



STILL WAITING FOR JUSTICE

The challenges facing the new Colombian administration to overcome alarming levels of impunity and how the U.S. government can help



Flor Hilda Hernández mother of victim Elkin Gustavo Verano Hernández.

“He was a very well behaved boy; he studied and worked as well to help me out. They looked for boys from poor families like ours. They thought they could kill them and nobody would report the case for fear. But, we won’t stop until our sons’ names have been cleared and the military officers responsible pay for these crimes,” Blanca Nubia Monroy said of the assassination of her 19-year old son Julián.

Like thousands of other family members of alleged extrajudicial execution victims across Colombia, Blanca has seen no justice for her son’s murder, and those responsible are still free. Despite the significant amount of money that the U.S. Government (USG) has given the Colombian judicial and oversight sector - over \$50 million in the last three years alone - there has been very little progress in investigations and prosecutions for human rights cases. Indeed, in some aspects, cases of extrajudicial executions have undergone a marked backsliding in the past year.

Numbers at a glance

- Number of cases of alleged extrajudicial executions reported to the AGO’s Human Rights unit between 2002 and March 2010: 1,354 (with 2,321 victims). Of which; 1240 are under investigation, 3 are in pre-trial, 2 cases have been precluded, 66 in trial and 43 cases have resulted in convictions.
- Average number of alleged extrajudicial execution cases transferred from the military to the civilian justice system per month in 2008: 34.5. • Average per month in 2009: 3.
- Of the 62 military officers who were being investigated for the Soacha “false positives” case, the number who have subsequently been released from jail pending trial: 54.
- Of the approximately 30 high-level military officials who were dismissed from their posts in reaction to the extrajudicial execution scandal, the number who have been charged for these crimes: 0.
- The number of prosecutors in the AGO’s human rights unit assigned to 1,300 cases of reported extrajudicial executions: 10.
- Percentage of the total number of homicides reported under the new accusatory system from January 2005 to May 2008 that have resulted in a conviction: 3.
- Number of human rights defenders who were threatened, attacked or assassinated between 2002 and 2009: 784.
- Number of cases that have resulted in a conviction: 10 (1.3%)

This report focuses on impunity in two areas of great concern for the U.S. government: extrajudicial executions and threats and attacks against human rights defenders. It investigates some of the reasons for delays in achieving justice, and possible ways that the USG can help address them.

However, impunity is a problem in general in Colombia, one that worsened under former President Alvaro Uribe. Colombia's leading news weekly, *Semana*, recently reported on the "catastrophe" in the justice sector¹, which identifies and prosecutes the guilty party in only seven of every 100 murders.² Increased delays in prosecuting homicides – particularly extrajudicial executions – have resulted from Colombia's transition to a new accusatory justice system, which the USG has spent millions of dollars helping Colombia implement. According to a study contracted by the European Union, under the new system the probability that a homicide will result in the guilty party being sentenced is only 3 per cent.³

One reason for worsening impunity is a lack of resources. In the Attorney-General's Human Rights Unit, 100 prosecutors are managing about 8,000 cases.⁴ In theory, then, each prosecutor has 80 cases to resolve. This situation has been greatly exacerbated by the sacking of thousands of prosecutors in the Attorney-General's office (AGO)– nearly half of the total – due to a court ruling. The USG had spent millions of dollars training these prosecutors.

Another key reason for impunity, though, is a lack of political will – a reality that greatly deteriorated under the Uribe administration. Political will to move cases forward deteriorated in the face of constant attacks on the judicial sector, including illegally spying on the Supreme and Constitutional Courts and increased efforts to protect members of the armed forces from the civilian justice system. In June, for example, President Uribe publicly condemned the ruling sentencing Colonel Alfonso Plazas Vega to 30 years in prison for his role in the forced disappearance of 11 people after the 1985 Palace of Justice siege. Subsequently María Stella Jara, the judge who handed down the judgement, was forced to leave the country after she and her young son received multiple death threats. After the ruling President Uribe called an emergency meeting with senior military of-

ficers; they proposed the creation of a law that seeks greater protection for members of the armed forces, including moving cases against them out of civilian courts and into the notoriously lenient military justice system.⁵

This is of particular concern, as we have already seen serious delays in investigating and prosecuting cases of alleged extrajudicial executions. The situation continues to worsen, with a marked decrease in the transfer of cases from the military to the civilian justice system, and many of the officers allegedly involved in these cases being released from jail due to lengthy delays in beginning trials. Of the approximately 30 high-level military officials who were dismissed from their posts in October 2008, in response to the extrajudicial execution scandal, not a single one has been charged for those crimes, and some reportedly continue their service. Despite this severe backsliding in investigating and punishing extrajudicial executions – which clearly runs counter to one of the key conditions in the certification language in U.S. law – the Obama administration just decided to certify that Colombia is meeting these conditions.

The impunity level for threats and attacks against human rights defenders also remains alarmingly high. Indeed, threats against defenders – and in the past few months alone hundreds of defenders have been threatened – are very rarely investigated, and those responsible are almost never brought to justice. Even some of the most high profile cases of assassinations and threats against defenders, which U.S. NGOs have repeatedly brought to the State Department's attention, remain in impunity years later.

The United Nations highlighted impunity as one of the "principal problems" in Colombia in its 2010 report on the country.⁶ If members of the armed forces responsible for killing innocent civilians are not brought to justice, it is likely that these horrifying abuses will continue to occur. Likewise, the best way to protect human rights defenders would be to thoroughly investigate and prosecute those responsible for threatening, attacking and killing them.

Ultimately, real improvements require political will. President Juan Manuel Santos has shown some promising initial signs, meeting with the presidents of high courts and expressing his willingness to engage in dia-

logue with and to respect the judicial branch. Nevertheless, while running for office Santos assured that during his presidency he would strengthen and expand the scope of military justice system, and promised to defend the armed forces from the so-called “judicial war” led by the high courts against them. In several interviews, candidate Santos affirmed that military justice is faster and more effective than civilian justice, and therefore should be assigned cases of human rights violations. He also stated that the armed forces deserved to be investigated and prosecuted by military judges who, because they understand the particularities of military operations and tactics, would guarantee an impartial judgment.⁷ This signals that Santos could continue his predecessor’s legacy of protecting the military from the civilian justice system, which would lead to even greater impunity.

