes linked to participating in an illegal, armed group<sup>52</sup>. Therefore, crimes against humanity committed by those persons remained unpunished, and the details about them remained unknown<sup>53</sup>.

In 2007, the Supreme Court of Justice indicated that criminal conspiracy, the crime for which persons that benefited from this first legal framework were granted amnesty, could not be considered a political crime, neither could it be amnestied<sup>54</sup>. The Office of the Attorney General needed then to open an investigation

<sup>48</sup> <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/132/35/PDF/G1013235.pdf?OpenElement>

<sup>49</sup> Observatory of disarmament, demobilisation and re-integration processes (ODDR), National University of Colombia, April 2012. On line: <http://www.observatorioddr.unal.edu.co/cifrasDDR.html>

<sup>50</sup> Governed by Law 418 of 1997, Law 782 of 2002, Decrees 128 and 3360 of 2003, Decree 2767 of 2004 and Law 1106 of 2006 as well as various resolutions and agreements

<sup>51</sup> Operational Committee on the Surrender of Arms, CODA, Ministry of Defence, the Interior and Justice

<sup>52</sup> See Article 17 of Decree 128 of 2003

<sup>53</sup> The United Nations Human Rights Committee had, in 2004, manifested a fear in this regard and asked the Colombian State to ensure that war crimes and crimes committed against humanity do not remain unpunished. Human Rights Committee, Final observations: Colombia, May 26 2004, CCPR/CO/80/COL, par.8 available on: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.80.COL.Sp?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.80.COL.Sp?Opendocument) )

<sup>54</sup> Supreme Court of Justice, Criminal Appellate Division, Sentence No. 26945 of July 11, 2007. The court provides that Law 782 that regulates pardons and the cessation of procedures and has permitted the demobilisation of more than 30,000 paramilitaries, is only applicable to political offenses and cannot protect those who have committed a crime; so that the Justice and Peace Law 975 is not applicable to political crimes covered by Law 782. Therefore, paramilitaries involved in criminal conspiracy are not eligible for amnesty, pardon, asylum or the prohibition of extradition for those that commit political offenses. Available on: <http://www.dhcolombia.info/spip.php?article405>

against all paramilitaries that had benefitted from this first legal framework (that is approximately 30,000).

However, Law 1424 of 2010 was passed, “*through which transitional justice provisions are enacted that guarantee truth, justice and reparation to victims of demobilised individuals from organised groups on the fringes of the law, grant legal benefits and enact other provisions*”. This law similar to the Justice and Peace Law but with an only administrative proceedings doesn’t contribute to justice, neither to reparation and little to truth. Indeed it prohibits information provided to this non-legal mechanism to be used as legal proof, this hinders the State’s duties to investigate, judge and sanction the perpetrators of human rights violations, crimes against humanity and violations against international humanitarian law<sup>55</sup>..

### ***The Justice and Peace Law and its application***

Of the more than 35,000 demobilised paramilitaries, 86% benefitted from this de facto amnesty regime. The demobilisation of the rest should have, in principle been governed by the Justice and Peace Law (Law 975 of 2005), being, according to the government, subject to legal processes for crimes against humanity<sup>56</sup>.

#### *- A voluntary process which carries a limited number of guilty verdicts:*

Of the 35, 411 demobilised paramilitaries on August 30 2011, only 4,539 of them have been applied to the procedures of Justice and Peace. However, only 2,739 had begun the first procedural stage of spontaneous declaration. Ultimately, at present, sentence ruling has only been obtained under procedures of Law 975 of 2005 for ten persons<sup>57</sup>. La FIDH considers that the disproportion between the seriousness of the crimes (massacres, forces displacement, kidnapping etc..), the number of direct victims and the sanctions constitute a scheme of impunity.

#### *- 23 of the most senior responsible extradited and de facto articles:*

From May 2008 to March 2009, the government extradited 23 senior paramilitary commanders included under the Justice and Peace procedures to the United States with the aim of being judged for narco-trafficking, blocking the flow of procedures started in Colombia. These extraditions intervened when those paramilitary leaders began to make revelations about the relationships between their structures and the highest spheres of the State. The government said that extradition would not change anything in the process of the Justice and Peace Law. However, four years after the first extraditions, very few hearings have been organized (via video) and only seven of the extradited continued participating in different audiences (spontaneous declaration hearings). The FIDH fears that this paramilitaries will never be judged for the numerous crimes against humanity that they committed.

Besides the *de facto* perpetuated impunity by successive legal frameworks and extraditions, paramilitary demobilisation suffered serious deficiencies. The State did not make the necessary arrangements to verify the identity of the demobilised individuals, neither to guarantee that all paramilitaries of each bloc was demobilised, which caused many frauds and as a consequence as already explained, there was the continuation of criminal activities by paramilitary groups. Certain “demobilised” paramilitaries (both under the first legal framework as well as the Justice and Peace Law) and middle-level management of their structures were detected at the head of “new” groups that operate in the same regions and with the same methods as before<sup>58</sup>.

