

Human Rights Council Working Group on the Universal Periodic Review
16th Session, 22 April to 3 May 2013

ADVOCACY/BRIEFING NOTE
ICJ suggested recommendations: Universal Periodic Review of Colombia

This advocacy note is brought to the attention of all Permanent Missions to the United Nations Office at Geneva. This note addresses issues set out below, as further explained in the UPR Stakeholder Submission of the International Commission of Jurists (ICJ). The ICJ's full submission, along with an analysis comparing recommendations in that submission with corresponding first cycle recommendations and commitments, can be found online at: <http://www.icj.org/icj-submission-on-universal-periodic-review-of-colombia/>.

1. Impunity for human rights violations and access to justice for victims

Impunity has typically prevailed in respect of the prosecution of extrajudicial killings and of violence against trade unionists. According to the Centre for Research and Popular Education (CINEP), there have been 1,741 victims of extrajudicial executions in Colombia from 1984 to 2011. Of those, 1,189 took place between 2002 and 2008. Similarly, 2,903 trade unionists fell victim to homicide between January 1986 and May 2011. Of those, only 214 have resulted in court judgments. When prosecutions do occur, it is low-ranking soldiers that are charged for these crimes whilst the responsible highest-ranking commanders remain unpunished. Frequently, prosecution authorities do not investigate the accessories to crimes, especially when they are powerful economic actors, such as transnational corporations in the extractive sector. The absence of investigations and prosecutions frustrates victims' rights to access justice and to an effective remedy and reparation, as well the right to truth.

With regard to violence against trade unionists, evidence in several of these cases points to the involvement of national and transnational business corporations in the extractive sector, dairy products and agro-export industries. Colombia does not have a developed criminal law establishing direct criminal liability for legal entities, including corporations, which allows many of these cases to go un-investigated.

Currently, a series of projects aimed at reforming the National Constitution, and enabling access to justice for victims, are being debated in Congress. However, a number of the main reforms are of concern to the ICJ. Among these is the *Marco para la Paz* Bill, which aims to incorporate transitional justice mechanisms within the Constitution by providing tools to achieve peace, end armed conflict and to reduce impunity in the ordinary justice system. The Bill will establish that certain crimes committed by armed actors who demobilize will be investigated according to the seriousness of the offenses, as well as the particular situation of the perpetrators and victims. Remaining investigations and prosecutions would be prioritized focusing on the most serious crimes; and non-prioritized cases would be investigated by non-judicial mechanisms. Such prioritization must proceed in a manner so as not impair the rights of victims', especially in cases of gross human rights violations.

The proposed Justice Reform Bill, which aims to improve access to justice, is also of concern to the ICJ. After Congressional debates, the Government objected to the revised Bill because it would benefit current members of Congress investigated for criminal offences. The Bill was consequently not enacted. The ICJ believes that the Bill contains the several potential risks to the rule of law that must be addressed should they be taken up by a new legislature. For example, the reform proposes the creation of a new Supreme Court section for prosecuting members of Congress as well as other high-level officials. It is unclear how those under prosecution by the current tribunal would be affected. Additionally, practicing lawyers, and court officials – other than judges and magistrates – would take part in judicial proceeding as judges. This reform could lead to the privatization of justice and undermine the independent and impartial administration of justice.

Suggested recommendations:

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

2. Human Rights Defenders

The protection of human rights defenders (HRDs) is fundamental for the promotion and protection of human rights. However, HRDs in Colombia are frequently threatened, harassed, and subjected to illegal surveillance. The criminal justice system, together with measures to guarantee the life, security and integrity of HRDs, must act to apprehend those responsible by prioritizing investigations into these cases. The lack of investigations encourages new threats to and intimidation of human rights defenders.

Suggested recommendations:

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

3. International human rights instruments and mechanisms

Though a party to several of the core human rights treaties, Colombia is yet to become a party to the Optional Protocol (OP) to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the OP to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), and the Third OP to the Convention for the Rights of the Child (CRC). Further, Colombia has four pending visit requests by the Special Procedures mechanisms.

Suggested recommendations:

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

The ICJ expresses to all Permanent Missions the assurances of its highest consideration.