Recommendations

It is essential that the USG – at the very highest levels – urge the new Colombian government to make improving and finally overcoming its troubling record of impunity for human rights cases one of its top priorities. Furthermore, this should be a central focus of U.S. policy towards Colombia. Some ways that the USG could help reduce levels of impunity for human rights cases in Colombia include:

1. Making consistent use of all diplomatic means to urge the new Santos Administration to produce real results in both extrajudicial executions cases and cases involving threats and attacks against human rights defenders, including allocating sufficient resources to the AGO so these cases can move forward in a timely manner. The USG should publicly condemn any statements made by the new administration against the judicial sector and against those denouncing human rights cases. The USG should also urge President Santos and Defense Minister Rodrigo Rivera to publicly express their government’s intention to ensure that cases of alleged extrajudicial executions are effectively investigated and prosecuted by the civilian justice system, as established in Colombian law.

2. Vigorously applying the human rights certification provisions included in the annual U.S. foreign as-

sistance appropriations law. This report shows clearly that the Colombian government is in gross breach of condition one (investigating and prosecuting abuses by members of the armed forces) and condition four (respecting the rights of human rights defenders and other vulnerable groups). The U.S. Congress should freeze all military aid subject to these conditions until the Colombian government demonstrates significant improvement in the following areas:

- a) Cases of alleged extrajudicial executions being transferred in a timely manner from the military justice system to the civilian justice system;
- b) The percentage of cases, including those involving high-level officials, in the AGO moving from the investigation to the trial phase;
- c) Trials advancing in a timely manner with a marked decrease in military defense lawyers’ use of excessive delay tactics;
- d) Investigations opened into all threats and attacks against human rights defenders in the past three years, with these cases moved to the AGO’s human rights unit and given adequate resources to deal with the case load;
- e) Disciplinary rulings against members of the armed forces found to have been involved in extrajudicial executions.

3. The USG should urge President Santos to consider presenting new candidates for the position of Attorney-General who are clearly independent of the executive branch and have a sound understanding of criminal law.

4. The USG should privately ask Defense Minister Rivera to consider replacing the existing Director of the Military Justice System, under whose leadership the transfer of cases from the military to the civilian justice system – as established in Colombian law – has decreased notably. And the USG should urge him to issue a directive highlighting that: a) when someone is killed during a military operation it is the responsibility of the commander of that operation to ensure that the AGO’s crime scene investigations unit, CTI, are the first to investigate the scene, and; b) in the case of a death that occurred during a military operation, if there is any doubt of the legitimacy of the operation or of whether the person was an enemy combatant, the case must go before the civilian justice system.

5. The U.S. Embassy in Colombia should work with the Inspector General's office and the Attorney-General's office to support the creation of unified databases in each entity for monitoring investigations of human rights violations, especially in cases against human rights defenders and cases of extrajudicial executions. It is crucial that these unified databases include information from local and regional offices and that the AGO and IG regularly report on the status of human rights cases. The capacity to objectively track advancements in such cases could help measure improvements and provide analysis about obstacles and shared solutions to specific problems.

6. The U.S. Agency for International Development (USAID) and the Department of Justice (DOJ), in collaboration with Colombian oversight and judicial agencies and Colombian and U.S. human rights groups, should create indicators and establish benchmarks to measure the effectiveness of U.S. aid to the offices of the Attorney General, Inspector General and Ombudsman in reducing impunity and guaranteeing due process.

7. The U.S. Congressional committees on appropriations should require DOJ and USAID to provide a report before the end of each fiscal year evaluating how the Colombian Attorney-General's Office and Inspector-General's Office have met these benchmarks. If these benchmarks are met, the committee should consider increasing funds to these Colombian agencies, particularly the AGO's sub unit investigating extrajudicial executions and the Humanitarian Affairs regional sub units.

8. The State Department, in collaboration with DOJ and USAID, should conduct an investigation into the causes for delay in the investigation and prosecution of cases allegedly involving extrajudicial executions under the new accusatory system (Law 600).

9. The Justice Department should make the investigation of threats and attacks against human rights defenders, as well as the prosecution of the perpetrators, a priority in its work with the Colombian Attorney-General's office. It is also important for DOJ to support the work of the Humanitarian Affairs units that were created within the AGO and tasked with investigating threats and attacks against defenders.

10. The USG should encourage the Attorney-General to ensure all regional AGO offices currently located within military brigades be moved to an open and independent public facility.

11. The Department of State must fully implement the Leahy Law with regard to U.S. assistance to Colombia. At a minimum, this requires suspending assistance to brigades for which there is credible evidence of extrajudicial executions committed by its members, until and unless those killings are fully investigated and the civilian justice system reaches a judgment – which as this report shows has not occurred.

The Attorney-General's Office

The Attorney-General's Office continues to experience a period of instability, under interim leadership for over a year and undergoing the dismissal of about a half of its prosecutors. This comes at a time when the AGO is dealing with important cases such as the DAS illegal wiretapping and surveillance scandal, 1,724 extrajudicial execution cases involving nearly 3,000 victims¹⁰, the continuing and expanding para-politics scandal, and the 'Yidispolitica'¹¹ bribery case. In Colombia, the Attorney General is elected by the Supreme Court of Justice from a list of three candidates¹² (known as a 'terna') sent by the current Colombian president. However, the list of candidates sent by former president Uribe to replace former Attorney-General Mario Iguarán, whose term ended in August 2009, was ruled as unviable by the Supreme Court. This was reportedly due to their closeness to the President and their inexperience in criminal law.¹³ A new "terna" was proposed to the Court¹⁴, and was declared viable, but a decision has yet to be made and President Santos could still choose to elect a new terna if he wishes to. Colombian human rights organizations claim that the election of a competent Attorney-General with in-depth knowledge of the criminal system and independent of the executive branch is one of the most important steps in combating impunity.

The AGO also lost nearly half of its prosecutors – many of whom the USG had helped train – as they failed to pass an aptitude test implemented in 2007. The Attorney General has had to fire thousands of experienced prosecutors in order to make way for 7,000 new staff

members.¹⁵ According to the AGO, the test valued theory over practical experience.