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<sup>55</sup> Indeed, the law provides that the information that the demobilised persons give be used under the “non-legal mechanism of contributing to the truth and historical memory (...) will be unable in any circumstances to be used as proof in a legal process against the subject (...) or against third parties”

<sup>56</sup> Annual report of the ACNUDH on the human rights situation in Colombia, A/HCR/10/032, February 19, 2009, par. 50-51. See also the FIDH report, Paramilitary demobilisation, on the way to the International Criminal Court, October 2007 report, p.34

<sup>57</sup> Lawyers Collective «José Alvear Restrepo», based on the information provided by the Attorney General’s Office, August 2011

<sup>58</sup> Emerging armed groups are a growing phenomenon in the country, “the majority of them are made up of remainders of former paramilitary groups, non-demobilised groups and new delinquent gangs. The common thread in them all is their main motivation to obtain profits from drug trafficking and obtain money through a variety of illicit activities”. Security and Democracy Foundation, *Emerging Armed Groups in Colombia*, Colombia, May 2008, p. 5 Available on: <http://www.seguridadydemocracia.org>

In the same line that the former government, Santos government is reinforcing the impunity scheme. Indeed, currently being discussed in a second round in Congress is the bill known as “legal framework for peace”. Among the planned reforms for this project is the inclusion of a transitory article in the Constitution to establish instruments of transitional justice that can give “a difference treatment for each of the different parties that have participated in the hostilities”. So Congress, through government’s initiative, must establish prioritisation and a selection criterion of cases in the administration of criminal justice as actions “inherent in the administration of transitional justice”. With this measure Congress is vested with the power to “authorise the waiver of criminal persecution or the suspension of the execution of criminal sentences” in chosen cases.

It is worrying to think that as a result of the selection of cases, including cases of international crimes, the State can give up criminally persecuting those that are not selected or may suspend criminal sanctions. This would constitute a violation of Colombia’s international obligations and of the inter-american case-law on amnesties. These measures can have serious consequences on victims’ rights to access justice<sup>59</sup>.

**FIDH calls on the European Parliament to condition the adoption of the Free Trade Agreement with Colombia on the fulfilment of the recommendations formulated in the framework of the Universal Periodic Review, as well as by the United Nations High Commissioner for Human Rights and the United Nations Special Rapporteur on summary or arbitrary extrajudicial executions, asking the Colombian State to:**

- Take the necessary measures to dismantle the new paramilitary groups<sup>60</sup>;**
- Fulfil its duty to investigate, judge and sanction before civil courts those at the highest level who are intellectually and materially responsible for international crimes committed in Colombia<sup>61</sup>.**
- Penalise the paramilitaries that applied for the Justice and Peace process but did not appear, and ensure that those that did not appear in court, do so<sup>62</sup>;***
- Implement immediate forceful measures to end the impunity situation that is prevalent<sup>63</sup>**
- Respect and guarantee victims of crimes against humanity’s rights to truth, justice and redress in the framework of the demobilisation process or whatever other peace negotiation.**

<sup>59</sup> See comments on the project of « legal framework for peace », Colombian Commission of Jurists

<sup>60</sup> Recommendation N°32 accepted by Colombia Universal Periodic Review (EPU) framework done in December 2008. See <http://upr-epu.com/ENG/country.php?id=75>. See also Human Rights Council, Annual report of the United Nations High Commissioner for Human Rights, A/HRC/19/21/Add.3, *Op. Cit.*, par. 118i)

<sup>61</sup> Recommendation N°24 accepted by Colombia in the EPU framework, *Idem*.

<sup>62</sup> Recommendation N°31 accepted by Colombia, *Idem*. See also Report of the Special Rapporteur on summary and arbitrary extrajudicial executions, March 31, 2010, A/HRC/14/24/Add.2, par. 100

<sup>63</sup> Recommendation N°7 accepted by Colombia, *Idem*.

## Extrajudicial executions committed by the Militaries: perpetuating impunity for senior military officials?

After his visit to Colombia in June 2009, the United Nations Special Rapporteur on Arbitrary Executions confirmed: *“The primary concern is the incidence of the so-called ‘false-positives’, and the examples that have received the most publicity, that is, the homicide of young people from Soacha in 2008. The phenomenon is well known. A ‘recruiter’ deceives the victim with false claims and carries him to a remote location. There, shortly after arriving, members of the army kill the individual. Then the scene of the crime is manipulated so that it appears that the person was legitimately removed in the heat of combat. Often a photograph is taken in which they are dressed in guerrilla uniform with arms or a grenade in hand. The victims are usually buried anonymously in common graves, and the murders are awarded by the results achieved in the war against guerrillas. (...) the same numbers of cases, their geographic distribution and the diversity of implicated military units, indicate that the latter were carried out in a more or less systematic manner, by a significant quantity of elements within the army”*<sup>64</sup>.

The Observatory on Human Rights and International Humanitarian Law of the Colombia - Europe – United States Coordination Office (CCEEU) attributes 3,345 extrajudicial executions to the National Security Forces, committed between 1996 and 2008. During the course of the first five years of President Uribe’s government and in the framework of the so-called democratic security policy as a counterinsurgency strategy, extrajudicial executions committed by national security forces increased by 67.71% during the period 1996-2002<sup>65</sup>.

The 2011 report of the Office of the High Commissioner for Human Rights confirms that national security forces continue committing extrajudicial executions.

On August 30, 2011, the Attorney General’s Office publicly announced that it was investigating more than 3,400 members of the national security forces that had committed extrajudicial executions, among which 1,400 were detained<sup>66</sup>. Other figures announced in August 2011 by the National Unit on Human Rights of the Attorney General’s Office speak about 1,622 presumed homicide cases attributed to State agents that involved 3,963 national security agents and 148 guilty verdicts<sup>67</sup>.

These figures must be taken with due caution because it is particularly worrying when the material perpetrators of these executions are investigated and judged alone, in general low ranking soldiers, while the intellectual perpetrators remain with complete immunity. Besides, the number of condemned persons seems large because units are condemned and not the individual perpetrators. The 2011 report of the Office of the High Commissioner for Human Rights emphasizes that of all the persons condemned, the highest ranking official condemned was a retired colonel who accepted responsibility in 57 extrajudicial executions committed between 2007 and 2008<sup>68</sup>.

