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Aide-Mémoire

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Colombia

Although there have been positive developments in some areas, systematic and gross violations of human rights (HR) and International Humanitarian Law (IHL) persisted in 2010 and 2011.

We welcome a more favourable governmental rhetoric on human rights and human rights defenders with President Santos in office since August 2010. With law 1448 President Santos addressed important issues on victims' reparation and land restitution. Nevertheless the implementation of law 1448 faces serious challenges on different levels: administration, participation, protection.

In general, the human rights situation is still critical in many aspects. With respect to violations of the right to life, specific groups of the population are particularly affected:

Community leaders claiming the restitution of lands: at least 17 leaders of internally displaced communities reclaiming their land were killed from August 2010 to July 2011. Many more were threatened. Thus, the possibility to effectively reclaim the restitution of their property via law 1448 is seriously hampered and the illegal appropriation of 6 to 10 million hectares by violent actors could remain in place. The Office of the UN High Commissioner on Human Rights (OHCHR) in Colombia stressed that specific protection measures are needed for these communities and the organizations accompanying them¹.

Human rights defenders (HRD): 32 HRD were killed in 2010, most of them in the second half of the year. A recent report highlights the killings of 29 HRD in the first 6 months of 2011 and 145 aggressions against HRD in this period; the latter is an increase of 126% as compared to 2010² – despite of the improved political environment. Criminalization of the defence of human rights is alarming: from December 2009 to December 2010 at least 130 human rights defenders were subject to arrests, prosecutions and / or judicial investigations³.

Indigenous: According to the December 2010 report of the National Indigenous Organisation of Colombia (ONIC), 122 Indigenous were killed in 2010, an increase compared with 2009 (114).

Trade unionists: Colombia continues to be the world's leading country for killings of trade unionists. During 2010 there have been killed 51 trade unionists.⁴

Given the situation of HRD, Colombian civil society organisations claim a lack of guarantees for their activities. After the murder of displaced-leader Ana F. Córdoba in Medellín in April 2011, the

¹ OACNUDH, 26.11.2010 "La OACNUDH solicita establecer una política de protección de las personas que reclaman la restitución de tierras".

² Programa somos defensores, september 2011, "Beyond the numbers" and Programa somos defensores, Informe 2010, August 2011.

³ "Criminalización y judicialización de la protesta social y de la defensa de los derechos humanos en Colombia", Campaña Nacional e Internacional por el derecho a defender los Derechos Humanos en Colombia, November 2010.

⁴ Escuela Nacional Sindical, agencia de información laboral, 03.02.2011. www.ens.org.co

networks of human rights organisations suspended talks on the National Human Rights Plan of Action with the government and proposed guarantees for their safety in order to re-establish negotiations on the plan.

Children: Non-state armed actors (FARC, ELN, paramilitary successor groups) recruit high numbers of children with even decreasing ages. Recruitment of minors continues to go largely unpunished under the "Justice and Peace Law". Non-state armed actors and the military abuse children for logistic and intelligence services and for sexual purposes and frequently don't respect civilian institutions as schools and hospitals. The armed forces and the police conduct military training and operations with children.

The situation of internal displacement in Colombia is one of the most serious in the world with 3,3 to 4,9 million of internally displaced.⁵ Moreover, displacement in Colombia continues and women and children are particularly affected by displacement. State agency "Acción Social" registered an increase of massive displacements. The Colombian NGO CODHES reports 280.041 displaced in 2010. Colombia's Constitutional Court maintains its conclusion of a "state of unconstitutionality" for the displaced population due to the widespread non-compliance of rights.

The state often fails to comply with its obligation to protect people against activities of private actors, including transnational companies. This is of special concern regarding land-grabbing and mining. The legislation does not protect communities' rights to free prior and informed consultation and consent.

Guerrilla groups: The FARC and ELN are responsible for infractions of IHL, including the use of antipersonnel landmines, killings of civilians, taking of hostages, the recruitment of minors and abuses of women within their lines. In the first semester of 2010 the Research Centre CINEP counted 44 breaches of IHL by different guerrilla organizations. We welcome the liberation of hostages in 2010 and 2011.

After the demobilization process of paramilitaries the activities of their successor groups are of severe concern. National Police reported the groups had 3,749 members (July 2010) while the Colombian NGO Indepaz estimates they have approximately 7.100 combatants, with operations in all of Colombia's 32 departments. Toleration of these groups by members of the public security forces is a main factor in their growth⁶. The MAPP-OEA Mission, monitoring the demobilization process, reiterated its concern about civilian population being affected by "post-demobilization groups" including threats, restrictions on movement, forced recruitment, sexual violence, selective assassinations and forced disappearance.⁷ CINEP registered 754 human rights violations and 564 infractions of International Humanitarian Law (IHL) during 2010 committed by paramilitary groups⁸.