Another issue of concern is the fact that in several regions in the country, including Medellín, Arauca and Magdalena Medio, some offices of the AGO's district attorneys are situated within military installations. *The National and International Campaign for the Right to Defend Human Rights*¹⁶ made the recommendation that Attorney Generals' offices should be removed from military and police installations to ensure independence and impartiality in their investigations, and to guarantee the safety of human rights defenders and the victims they represent. In part, this concern arose when these units brought baseless prosecutions against human rights defenders, such as the prosecution of members of the Corporation for Judicial Freedom in Medellín, an internationally renowned human rights law firm representing victims of military extrajudicial executions.

The Inspector General's Office

The USG has provided over \$6 million to the Colombian Inspector-General's Office (IGO) over the past three years. The IGO oversees public officials' performance and that of public institutions and agencies. The IGO is in charge of initiating, developing and ruling disciplinary investigations against public officials when necessary. However, since current Inspector-General Alejandro Ordóñez Maldonado took over from his predecessor, Edgardo Maya, there has been a concerning lack of progress on important human rights issues. These include; extrajudicial executions cases, violations against human rights defenders, women's rights and LGBT rights. In cases of extrajudicial executions, the current Inspector-General has taken very few disciplinary measures, and many officers allegedly involved in these cases are reported still to be active in the armed forces. Furthermore the IGO has asked in different occasions for cases to be closed on the basis of lack of evidence, in spite of the fact that the AGO has confirmed the charges and decided to proceed with the trials. With regard to human rights defenders and members of the opposition, the IGO has backed regional prosecutors' decisions to open investigations against human rights defenders based on illegally acquired intelligence information and testimonies from demobilized combatants, which in many instances have proven to be false.

Impunity for the San José de Apartadó brutal massacre



MASSACRE OF SAN JOSÉ APARTADÓ 2005

On August 6, 2010 ten Army officers linked to the gruesome 2005 massacre of four adults and three children in the Peace Community of San José de Apartadó were acquitted of all responsibility by a judge in Antioquia. This judgment maintained that joint army patrolling with illegal paramilitary groups was inadequate evidence of army culpability in planning the crimes. It also dismissed as inadequate the confession of an army captain, currently the one soldier serving time for the crime, regarding army officers' involvement with paramilitaries in planning and implementing the massacre. The decision also did not take into account the confessions of six paramilitaries who, as part of the Justice and Peace process, testified that the massacre was planned and executed by a joint force of paramilitaries and army officials from the Army's 17th brigade. One of these paramilitaries, Alias Kiko, testified that in the massacre they discovered two children, aged 5 and 21 months, and asked the army commander what they should do with them. The commander allegedly ordered them to be killed, saying they were likely to become guerrilla fighters in the future.⁸

The trial was marked by obstacles such as an unexplained lack of cooperation from the Colombian Prison Institute (INPEC) in bringing the detained paramilitaries, key witnesses in the investigation, to the hearings, and the victims' families' lack of access to the hearings.⁹ In December 2009 an evidence file went missing, only to be found days later after the hearing was closed. Witnesses were intimidated by strangers outside the court room, who took photographs and recorded video of people attending the hearings. A pamphlet distributed at one of the hearings stated that the victims' lawyers were guerrilla militants.

New Accusatory System

The USG has dedicated considerable financial and technical support to helping Colombia transition from the old criminal code (Law 600) to the new accusatory system (Law 906), which came into effect in 2005. While the new system is a general improvement, there are worrisome delays in some cases, notably homicides, including extrajudicial executions.

According to a report commissioned by the European Union, from January 2005 to May 2008 the new accusatory system registered a total of 62,737 homicides (52/day) during this period, of which only 1,699 have been investigated, prosecuted and a sentence handed down. In other words, of the homicides reported during this period less than three per cent have resulted in a conviction under the new system.¹⁷ Of the 62,737 cases 10,646 were archived, 21,507 are in preliminary investigation, and as of May 2008 the Attorney-General's office had not acted upon 24,581. Very few are in the investigation and trial stage.¹⁸ The report found problems and delays in more serious cases, such as homicides, under the new system. For example, the preliminary investigation tends to be very lengthy under this system, increasing the risk that the case will pass the limitation period, thus allowing the defendant to be released from jail pending trial, as has happened in many extrajudicial executions cases. There are also serious difficulties in the process of investigation and formulation of charges.¹⁹ The European Union-commissioned investigation also highlights that the AGO has archived cases "for unusual conduct" during this initial investigation on numerous occasions.²⁰

Colombian human rights lawyers representing extrajudicial execution victims have said that in the vast majority of such cases this system has brought major delays. They highlight several problems, including that the system excludes victims (and their lawyers) during the investigation, thus severely limiting their access to the judicial case file, and their participation in the initial investigation. Furthermore, according to the lawyers, their participation during the hearing is merely one of spectator. While in general there have been very few convictions for cases of extrajudicial executions, all of these have occurred under the old criminal code. Meanwhile all such cases under the new system – which applies for cases that occurred from 2005 onwards when there was a real spike in cases – remain stagnated. Of the 514 cases

in the AG's Human Rights Unit which come under Law 906, only 9 are in the investigation stage.²¹

Extrajudicial Executions

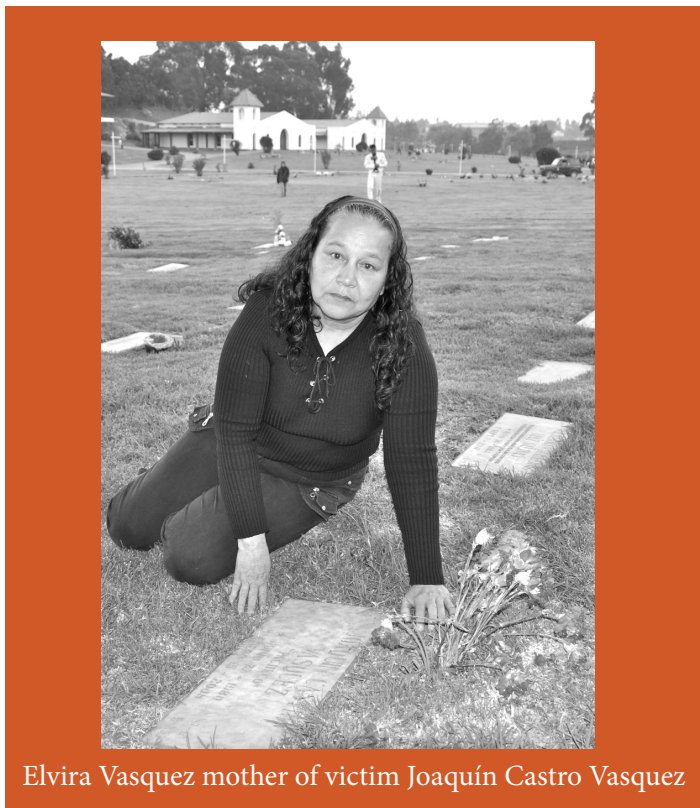
"They had no mercy with Fair even though he suffered from a mental handicap. The military officers of the 15th Brigade of Ocaña assassinated him. Despite his mental disabilities they accused him of being the head of a drug-trafficking terrorist group. He couldn't even learn to write, nor identify money because when he was three months old he had meningitis. Those who were detained for his murder are now free," said Luz Marina Bernal, the mother of Fair Leonardo Porras Bernal, who was killed in Jan 12, 2008 in the state of Norte de Santander.