The FIDH considers false positives as crimes against humanity. This has been confirmed by the Special Rapporteur on summary or arbitrary extrajudicial executions in his 2010 report in which he confirms that “the members of the national security forces of Colombia have committed a considerable number of illegal executions and that the systematic pattern of false positives has repeated itself all over the country”<sup>69</sup> 14

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<sup>64</sup> Declaration of Professor Philip Alston, United Nations Special Rapporteur on Arbitrary Executions, at the end of his mission in June 2009. Available on line on [http://www.codhes.org/index.php?option=com\\_content&task=view&id=530](http://www.codhes.org/index.php?option=com_content&task=view&id=530)

<sup>65</sup> Permanent Assembly of Civil Society for Peace ASAPAZ, *et al.*, Report for the Universal Periodic Review of Colombia, *The human rights situation in Colombia*, July 2008, Editorial CODICE Ltd., Bogotá Available on: [http://www.colectivodeabogados.org/IMG/pdf/Informe\\_final\\_para\\_el\\_EPU\\_Colombia-1.pdf](http://www.colectivodeabogados.org/IMG/pdf/Informe_final_para_el_EPU_Colombia-1.pdf)

<sup>66</sup> Office of the Prosecutor of the International Criminal Court, report on the activities of the Attorney General’s Office regarding preliminary investigations, *Op. Cit.*, par. 81

<sup>67</sup> Annual report of the United Nations High Commissioner for Human Rights (ACNUDH) , A/HRC/19/21/Add.3, *Op. Cit.*, par. 33

<sup>68</sup> Human Rights Council, Annual report of the United Nations High Commissioner for Human Rights (ACNUDH) , A/HRC/19/21/Add.3, par. 33

<sup>69</sup> Report of the Special Rapporteur on Summary or Arbitrary Extrajudicial Executions. Mission to Colombia. March 2010

regions are mentioned in said report<sup>70</sup>.

FIDH is very concerned by the new regulatory framework of military criminal jurisdiction that the current government is boosting as it aims at facilitating trials by military courts in cases of serious violations of human rights, including crimes against humanity. On February, thanks to the international community pressure, the President of the Republic announced the withdrawal of the reform of the military jurisdiction that the government had tabled in the Congress. In fact the project was modified but not withdrawn, it currently includes **the creation of a “court of guarantees” that will review decisions of the prosecutor who investigates the military officer in question**, composed partially of retired military personnel they, “will monitor the prosecutor to see if there is merit in charging or not charging” the member of the National Security Forces being processed.

Both the approval of the military jurisdiction and the perspective of this new draft must be the object of particular attention and vigilance, since, if an extension of the military jurisdiction is passed, there is an increased risk of perpetuating impunity for crimes against humanity committed by militaries.

Besides extrajudicial executions, the number of victims of enforced disappearances continues increasing. While the United Nations Working Group on Enforced or Involuntary Disappearances recognised legislative and regulatory advancements in enforced disappearances<sup>71</sup>, it expressed its concern about the continuation and persistence of this criminal practice. In early 2012, the United Nations Working Group on Enforced or Involuntary Disappearances again stated “impunity is found in almost all cases of enforced disappearances. Judicial advancements are slow and limited and very few persons have been condemned for the crime of enforced disappearance. Also, there are very few state officers subjected to disciplinary sanctions by the Attorney General’s Office for enforced disappearance cases”<sup>72</sup>.

The prevalence of impunity in both extrajudicial executions and enforced disappearances is worrying. In July 2011, the Attorney General’s Office knew about more than 16,000 cases of enforced disappearances. However, in accordance with the Colombia – Europe – United Nations Coordinating Office, the figure would reach 32,000, solely at the hands of paramilitary groups<sup>73</sup>, that is, without counting those committed by the National Security Forces. Since many false positives continue to be buried as John Does in cemeteries and clandestine common graves throughout the country, the figure of enforced disappearances in Colombia would, in reality be considerably larger.

Combined with the de facto amnesty of 30,000 paramilitaries, both the absence of investigation of those at the highest levels responsible for the extrajudicial executions and the obstacles in investigations of enforced disappearances and the archiving of the majority of the cases demonstrates the lack of political will of the current government in ending impunity that is prevalent in Colombia.

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A/HRC/14/24/Add.2. Par. 14. On line: <http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=pais/docs/2791>

<sup>70</sup> Soacha, Antioquia, Meta, Santander, Arauca, Valle, Casanare, Cesar, Córdoba, Guaviare, Huila, Norte de Santander, Putumayo, Sucre and Vichada. In the Report of the Special Rapporteur on Summary or Arbitrary Extrajudicial Executions. Mission to Colombia. March 2010 A/HRC/14/24/Add.2. Par. 14. On line: <http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=pais/docs/2791>

<sup>71</sup> United Nations Working Group on Enforced or Involuntary Disappearances, Follow up Report to the Recommendations of the Working Group, A /HRC/19/58/Add.4, *Op. Cit.*, p. 4: “The Working Group states that, since its visit to Colombia in 2005 (E/CN.4/2006/56/Add.1), the Colombian State has carried out numerous advancements in enforced disappearances, especially in the last two years. Among these advances, the Working Group outlines: official recognition at the highest level of the existence of internal armed conflict that Colombia has borne for many decades; adoption of Law 1408 of August 20, 2010, “ through which tribute is paid to the victims of the crime of enforced disappearances and they issue measures for their localisation and identification”; the adoption of Law 1448 of June 10, 2011, “through which measures of attention, assistance and comprehensive redress are issued to victims of internal armed conflict and other provisions are issued”; the issuance of a new Military Penal Code (Law 1407 of August 17, 2010) which, like the previous one, explicitly exempts the crime of enforced disappearance from the competence of the military justice system; the creation of a National Unit of Enforced Disappearance in the Attorney General’s Office, at the end of 2010; the work of exhumation of common and/or clandestine graves carried out by the Attorney General’s Office; and the Agreement between the National Institute of Legal Medicine Forensic Science and the National Civil Registry, for Cadaver Identification “N.N.”.