The results of the Justice and Peace Law concerning Justice, Truth and Reparation are highly unsatisfactory: most of paramilitaries' crimes remain unpunished. More than six years after the law was approved, by august 2011 there are only three final judgements

Colombia's Supreme Court has made considerable progress investigating Colombian Congress members' collaboration with paramilitaries. More than 150 Congress members and former members – mostly from the coalition of the former president – have been investigated, and at least 20 convicted. Still, investigations against military officers and businesspersons who allegedly collaborated with paramilitaries have been slow.

Illegal activities of the Colombian intelligence service DAS included not only illegal surveillance of human rights defenders, political leaders, Supreme Court judges and journalists but also threats and smear campaigns. The Attorney General's Office is investigating dozens of former and current DAS officials. The former DAS-director Noguera has been convicted. Still, many of the trials are not advancing duly and the actual head of DAS remains in office even though implicated in accusations.

⁵ International Displacement Monitoring Center / Norwegian Refugee Council: Internal Displacement. Global Overview of Trends and Developments in 2009, Geneva 2010, www.internal-displacement.org.

⁶ Human Rights Watch: World Report 2011. Events of 2010, 2011, www.hrw.org.

⁷ MAPP-OEA, April 2011: Fifteenth Quarterly Report. www.mapp-oea.net.

⁸ Banco de Datos de Violencia Política: Noche y Niebla no. 42. Julio – Diciembre 2010. March 2011.

The number of extrajudicial executions by Colombian army personnel reported as killed combatants has dropped significantly. However, more cases are reported and there have been few sentences so far. The Attorney General's Office is investigating 1.488 cases with 2.547 victims. HCHR in its annual report 2011 on Colombia states its concern about 448 cases remaining in the military justice system and about the decrease of transfer of such cases from military to civilian courts. OHCHR stresses the urgent need to ensure fast progress and due process in these cases.

Regarding the high level of impunity related to human rights violations the case of forced disappearances is emblematic. By November 2010 official government statistics report more than 51,000 disappearances, the Attorney General's mentions more than 32.000 "forced disappearances" with more than 1.130 new cases recorded in the last three years (WOLA 2010). By January 2011 the Attorneys Justice and Peace Unit found 3.080 graves and handed over 1.168 corpses to their families⁹.

Recommendations:

- Urge the Colombian Government to implement immediately and without exception all recommendations made by UN bodies. A plan for implementation should be presented.
- Continue to monitor the situation in Colombia and follow up each year on the implementation of the UNHCHR's recommendations, and UN special mechanisms. Request that the UN High Commissioner issue a public report which includes an analysis by her office of the HR situation in Colombia, and to present it to the Council at one of its sessions the following year.
- Urge the Colombian Government to take effective steps to guarantee HRD the right to carry out their work. Follow-up of the recommendations of the UN Special Rapporteur on HRD.
- Urge the Colombian government to fully apply the *Guiding Principles on Internal Displacement* at the local, regional and national level, and implement the recommendation of the Representative of the UN Secretary-General on Internally Displaced Persons based on his visits.
- Request that the Colombian Government and member states establish a reliable mechanism for verifying the demobilization of the AUC. Guarantee the prosecution of newly formed groups. Illegal assets, primarily expropriated property/land of (ex-) paramilitary groups, must be returned to the millions of displaced persons.
- Urge the Colombian Government to develop a comprehensive peace strategy for all armed actors and ensure that any negotiations with illegal armed actors, as well as demobilisation processes, guarantee the rights of victims to truth, justice and reparation, and guarantee the effective dismantling of the respective illegal group.
- Urge guerrilla groups to respect IHL, stop recruiting minors and seek a negotiated solution to the armed conflict. Urge paramilitary groups to respect IHL and stop recruiting minors.
- Urge the Colombian Government to stop the use of children as spies and messengers and the widespread seduction and sexual abuse of female minors by the Colombian Army, to stop the militarization of schools and other civilian institutions and to stop the military training of minors (7 to 14 years of age) in the Policía Cívica Juvenil.
- Urge the Colombian Government to implement social reforms in order to fully comply with the standards of the Treaty on Economic, Social and Cultural Rights, particularly the development of genuine agrarian reform to guarantee the right to food.
- Implement the recommendations of the UN Special Rapporteur on the Rights of Indigenous Peoples in applying the UN Declaration for the Rights of Indigenous Peoples in Public Policy, especially concerning the right to free, prior and informed consent of the indigenous peoples.

⁹ Unidad Nacional de Fiscalías para la Justicia y la Paz: Consolidado de exhumaciones, state of 11th January 2011.