"Lack of sufficient accountability has been a key factor in the continuation of the Falsos Positivos," United Nations Special Rapporteur on Extrajudicial Executions, Philip Alston.²²

Despite considerable U.S. pressure to investigate and prosecute members of the armed forces responsible for extrajudicial executions or "false positives," there has been little progress. Indeed, in some aspects there has been a marked regression this year, with many of the members of the armed forces allegedly involved in the Soacha case released from jail, and a slowdown in the transfer of cases from the military to the civilian courts.

During the Justice and Peace²³ hearings paramilitary bosses have named around 150 military officials who allegedly collaborated in the crimes committed by the paramilitaries. To date no legal action has been taken against these officers, in stark contrast to the numerous investigations of civilian politicians under way for the 'para-politics' scandal.²⁴ In the few rare cases where senior military officers have been sentenced for human rights abuses, such as the case of Colonel Alfonso Plazas Vega, for the forced disappearance of 11 people from the Palace of Justice in 1985, the government has spoken out against the high courts and called for greater judicial protection of the military.

Between January 2002 to March 2009 1,354 cases of alleged extrajudicial executions involving 2,321 victims were assigned to the AGO's human rights unit. Of those cases, 1,240 are under investigation, 3 are in pre-trial, 2 cases have been precluded, 66 are in trial and 43



Elvira Vasquez mother of victim Joaquín Castro Vasquez

cases have resulted in convictions. This shows a minor improvement in the percentage of cases in trial phase – 4.8% compared to 2.2% a year ago – and in the percentage of cases that have resulted in conviction, 3.1% compared to 1.5% last year.²⁵ However, the percentage of cases in the trial phase and the percentage of cases that have resulted in a conviction are still alarmingly low.

Military lawyers' delay tactics

One of the main reasons for continuing impunity for extrajudicial execution cases are the military lawyers' coordinated and excessive delay tactics. Colombian law establishes a 90-day period from when charges are made to when a trial must begin. If this time period is exceeded, the accused can be released from jail, which is what has occurred in extrajudicial execution cases across the country. Judges, prosecutors and human rights defenders²⁴ allege that in the majority of cases these delays are due to the defense's delaying tactics. These include repeatedly missing trials due to alleged sickness, arriving late, confusing dates, requesting that the case be moved to the military justice system, or submitting inadmissible evidence. The way in which these tactics are being used in extrajudicial execution cases throughout the country to delay and disrupt cases is in clear violation of

Colombian law 1123 of 2007.²⁷

The lawyers responsible for these delays are part of a private organization created and supported by military members to provide legal defense to active or retired members of the armed forces accused of crimes committed in battle, Integral Military Defense – DEMIL. One of the leaders of DEMIL is the Inspector-General of the Army, who has been criticized for a conflict of interests, as on one hand he has an impartial public investigative role, yet at the same time leads a private organization dedicated to defending members of the armed forces, including for grave human rights abuses.

Another way that defense lawyers have been delaying cases is by requesting that they be transferred to the military justice system - despite the fact that they involve alleged grave human rights abuse – where they are far less likely to be brought to justice.

José Orlando

José Orlando Giraldo's daughter, Martha, has traveled to the United States twice to ask U.S. policy makers and organizations to help her ensure justice for her father's 2006 assassination. Yet four years after soldiers from the 3rd High Mountain Battalion killed her father and dressed him in guerrilla fatigues, there have still been no prosecutions. Like so many other extrajudicial execution cases across the country, the full gamut of dirty tricks has been used to delay and prevent justice, from threatening and attacking witness and family members, to defense lawyers' inventing reasons for the case to be adjourned and/or dismissed.

On March 10, 2006, the night that Mr. Giraldo was killed, the AGO's investigative unit, CTI, was called to investigate the crime scene. However, military personnel denied the CTI access and ordered the investigation of the scene to be conducted by a military judge present in the area. The Giraldo family requested that the case be moved to the civilian justice system, which was accepted in April 2006. However, it was not until March 2009 that the AGO ordered an arrest warrant for Sergeant Luis Eduardo Mahecha Hernandez from the High Mountain Battalion for the killing, charging him with aggravated homicide and falsification of a



José Orlando Giraldo

crime scene. The trial against Mr. Mahecha began on May 5, but after the prosecution presented its case and witnesses, the defense requested that the hearing be adjourned due to ‘domestic calamity’. The case was adjourned for a month, and four days after it adjourned there was an assassination attempt against one of the key witnesses, Mr. Giraldo’s brother, José Wilson Giraldo, who narrowly survived after being shot in the head.

On August 5 2009 the Municipal Criminal Court issued a warrant for seven other members of the High Mountain Battalion on charges of aggravated homicide, alteration or destruction of evidence, and falsification of public documents. The defense lawyers applied numerous delay tactics and then in March 2010 requested that the defendants be released from jail due to expiration of established time limits. The request was denied.

In March 2010 a trial date was finally set. Days prior to the first hearing in the trial, the defense lawyers asked that the hearing be suspended in order to try to reach an agreement with the family members. The family saw as grossly inadequate, and rejected, the proposed agreement drafted by the defense. Since this time, however, the trial has not resumed. On numerous occasions throughout these four years, Martha and her family have been threatened and harassed. They fear for their safety.