<sup>72</sup> *Idem*

<sup>73</sup> Round table on Enforced Disappearances of the Colombia - Europe – United States Coordination Office, Executive Summary on the General State of Enforced Disappearances in Colombia and Impunity, March 2012



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- Sanction those at the highest levels who are intellectually responsible for extrajudicial executions and not just those materially responsible<sup>74</sup>;**
- Purge the Armed Forces of those responsible by action or omission of sponsoring *false positives*;**
- Take adequate measures to guarantee the non-repetition of these serious human rights violations;**
- Do not adopt any reforms that restore military jurisdiction to judge human rights violations committed by the National Security Forces<sup>75</sup>;**
- Ratify International Convention for the protection of all persons against enforced disappearances<sup>76</sup>,**
- Search for peace through a negotiated conflict solution and through participatory dialogue, without this translating into impunity of any of the actors that are party to the conflict.**

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<sup>74</sup> Recommendations Nos. 9 and 11 accepted by Colombia in the framework of the Universal Periodic Review (EPU). See also Human Rights Council, Annual report of the United Nations High Commissioner for Human Rights, A/HRC/19/21/Add.3, *Op. Cit.*, par. 118 h)

<sup>75</sup> Report of the Special Rapporteur on summary or arbitrary extrajudicial executions, March 31, 2010, A/HRC/14/24/Add.2, par. 89

<sup>76</sup> Recommendation N°1, accepted by Colombia, *Idem*.

## **The Colombian State must duly fight against the murder and harassment of trade unionists, indigenous people and human rights defenders.**

The defence of human rights continues being a high risk activity in Colombia. In fact, it still is the most dangerous country in the world for trade unionists: 49 trade unionists were murdered in 2010 (of a total of 90 trade unionists murdered in the world), and 29 in 2011; and since the start of 2012, at least 5 have been murdered<sup>77</sup>.

While the murders of trade unionists between 2010 and 2011 reduced from 40%, according to the “We are Defenders Programme”, in 2011, 55 human rights defenders were murder or enforced disappearances victims, being the year in which the largest number of records since 1996<sup>78</sup>, which represents a 40% increase in comparison to 2010, in which 32 defenders were murdered<sup>79</sup>. Of the 55 defenders murdered in 2011, 21 fell within the framework of land restitution<sup>80</sup>.

Regarding murders committed in 2011, 13 out of 20 cases in which the presumed perpetrator is known are attributed to paramilitaries, 5 to the Revolutionary Armed Forces of Colombia (FARC), and 2 to the National Security Forces. Antioquia was the most affected department, followed by Cauca, Córdoba and Putumayo<sup>81</sup>.

Besides violations of the right to life, human rights defenders in Colombia have to face violations to their right of personal integrity, threats, defamation and judicial harassment. According to the figures of the “We Are Defenders Programme”, 239 individual attacks on defenders were recorded in 2011, against 174 in 2010, which represents an increase of 36% in comparison to the previous year. Of these individual attacks recorded in 2011, 59% were threats, 20% were murders, 10% arbitrary detentions, 7% attempted, 3% enforced disappearances, 1% injured and judicial harassment<sup>82</sup>.

As outlined in the High Commissioner’s report, the level of impunity of attacks on defenders is concerning<sup>83</sup>. On the other hand, unsubstantiated proceedings are carried out against them which usually substantiate false testimonials and trumped up evidence, while the attacks of which they are victims are not diligently investigated.

In this context, although different judicial and institutional organs of the Colombian State adopted criminal and disciplinary measures against some of the officers implicated in illegal intelligence activities carried out both in Colombia and Europe by the Administrative Department of Security (DAS) under both mandates of Álvaro Uribe Vélez against human rights defenders, trade unionists, journalists, political opposition leaders and including magistrates<sup>84</sup>, the absence of advancements in certain processes is concerning and contributes to the situation of impunity that the country experiences.

Among advances in justice, stands out the conviction in September 2011 of Jorge Noguera Cotes, who was the Director of the DAS under the first mandate of Álvaro Uribe Vélez, 25 years in jail for homicide,

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<sup>77</sup> Sinaltrainal, New avalanche of trade unionist homicides, February 6, 2012

<sup>78</sup> Non-Governmental Protection Programme for Human Rights Defenders “We are Defenders”, 2011 Annual Report: Attacks against Human Rights Defenders in Colombia, Bogotá, February 2012, p. 22. On line: [http://www.somosdefensores.org/attachments/article/106/INFORME%20SOMOS%20DEFENSORES%202011\\_ES\\_PA%C3%91OL.pdf](http://www.somosdefensores.org/attachments/article/106/INFORME%20SOMOS%20DEFENSORES%202011_ES_PA%C3%91OL.pdf)

<sup>79</sup> Non-Governmental Protection Programme for Human Rights Defenders “We are Defenders”, 2010 Annual Report, information system on attacks against human rights defenders in Colombia (SIADDH), February 25, 2011

<sup>80</sup> Non-Governmental Protection Programme for Human Rights Defenders “We are Defenders”, 2011 Annual Report: Attacks against Human Rights Defenders in Colombia, Bogota, February 2012, p.23