Civilian vs. Military Justice System

“The most significant obstacle to effective prosecution of extrajudicial executions by members of the security forces are the continuing jurisdictional conflicts between these two systems (military and civilian) and the failure of military judges to transfer cases to the civilian justice system,” Philip Alston, U.N. Special Rapporteur on Extrajudicial Executions.³¹

The chance that cases of alleged extrajudicial executions will be subject to an impartial investigation and prosecution is far greater in the civilian justice system. Following significant national and international pressure, in 2007 and 2008 there was an improvement in the transfer rate of cases from the military to the civilian justice system. Disturbingly, there has been a marked backsliding on this issue over the past year as the military justice system has slowed down the transfer of human rights cases to civilian courts.

After the previous military justice director was forced to resign in May 2009, the transfer of cases has slowed dramatically from an average of 34.5 cases per month in 2008 to 3 cases per month in the last trimester of 2009.³² As of March 2010 there were 283 cases that had yet to be transferred from the military to the civilian

justice system because the military justice system had yet to respond to the AGO’s request for transfer or because they had denied transfer and thus the case was before the Superior Council of Justice. This is 68 cases more than a year before.³³ UN Special Rapporteur Philip Alston wrote that one reason for the delay in transferring cases is due to the Supreme Judicial Council’s³⁴ failure to fulfill its constitutional role of deciding jurisdictional challenges on a timely basis, as has been the case in some of the Soacha trials. But he also said that “there appears to be a conscious attempt by military judges to frustrate the efforts of the civilian justice. In cases where the military judges want to cooperate with the civilian justice they have been harassed or transferred to other jurisdiction.”³⁵

In an interview with USOC, the Director of the AGO’s Human Rights Unit said that the Supreme Judicial Council had been failing to meet the established thirty day period to determine in which judicial system cases should be held. He said that it was a matter of political will, as the government was not demanding that the courts process these cases in a timely manner. And what President Juan Manuel Santos has said so far signals that this situation could continue to deteriorate with an increased protection for military officials from the civilian justice system. In April 2010 as a candidate

Soacha

The case of Soacha, in which 22 young men from poor neighborhoods of Soacha and the south of Bogotá were disappeared and later killed in early 2008, gained more national and international attention than any other.

After considerable pressure from the USG and other countries the Colombian government sacked 40 army officers (22 other military officers have subsequently been linked to the case) and promised justice and an exhaustive investigation into



(starting from left to right): Carmenza Gómez mother of victim Victor Fernando Gómez, Flor Hilda Hernandez and Cecilia Arenas de Sanchez sister of victim Mario Alexander Arenas Garzón

the case. However, two years later the cases continue to move at a snail's pace, no sentences have been given and military defense lawyers have used concerted delay tactics resulting in the majority of the accused being freed from jail. Indeed, of the 62 military officers linked to the case, 54 have been freed due to the delay tactics used by the military defense (led by DEMIL). Even more disturbing is the fact that the Army threw a party for the officers who were released from jail (who are accused of killing innocent civilians), including a special lunch, massages, presents, and relaxation treatments for them and their families, with ten days of holidays.²⁸

While the cases continue despite the accused being set free, the victims' lawyers fear this will lead to further delays and will also put victims' families and witnesses at an even greater risk. Already, many of the families of the victims of the Soacha killings have been threatened.

The Inspector-General's office has yet to take disciplinary action against any of the officers linked to the Soacha case²⁸ and according to serious accusations, some of them continue to be active in the armed forces. For example, General José Cortés, ex-commander of the II Division, was one of the three generals removed from the armed forces for alleged involvement in the Soacha scandal. In an interview with Colombian newspaper El Espectador he revealed: "Not all of the 27 officers and non-commissioned officers removed by the President truly left the Army. Some continue working, including a major, captains and sergeants."³⁰

Many of the actions taken by the Colombian government have focused primarily on Soacha. But, as UN special rapporteur on extrajudicial executions Philip Alston observed, "Soacha is only the tip of the iceberg." If the Soacha cases continue in impunity, then there is little hope for the other, far less public cases. This concern was expressed by the Office of the United Nations High Commissioner for Human Rights in Colombia.

"I am extremely worried about the impact and the repercussions that this decision could have over the more than 1,200 cases of extrajudicial executions that the Prosecutor-General's Human Rights Unit is investigating, as well as on the mothers of the victims and the witnesses," said Christian Salazar Volkmann, representative in Colombia of the UN High Commissioner for Human Rights.

for the presidency Santos said, “*I take this opportunity to tell all the members of the Armed Forces that we will use all our resources to defend you from the ‘judicial war’ and strengthen [...] the military justice system*”.³⁶

Military judges who have effectively followed this protocol and transferred cases of deaths in combat showing irregularities have often been punished as a result. Alexander Cortés, for example, took up office as a military judge in Carepa, Urabá in 2007 and found many irregularities in the combat deaths reported by different units of the 17th Brigade. He began to transfer dozens of cases to the civilian justice system, including archived cases from before 2006. Cortés said that due to his work he became seen as a traitor within the army brigade and he feared for his safety. In June 2009 he was moved to another brigade in Boyacá, where he continued to find suspicious cases that he transferred to the civilian justice system. In early 2010 Cortés was dismissed. In an interview with newsweekly *Semana*, he said that over the last year the government’s efforts to investigate and prevent false positives have suffered a “180 degree turn around” and that the military judges have lost their independence.³⁸

“There is an enormous pressure to delay and even not to send clearly questionable cases to the Attorney-General’s office. I know that more than a dozen of my colleagues have had the same misfortune as I have and have lost their jobs due to their brave decisions. Many of them are alarmed and fear for their life,” said former military judge, Alexander Cortés.

Afusodo (the Association of Families United in Shared Suffering), was established by 40 families in Colombia’s Atlantic coast whose loved ones have been killed by the armed forces. The organization, led by a group of brave women, has fought tirelessly to ensure justice for each of the 40 cases. While they have had some success, six cases in particular have not moved at all because they remain in the military justice system. These cases include: Rubén Jr. Villa Padilla, 21, killed in 2007; Orlando José Villareal, 25, killed in 2004; Carlos Enrique de Ávila Pacheco, 42, killed in 2006; and Roberto Taguer Bolívar, 24, David de Jesús Pacheco Hernández, 16, and Cristian Camilo Redondo, 41, all killed in 2005.