<sup>81</sup> *Idem*, pp. 22-23

<sup>82</sup> *Idem*, p. 16

<sup>83</sup> Annual report of the United Nations High Commissioner for Human Rights (ACNUDH), A/HRC/19/21/Add.3, *Op. Cit.*, par. 14

<sup>84</sup> International Human Rights Federation, Report on illegal activities of the DAS, September 2010, p.8, available on <http://www.fidh.org/IMG/pdf/ColombiaEsp542e.pdf>

aggravated criminal conspiracy, destruction, suppression and hiding public documents and revealing a secret matter. In October 2011, the Office of the Attorney General also dismissed and barred the Ex-Secretary General of the Presidency, Bernardo Moreno for 18 years. Of notable mention also is the opening of a preliminary investigation by the Accusations Committee of Congress's House of Representatives against former President Álvaro Uribe Vélez for his alleged involvement in telephone tapping and illegal interception carried out by the DAS. Nonetheless, it is only being investigated because of the "phone-tapping", but not for the acts of harassment and attacks against the DAS victims, and there are serious doubts as to the independence of the process. On the other hand, the Belgian justice request to carry out letters rogatory in Colombia in the framework of investigation of the DAS's illegal activities in Belgium, that affected the work of various human rights and defenders NGO's, to this date remain unanswered by the Colombian Attorney General. To this absence of diligence was added the refusal of the Panamanian Government to consent to the request made by Colombia of extraditing the ex-Director of the DAS María del Pilar Hurtado, who was accused by Colombian justice system of criminal conspiracy and other crimes that have been confessed by high-level officers of the DAS that were at his service.

After the dismantling of the DAS, that was under the charge of the former protection scheme of defenders and on numerous occasions used it to carry out intelligence work against it, the current government created the National Protection Unit, attached to the Ministry of the Interior. However, this new system will be equipped with at least 600 ex-officers of the DAS<sup>85</sup>, which runs the risk of repeating old illegal practices.

To this pattern of attacks described above and after the DAS scandal, should be added the discrediting and stigmatisation of the work of human rights organisations. At the end of 2011, from the retraction of a presumed false victim in the case of the Mapiripán massacre<sup>86</sup>, who confessed to having given a false testimony, the President of the Republic Juan Manuel Santos made declarations discrediting the work of "José Alvear Restrepo" Lawyers Collective and began a true discrediting campaign, both nationally and internationally, against this organisation that took this case before the Inter-American Human Rights System. In this respect, it should be noted that the CIDH declared that "public officers should abstain from making claims that stigmatise defenders and that suggest that human rights organisations act improperly or illegally to carry out its promotion or protection of human rights work"<sup>87</sup>

Therefore, the governmental discourse towards human rights defenders that seeks to discredit and delegitimise their work and expose them to various attacks on their lives, integrity and freedom and even criminalize them. Indeed, President Santos, after an episode in October 2011, in which some false victims were identified by the Office of the Attorney General for Justice and Peace, as having unduly received indemnification by the Colombian State, unleashed a media campaign and the announcement of exemplary sanctions against their lawyers that he called "greedy", "corrupt", and who undermine the credibility of the Inter-American Human Rights System.<sup>88</sup> Similarly, the serious violations of rights of which they are victims, remain in impunity and this proves the lack of adequate mechanisms for their protection.

**Between January and October 2011, 109 indigenous people were murdered<sup>1</sup> and at least 34 Indigenous Peoples are at risk of extinction.** Indigenous Peoples are the victims of attacks by all the different armed actors

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<sup>85</sup> Non-Governmental protection for human rights defenders "We are Defenders", 2011 Annual Report, Attacks against Human Rights Defenders in Colombia, Op. Cit., Bogota, February 2012., p. 31

<sup>86</sup> In July 1997, near to 80 paramilitaries, under the command of Carlos Castaño, were taken from the Urabá Region via air to the Eastern Plains and then by land and river they arrived in Mapiripán, and there they pulled numerous inhabitants from their houses, tortured them, murdered them and got rid of their remains, throwing them in the Guaviare River, in an extreme act of internationally known barbarism. The same paramilitary leader Carlos Castaño publicly confessed on September 29, 1997 that they had murdered 49 persons in that massacre. In its verdict CoIDH emphasises that Carlos Castaño Gil, leader of the paramilitary manifested to the media that the events in Mapiripán "were the largest combat that that paramilitaries have had in their history. We never killed 49 members of the FARC neither recuperated 47 rifles". See CoIDH, *Case of the Mapiripán Massacre vs. Colombia*, Sentence of September 15, 2005, Series C. No. 134, par. 96.50.; see also CIDH, *2010 Annual report*, Chapter IV, Development of human rights in the region, Colombia, Document of the Organisation of American States OEA/Ser.L/V/II, Doc. 5 corr. 1, 7 of March, 2011, par. 34 to 46.

<sup>87</sup> CIDH, Report on the human rights defenders situation in the Americas, Document of the Organisation of American States OEA/Ser.L/V/II.124, doc. 5, 7 of March 2006, par. 99.

<sup>88</sup> «There will be many more Mapiripans, who wants to destroy the CCJAR? » José Alvear Restrepo Lawyers Collective News. November 3 2011. On line: <http://www.colectivodeabogados.org/Habra-muchos-mas-Mapiripanes-quien>

in the internal conflict, who exert pressure over their lands. While Indigenous Peoples make up 3.4% of the Colombian population, they nevertheless make up at least 10% of the displaced population. The Inter American Commission on Human Rights (IACHR) has expressed its concerns over this situation on numerous occasions, in particular in cases of murders of indigenous leaders who had been granted precautionary protection measures by the IACHR<sup>ii</sup>. They also suffer from poverty and the violation of their economic, social and cultural rights. According to the ONIC, 75% of indigenous children suffer from malnutrition.

**FIDH calls on the European Parliament to condition the adoption of the Free Trade Agreement with Colombia on the fulfilment of the recommendations formulated in the Universal Periodic Review framework, as well as by the United Nations High Commissioner for Human Rights and the United Nations Special Rapporteur on summary or arbitrary extrajudicial executions, requesting the Colombian State to:**

- take the necessary measures to protect human rights defenders against all types of attacks, reprisals and persecution because of their human rights activities, and improve the structure of the protection programmes of at-risk defenders, guaranteeing their independence and assigning sufficient financial and human resources to implement protection measures<sup>89</sup>;**
- Recognise publicly the legitimacy of the work done by human rights defenders and trade unionist and take measures to sanction public servant who stigmatise them.**
- end all types of harassment – including those at the legal level – against human rights defenders and abstain from stigmatising their work<sup>90</sup>**
- begin effective, independent and impartial investigations regarding violations committed against human rights defenders<sup>91</sup>;**
- adhere to the memorandum on trade unionists attached to the free trade agreement between Colombia and the United States**
- invite the United Nation Special Adviser on the Prevention of Genocide to monitor the situation of indigenous communities threatened of cultural or physical extermination.**
- implement measures necessary to avoid the extinction of the 34 indigenous Peoples**

## Section 2: Human rights protection within the FTA is not enough

Since 1995, a standardised clause regarding human rights has been inserted in cooperation agreements. This clause makes Human Rights and democratic principles one of the essential elements of the agreement. It allows the parties to immediately take appropriate measures in case of violations but also to initiate a consultation process and engage the dispute settlement mechanism in case disagreement.

Gradually, overarching Human Rights issues in the agreements have been reinforced. Firstly, the reference to the Universal Declaration of Human Rights has been extended to cover HR international obligations of the parties at large. From 2000 onwards, the EU has also endeavoured to negotiate the establishment of structural dialogues (through the creation of committees or working groups on Human Rights) or ad hoc ones (as provided for in Article 8 of the Cotonou Agreement). Over the last years, the EU has finally institutionalised civil society's participation in the follow up process, e.g. the Free Trade Agreement (FTA) with Korea. By adding these provisions

<sup>89</sup> Recommendation N° 41 accepted by Colombia in the framework of the Universal Periodic Review (EPU)

<sup>90</sup> Report of the Special Rapporteur on summary or arbitrary extrajudicial executions, March 31, 2010, A/HRC/14/24/Add.2, par. 104

<sup>91</sup> Human Rights Council, Annual report of the United Nations High Commissioner for Human Rights, A/HRC/19/21/Add.3, *Op. Cit.*, par. 118 g). See also the Report of the Special Rapporteur on the human rights advocates' situation, Addendum Mission to Colombia (September 7 to 18, 2009), A/HRC/13/22/Add.3, March 4, 2010, par. 147

(consultations, dispute settlement, institutionalised dialogue and civil society's participation) to the Human Rights clause, the EU has shown its will to create the tools to conduct both a "constructive approach" and a reactive approach. The constructive approach is then based on prevention, negotiation and incentives. It completes the tools at its disposal in order to react unilaterally to emergency situations, persistent violations or reluctance to comply with Human Rights.

In the present case, various clauses likely to affect Human Rights have been included in the FTA negotiated with Colombia. In addition to the clauses scattered through the agreement, e.g. under the title of intellectual property in the articles 197 and 201, the essential elements clause (art. 1 and 8), the clauses regarding dispute settlement and sustainable development (art. 267 to 285), as well as institutional provisions (art. 12 to 16 and 280 to 285) are likely to affect Human Rights. If these provisions allow Human Rights, democratic principles and the rule of law to be taken into account, they are nevertheless below the approach developed these last few years.

### **A. The general regime**

The general regime is understood as opposed to the provisions regarding sustainable development: it is the compound of the essential elements clause, the monitoring and dispute settlement mechanisms, as well as the various clauses scattered in the agreement that are likely to affect Human Rights.

#### **1. Commitments of the parties**

Article 1 raises the respect for human rights, democratic principles and the rule of law to the level of essential elements of the agreement. It binds the parties to abstain from perpetrating any action that would contravene those rights and principles, and to take any necessary measure to ensure their respect (as confirmed in article 8.3). However, these rights and principles are understood only "as laid down in the Universal Declaration of Human Rights". HR would have been better guaranteed by the insertion of an explicit mention of all the international obligations of the parties ("as defined in the Universal Declaration of Human Rights and other international obligations of the parties on the matter").

Article 8.3 stipulates that in case of violation of the essential elements of the agreement, the other party, without any prejudice to the political dialogue, has the right to take immediate and appropriate measures (this is to be interpreted as the ability by the parties to suspend, in whole or in part, the agreement). With this article, the agreement sanctions the above-mentioned unilateral and reactive approach.

Beyond the essential elements clause, the provisions that would allow for the protection of Human rights are generally drawn up in non-communatory terms, e.g. Art. 201 regarding intellectual property which engages the parties to only "promote" the prior informed consent of indigenous peoples and to "collaborate" in order to "clarify" the question of misappropriation of genetic resources. The agreement provides no means of compelling the parties to respect those rights (neither the HR clause nor the dispute settlement) .

These various provisions regarding Human Rights are scattered over the agreement, which is detrimental to its legibility and shows a lack of coherence on the matter (in this way, the protection of indigenous peoples provided for in this agreement is beneath the protection provided for in the conventions ratified by Colombia; the most notable of those is the Convention n°169 of International Labour Organisation (ILO) which commands a generalised attention for an inclusive process whatever the policies being discussed).