“If these cases remain in the military justice system

we know the results will not be objective or neutral, but rather they will favor the people who killed our sons,” a representative of the organization said.

The official protocol for cases of deaths in combat

In June 2006 the Ministry of Defense signed a formal agreement with the Attorney-General’s Office stipulating the official process to respond to deaths that occur during a military operation. When someone is killed during a military operation it needs to be established if that person is a civilian or an enemy combatant. According to that agreement, the first person at the scene of the crime – who in general is the commander of the operation – should inform the AGO’s crime scene investigations unit, CTI, and should guarantee the safety of the CTI investigators and ensure the crime scene is not altered in any way. The CTI should be the first to inspect the scene where there has been a death in a military operation. This seeks to avoid tampering with evidence and material at the scene. After they have collected all evidence and testimonies and recovered the body the CTI should remit this information to the AGO’s Immediate Reaction Prosecutor with jurisdiction in the area. The CTI has 36 hours to report the findings of its initial investigation to the prosecutor. However, as of July 2009 the CTI had 1,800 cases that it had held over more than six months, resulting in significant delays.³⁷

On analysis of the evidence, the prosecutor should decide if the case should be tried by the civilian justice system, which occurs when there are perceived irregularities and any doubt that the person killed was an enemy combatant. In some cases the military judge with jurisdiction in the area decides that the case should be before the military justice system and requests this transfer, thus creating a conflict of judicial jurisdiction, which has to be resolved by the Superior Council of Justice. Military lawyers have also been questioning the civilian justice system’s jurisdiction over alleged extrajudicial execution cases, which has resulted in lengthy delays in trials beginning.

In December 2009 the Council of State provisionally suspended the inter-institutional agreement between the Attorney General’s Office and the Ministry of Defense as the result of a legal action brought by the

military defense lawyers (DEMIL) against the agreement. As a consequence the CTI's exclusive ability to carry out the initial investigation into the crime scene is now under question. The military justice system had been repeatedly requesting that the military prosecutors be responsible for collecting and processing the evidence. The Council of State's decision puts at risk the impartiality of the investigations and the search for truth and justice. Limiting the CTI's ability to be the first to investigate the crime scene, curtails the possibility of an impartial analysis when determining if the death was produced within the framework of legitimate military operations or not. The decision increases the chances for higher impunity levels in Colombia.

It is important to note that the disciplinary wing of the Superior Judicial Council is composed of 7 justices elected for a period 8 years from a list of three candidates proposed by the government and approved by Congress. In 2008 the 7 justices of the disciplinary wing were replaced by candidates presented by President Uribe and approved by Congress. The election was highly criticized as the elected justices' legal knowledge and skills were questioned, as were their closeness to the President. This had never happened before as the Constitution of 1991 had established a clear balance to avoid the president's majority in the tribunal, a balance that was broken with the approval of the reelection bill.

Inspector-General's office

The USG has provided over \$6 million to the Colombian Inspector-General's office over the past three years. Thus, it is of great concern the IGO's lack of progress, and indeed backsliding, in taking disciplinary action against army officers involved in extrajudicial executions. Since the election of the new Inspector-General Alejandro Ordóñez in 2009, the IGO has initiated very few disciplinary actions against public officials both military and civilian, especially of high rank, involved in these atrocities. For example, even in the Soacha cases that have received most attention, no disciplinary measures have been taken.

The Inspector-General has the ability to request that the military justice system re-open cases that it has

archived. However, according to a respected group of Colombian NGOs the Colombia-Europe-United States Coordination (CCEEU), since Dr. Ordóñez took office he has not requested that any such cases be reopened. Colombian human rights groups say this has contributed to the archiving of many cases suspected to be extrajudicial executions, after merely considering the official version of the military officers involved. They believe this has contributed to the reduction in recent official statistics for cases of new extrajudicial executions.³⁹

Furthermore, the IGO has limited several important human rights investigations against military leaders, such as retired General Rito Alejo del Río. Del Río has been investigated for alleged links with paramilitary structures, and the assassination of human rights defender Marino López Mena, when he was in active duty. The IG determined that there was not enough evidence to link him to the assassination of López Mena, in spite of the fact that the AGO confirmed the charges against the retired General and continued the criminal investigation.

The current inspector-general has also done away with the autonomy⁴⁰ of the Special Investigations Unit. The Unit has produced no significant investigations,⁴¹ despite the resources allocated from international aid, including from the USG. The Unit has also been marginalized from investigations involving high rank army officials. Previously this unit was responsible for carrying out the technical investigations, which confirmed that many cases of alleged combat deaths were actually extrajudicial executions.⁴²

Threats against witnesses and those who report cases

Many cases are never even denounced, as victims' families – with reason – fear for their safety. As the UN Special Rapporteur highlighted in his report, many family members, witnesses and organizations denouncing extrajudicial executions have been threatened and even killed for doing so.⁴³ One example is the case of José Orlando Giraldo Barrera, discussed above whose brother, a key witness to the trial, was shot in the head – but survived - and whose daughter has been repeatedly threatened for seeking justice.

This situation has been aggravated by public comments from senior Uribe government officials stigmatizing those who denounce these cases as enemies of the armed forces and even guerrilla members or allies. It is troubling that among those who made these comments is current President, Juan Manuel Santos, who was Defense Minister at the time. In a press conference on May 4, 2009 Santos said that intelligence information has revealed that *“there are people who want to tarnish the Armed Forces’ name by presenting false accusations.”*⁴⁴ In a separate occasion he said that there was a *“perverse interest in inflating the statistics”* and that this was being done by *“President Uribe’s enemies.”*⁴⁵ It is important for the USG to urge President Santos to refrain from making such comments, and rather to show clear solidarity with the families and organizations denouncing these cases. This includes ensuring adequate protection for these family members, lawyers, witnesses and organizations involved in denouncing and prosecuting extrajudicial execution cases.

Lack of resources

The director of the Attorney-General’s Human Rights Unit, Hernando Casteñero, told USOC in July 2009 that the Unit was carrying out around 8,000 investigations with only about 100 prosecutors. Of these, there were approximately 1,300 cases of alleged extrajudicial executions being carried out by 10 prosecutors. With on average 130 cases per prosecutor, it is little wonder that cases are moving so slowly.