The agreement would have been improved by the introduction of a separate chapter dedicated solely to Human Rights. This would have increased the predictability and judicial security of commercial

relations by sending a message without ambiguity to the economic actors and to the States.

## 2. Mechanisms for institutional follow up

The agreement provides for the establishment of a “Trade Committee” and specialised sub-committees. None of the sub-committees is dedicated to the respect of Article 1, which means that only the Trade Committee is competent on the matter.

According to the agreement, the Trade committee can establish and delegate responsibilities to specialised bodies (Art. 13.2 (a) and 15.4). It therefore can establish a specialised body to oversee the application of Article 1. However, the establishment of a specialised sub-committee in charge of the application of Article 1 and of the dialogue should have been explicitly set out in the agreement, without leaving it to the appreciation of further parties.

The agreement should also have explicitly set out that the Sub-Committee’s monitoring:

- will be based on precise benchmarks agreed on by the parties and which have a calendar,
- will ensure the publicity of the engagements,
- will be relayed in the other dialogues undertaken by the parties, including in high level meetings and in the context of aid programming,
- will take place within procedures that will allow the follow up, participation and formulation of recommendation by civil society, specialised organisations and experts and the European parliament.

Finally, an impact assessment of the implementation of the agreement on Human Rights should have been provided for. The assessment procedures should be convened between parties and their respect should be monitored by the Sub-Committee on Trade and Sustainable Development, whose mandate would be extended, ensuring the participation of civil society.

## **B. The special regime regarding sustainable development**

Giving a particular attention to social and environmental norms, Title IX sets out mechanisms for monitoring, dialogue and dispute settlement that are different to the ones of the general regime of the agreement. Even though some of these provisions reflect the will to give a particular attention to the matter and to better include civil society and international experts, the lack of a binding dispute settlement mechanism allowing compensation and remedy measures is regrettable.

### 1. The parties’ engagements

Various provisions encourage the ratifications of ILO conventions to promote decent work conditions, better practices regarding corporate social responsibility (CSR) as well as to cooperate and exchange on the matter. However, few of these provisions are mandatory.

The provisions that encourage the ratification of ILO norms have a limited added-value, as Colombia already has a lot of ratifications. Similarly, dispositions regarding CSR are below the level of protection recommended, among others, by the European Parliament in its resolution of the 25<sup>th</sup> of November 2010.

Article 269 obliges the parties to promote and ensure the effective implementation of the fundamental principles of labour, as laid down in the fundamental conventions of the ILO. In addition to this provision, already limited to the fundamental conventions of the ILO only, there is a reference to engagements that are inherent to the simple participation to the ILO structures (freedom of association, the right to collective bargain, the elimination of discrimination in labour). Those are principles that the ILO had already declared as applicable, whether States had ratified its fundamental conventions or not. Article 269 positions itself clearly below the international obligations of the parties because it doesn’t require the implementation of the various ILO

conventions already ratified by Colombia, notably convention 169 on indigenous peoples. This is while these populations are particularly vulnerable to the effects of the implementation of the agreement itself, as emphasised by the Sustainability Impact Assessment (SIA) already conducted<sup>iii</sup>.

Another provision set out in Article 268 of Title IX recognises that the agreement doesn't affect the sovereign right of each of the parties to decide and ensure high levels of protection regarding labour. Finally, Art. 269.5 sets out that "the parties stress that labours standards should not be used for protectionist trade purposes and in addition, that the comparative advantage of any party should in no way be called in question". This article, which prevents the abuse of social norms, should be interpreted in light of Article 1, which doesn't prevent the adoption of immediate measures in case of violations of Human Rights as laid down in the Universal Declaration of Human Rights, as well as in light of the ILO's declaration of 2008, which specifies that fundamental rights violations cannot be considered as a comparative advantage. "The violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage and that labour standards should not be used for protectionist trade purpose".

It should be noted in conclusion that the engagements formulated in binding terms are too limited and below the international obligations of the parties.

## 2. Institutional monitoring mechanism

The agreement establishes a Sub-Committee on Trade and Sustainable Development, comprising high-level representatives from the administrations of each Party, responsible for labour, environmental and trade matters. The sub-committee has the responsibility to carry out the monitoring of the objectives on Trade and Sustainable Development and identify actions for the achievement of the objectives of sustainable development. Moreover it may submit recommendations to the Trade Committee for the proper implementation of the Title, when deemed appropriate. It can also identify areas of cooperation and resolve matters within the Title' scope of application, without prejudice to the mechanisms set out for that purpose (see below).

Transparency and public participations in its work will be promoted. Civil society is allowed to submit inputs, comments or views. Any report on matters related to the work of the sub-committee will be made public, unless it decides otherwise (Art. 280.7). Labour and environment or sustainable development committees or groups will be created at the domestic level. They will be able submit opinions and make recommendations and will be composed of representative domestic organisations in the area of the title discussed (Art 281). An annual dialogue with civil society will also have to be organised (Art. 282).

However, the agreement doesn't set out in a binding manner the publication of decisions and reports of the sub-committee, nor does it oblige it to take into consideration the recommendations of domestic consultative groups or to answer them. The relative lack of effectiveness of Human Rights dialogues held these last years emphasises the necessity to ensure that the Trade Committee is accountable on the manner in which information, opinions and recommendations are taken into account.

If an impact assessment on sustainable development is to be conducted the agreement doesn't present enough guarantees. Indeed, it is the parties that will conduct it, each on their own and according to the internal procedure they will have formulated (Art. 279). The agreement doesn't set out any procedural principles to follow nor does it establish a joint monitoring body to oversee their correct implementation. Even though the agreement gives the ability to the Sub-Committee on Trade and Sustainable Development to conduct impact assessment, this is only if it deems is necessary. This puts the agreement below the recommendations formulated by the United Nations<sup>iv</sup>.