The UN Special Rapporteur also highlighted the difficulties family members experience accessing information on the progress of their loved ones’ cases.⁴⁶ He suggested creating a centralized database system through which each institution reports its activities and progress on each individual case. At the moment it is very difficult to obtain up-to-date information about the status of alleged extrajudicial executions and other human rights cases. This makes it very hard to have a transparent process where progress can be tracked and areas that need improvement can be identified.

Human Rights Defenders

“This entire scenario of death and war continues in the country and no one is brought to justice nor the responsible parties convicted, rather, those who denounce these criminal acts are investigated and even prosecuted for having brought this situation to light,” Alexander Quintero, a human rights defender and President of the Alto Naya Association of Community Action Councils said. On May 23, 2010 he was assassinated.

“Impunity for violations committed against human rights defenders also contributes significantly to their insecurity. According to several sources, the vast majority of attacks and threats against defenders are left uninvestigated,” Margaret Sekaggya, United Nations Special Rapporteur on the Situation of Human Rights Defenders⁴⁷

As the United Nations Special Rapporteur on the Situation of Human Rights Defenders highlights, the vast majority of attacks, and especially threats, against human rights defenders are never even investigated, let alone brought to justice. Between 2002 and 2009 there were 10 sentences in relation to violations against defenders, condemning 18 persons.⁴⁸ Yet, in the same time frame 784 human rights defenders were threatened, attacked or assassinated.⁴⁹ This means that only 1.3% of these cases resulted in a conviction. Within the framework of the Justice and Peace Law only 21 cases of violations against NGO members, 13 cases of violations against defenders and 220 cases of violations against trade unionists have been handled.

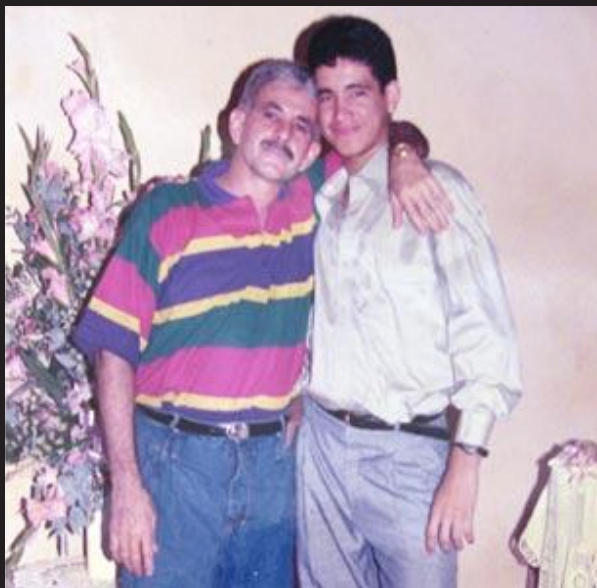
Until the abysmal levels of impunity for threats and attacks against human rights defenders are addressed, their lives will continue to be in grave danger. No protection program can be truly effective while the illegally armed groups who seek to threaten and intimidate defenders know they can do so with zero repercussions. Indeed, in 2010 there was a dramatic increase in threats and attacks against human rights defenders, with hundreds of organizations threatened and seven defenders killed in the months of April and May alone. Despite much national and international action on this situation, defenders have not been informed of any investigations into these threats. In 2009, the Colombian nongovern-

mental organization Somos Defensores registered 125 cases of threats against defenders, and reports that 32 of these defenders were subsequently assassinated. This is a marked increase as between 2002 and 2008 there were 60 defenders killed during that six year period.⁵⁰

Even the most emblematic cases that U.S. NGOs have repeatedly brought to the attention of the USG, especially in the bi-annual certification meetings, continue mired in impunity. This is the case for the National Movement for Victims of State Crimes (MOVICE).

The constant threats and attacks against the National Movement for Victims of State Crimes (MOVICE) have been brought to the USG's attention in numerous urgent actions, State Department certification meetings and reports, all of which call on the USG to urge the Colombian government to thoroughly investigate these crimes and ensure those responsible are brought to justice. Despite this, the vast majority of these attacks remain in impunity.

Since its foundation in 2006, MOVICE has received over 100 death threats against both national representatives and the victims who have organized regional branches of the organization. The Sucre branch alone has reported 38 such cases to the Attorney-General's office in Sucre and Cartagena between 2006 and February 2010. Of those cases, 10 have been archived, two referred to Bogota, one in preclusion, 16 under investigation, four pending a motion of dismissal for lack of jurisdiction, one before the military justice system, three in other jurisdictions and only one in prosecution. Furthermore, MOVICE has not been notified of the advances in the cases they have reported to the authorities, despite numerous requests for information.



Juan David Díaz and his father Eudaldo Díaz foto El Tiempo

In total MOVICE has reported to the Attorney-General's office 170 cases of aggression against its members, including assassinations and assassination attempts, threats, baseless criminal charges, arbitrary detention and intimidation. According to MOVICE, authorities have repeatedly failed to provide them information on the status of these cases⁵¹ and they believe that not even two per cent of these reported cases have resulted in prosecutions. The impunity for aggressions against members of MOVICE has allowed for their ongoing re-victimization as those responsible for these crimes have no incentive to stop.

One individual case which is particularly troubling is that of Juan David Diaz, whose father Eudaldo Diaz Salgado, the ex-mayor of El Roble, Sucre, was forcefully disappeared and then killed in April 2003. Juan David received a death threat the day his father was killed and has subsequently received numerous threats and has been followed. On two occasions armed men were discovered trying to enter Juan David's house and on both occasions they were caught and delivered to the local Attorney-General's office, only to be released shortly after. Rather than actually look for those intimidating and harassing Juan David, the Attorney-General's office brought trumped-up charges against him of conspiracy to commit a crime in the assassination of his father.⁵²

Reasons for lack of progress in cases against HRDs and attempts to address the situation

A lack of political will?

As the Campaign for the Right to Defend Human Rights highlighted in its recent report on impunity, one of the key factors leading to this situation is that the Colombian state does not send a clear message to the perpetrators that all aggressions against human rights defenders will not be tolerated.⁵³ As a result these issues are not prioritized. Threats against defenders are an example. If there were a clear directive from the government that all threats against defenders should be thoroughly investigated and those found guilty brought to justice, then the current state of impunity for these crimes would not exist. Rather than support the key democratic role of human rights defenders, though, the former Uribe administration repeatedly made public comments stigmatizing them as allies of the guerrilla groups. These comments often led to threats, and at times, attacks.