The exception to the dispute settlement process and the links between Title IX on Trade and Sustainable Development and the essential elements clause (Art. 1 and 8)

The parties can request consultations on any question of mutual interest falling under Title IX. These consultations will be directed by the Sub-Committee on Trade and Sustainable Development. It can, if all the parties agree, seek information or views of any person, organisation or body that may contribute to the examination of the matter at issue (Art. 283.2). The Sub-Committee has to publish reports describing the outcome of completed consultation procedures (Art. 283.4). In case of failure to reach a consensus within the Sub-Committee, unless the parties agree otherwise, a group of experts may be convened to determine whether a party has fulfilled its obligations or not (Art. 284.2). This group of experts will be able to request and receive submissions or information from organisations, institutions, and persons with relevant information or specialised knowledge (Art. 285.5).

Transparency in the consultation process should have been guaranteed, together with the possibility for civil society to remain informed, consulted, to submit opinions and recommendations and receive an answer.

The specific procedure for Trade and Sustainable Development sets out that the parties present to the Sub-Committee an action plan to implement its recommendations (285.5). However, and derogating from the general regime, the use of the dispute settlement mechanism (Title XII described above) is explicitly excluded (Art. 285.5). It means that the procedure will vary depending on the rights and obligations discussed.

The first possibility is when consultations have been conducted and the group of experts mobilised in order to decide on a violation that is not solely relevant to the Title on Trade and Sustainable Development but also to the essential elements clause, e.g. a violation of the fundamental labour rights. In this scenario, the exclusion of Title XII doesn't preclude one of the parties from taking immediate measures as set out in Article 8.3. This is a good level of protection. However, the situation is different when it comes to other social rights. Indeed, if those rights are violated, and as opposed to other agreements, e.g. Canada-Peru, the exclusion of Title XII precludes arbitration proceedings as well as temporary and full compensation measures. In addition to that, the application of Article 8.3 regarding immediate appropriate measures that can be taken in case of violations of rights is not possible if these rights do not fall under the Universal Declaration on Human Rights.

In such case, once the opinion of the group of experts is formulated, there is no further mechanism put in place to enforce the proper implementation of corrective measures or the action plan proposed by the parties. The agreement shouldn't have reserved the possibility to have recourse to binding mechanisms to labour rights only.

Considering all the above, the agreement should have explicitly linked the essential elements clause to all the obligations of the parties regarding Human Rights, and not only to the Universal Declaration on Human Rights. In addition to that, it should have included, in addition to the possibility to take immediate appropriate measures in case of violation of the Human Rights clause, a chapter solely dedicated to the respect of Human Rights, with reference to the relevant international instruments, and which sets out optimised monitoring and dispute settlement mechanisms:

- A joint monitoring committee to monitor the implementation of all the obligations of the parties on Human Rights and, when they exist, the implementation of recommendations submitted by relevant international organisations (such as the UN, the Inter-American Commission or the ILO),
- An ad hoc consultation that can be confidential (on the model of Article 8 of the Cotonou Agreement),



- Public consultation process,
- Arbitration that is binding regardless of the rights discussed,
- Impact assessment studies conducted according to agreed binding procedures and regularly monitored by appropriated bodies (including consultation committee),
- Systematic participation of civil society and experts at every stage of the various procedures, provide a compulsory mechanism making parties accountable for the way they have taken the recommendations into account and the constitution of competent consultative committees in order to monitor the respect for Human Rights with the same guarantees.

In the absence of those elements one cannot speak of an optimal human rights mainstream in the FTA.

**Due to all the above, FIDH believes that the human rights situation in Colombia does not currently permit the vote on the ratification of the Free Trade Agreement with the European Union. The latter must be conditioned on the strict fulfilment of some of the formulated recommendations and on a clear engagement to implement the other recommendations, in order to ensure that the Colombian State's public policies aim at the full respect, protection and fulfilment of human rights.**

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<sup>i</sup> See interview with the National Indigenous organisation of Colombia (*Organización Nacional Indígena de Colombia - ONIC*) <http://www.contagioradio.com/otra-mirada/onic-denuncia-que-109-indigenas-han-sido-asesinados-en-2011> (in Spanish)

<sup>ii</sup> As for example the murders at the end of 2011 of Luis Ever Casamachín Yule, leader from the Nasa People ([http://www.oas.org/en/iachr/media\\_center/PReleases/2011/125.asp](http://www.oas.org/en/iachr/media_center/PReleases/2011/125.asp)) and Armando Guanga Nastacuas, leader from the Awa People ([http://www.oas.org/en/iachr/media\\_center/PReleases/2011/132.asp](http://www.oas.org/en/iachr/media_center/PReleases/2011/132.asp))

<sup>iii</sup> EU-andean trade sustainability impact assessment, final report, octubre 2009, pp. 186-187, [http://trade.ec.europa.eu/doclib/docs/2010/april/tradoc\\_146014.pdf](http://trade.ec.europa.eu/doclib/docs/2010/april/tradoc_146014.pdf)





# FIDH represents 164 human rights organisations on 5 continents



inhuman or degrading treatment or punishment. Article 6: Everyone has the right to recognition everywhere as a person before the law. Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Article 9: No one shall be subjected to arbitrary arrest, detention or exile. Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Article 11: (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty

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FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

### **A broad mandate**

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

### **A universal movement**

FIDH was established in 1922, and today unites 164 member organisations in more than 100 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

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Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.

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