However, in a positive step, in May 2010 former Minister of Interior and Justice Fabio Valencia Cossio and the former Minister of International Relations Jaime Bermúdez proposed a bill that seeks to increase sentences for violations committed against human rights defenders. The proposed bill passed the first debate in the senate and is currently in the second round of debate. If passed, this bill would be an important step in combating impunity for violations against human rights defenders.

Information theft

Unexplained break-ins of human rights defenders' offices or homes and robberies of sensitive information are rarely investigated adequately, even though they put the defenders, and the victims they work with, at risk. The majority of these cases are treated as petty theft, considering only the monetary value of the goods lost, rather than their importance and the real danger of this information being in the wrong hands. As a result, investigations are inadequate and often fail to search for fingerprints or other relevant evidence.⁵⁴

The way in which the AGO has dealt with the case of the Colombian human rights organization Corporación Jurídica Yira Castro (CJYC) is representative of many other cases of information theft and threats against NGOs. On June 22, 2007 CJYC's office was broken into and laptops, hard drives, disks, CDs, cameras and documents containing sensitive information about cases and victims they represent were stolen. The organization denounced the case to the AGO, yet it was classified as a simple robbery, despite the sensitive nature of the information that was taken and the numerous threats against the organization that had also been reported to the AGO. As a result the case was archived with little investigation. Following constant petitions by CJYC, the AGO reopened the case and moved it to the Human Rights Unit in June 2009. However, at the request of the Unit's head, it was returned four months later to the AGO unit dealing with petty theft. There has been no further progress on the case.

Lack of adequate reporting and lack of coordination

It is common for a human rights organization or defender to be the victim of multiple aggressions. However, in many cases the investigation of these threats or attacks is carried out by different prosecutors and even different units within the AGO, who treat them as individual cases, rather than looking at patterns and similarities.

In order to be effective, cases of threats and attacks against human rights defenders and their organizations should be centered in one national unit, especially for the case of repeated threats and attacks. While the Human Rights Unit was designed, as its name implies, to deal especially with cases involving human rights violations, according to its director cases are only transferred to the unit if there is sufficient national and international pressure.⁵⁵ Furthermore, the unit is highly understaffed to deal with all of these investigations, with around 80 cases per prosecutor.⁵⁶ As of 20 December 2009, the unit reportedly had only 34 assigned cases for violations against 67 defenders: 22 cases of homicides: 8 cases of threats, 3 cases of enforced disappearances and 1 case of kidnapping.

In 2009 the Attorney General's office opened a series of Humanitarian Units across the country in order to offer greater coordination and attention to crimes against defenders, trade unionists, indigenous groups, and extrajudicial executions. In theory these units offer much-needed specialization and coordination for these cases. In reality they are grossly under-resourced and the plan to create units across the country has been stalled. The units seek to work with the judicial police to group investigations into human rights abuses, through identifying the existing relations between cases, with the objective of concluding a higher number of investigations in reasonable time frames. They also train prosecutors in human rights, international humanitarian law and technical and investigation strategies to improve their capacity to effectively resolve human rights cases in a timely manner. In March 2009 the first units were opened in Cúcuta, Bucaramanga and Santa Rosa de Viterbo, to cover the departments of Santander, Norte de Santander, Arauca, Boyaca and Casanare. In May 2009 four more units were opened in Cartagena, Quibdó, Santa Marta and Montería covering the departments of Bolivar, San Andres Islas, Magdalena, Atlantico, Cesar, Guajira, Cordoba, Sucre and Choco. The third phase started in July 2009 with units in Florencia, Ibague, Pasto y Pereira. However, due to a lack of resources the AGO will not continue to expand this model into other regions as planned, and since the AGO lost so many of its experienced staff, many of the investigators and prosecutors in these units have been forced to leave,

Conclusion

Impunity in Colombia, especially for human rights cases, is one of the principal problems facing the nation. As this report has shown, this situation is not improving. Instead, in two areas of concern for the USG, there has been a marked backsliding: extrajudicial executions and threats and attacks against human rights defenders. Until these cases are thoroughly investigated and the guilty parties brought to justice in a timely manner, these crimes will continue to occur, and may even increase.

The new Santos administration offers opportunities for improvement, but also reason for concern. President Santos has shown his willingness to meet and dialogue with the judicial sector, a great improvement from his

predecessor. Nevertheless, as his comments during his candidacy show, under pressure from a strong backlash from the military high command he is likely to seek accommodations that make effective prosecutions even less achievable. The U.S. government must, using the certification process, Leahy Law and public statements, press for serious progress on investigating, prosecuting and securing convictions in the civilian justice system for cases of extrajudicial executions and violence and intimidation against human rights defenders. The USG must also demand greater results and transparency for its current support for the Colombian justice and oversight agencies, operated through DOJ and USAID.

1 The judicial system in Colombia is composed by the "High Courts" and by the Attorney-General's office (Fiscalia). The Colombian court system is headed by four roughly equal, supreme judicial institutions: 1) The Supreme Court of Justice, 2) The Council of State, 3) The Constitutional Court, and 4) The Superior Judicial Council.

2 *Semana, Catástrofe!* Aug 28, 2010. <http://www.semana.com/noticias-nacion/catastrofe/143695.aspx>

3 Sneider Rivera y Luis H. Barreto, *La impunidad en el sistema penal acusatorio en Colombia*, 2008. <http://www.mij.gov.co/eContent/library/documents/DocNews-No4362DocumentNo2463.PDF>

4 USOC interview with the director of the Attorney-General's Human Rights Unit, Hernando Casteño, July 2010.

5 *El Tiempo*, Uribe propone Ley para blindar a mandos militares en respuesta a condena contra Plazas Vega, June 11, 2010. http://www.eltiempo.com/colombia/justicia/ARTICULO-WEB-PLANTILLA_NOTA_INTERIOR-7749488.html

6 *El Espectador*, El Principal Problema de Colombia es la Impunidad: ONU. <http://www.elespectador.com/noticias/paz/articulo-216266-principal-problema-de-colombia-impunidad-onu>

7 *Noticias*, Juan Manuel Santos promete defender a los militares y fortalecer la justicia penal militar. <http://www.noticias.com.co/2010/05/11/juan-manuel-santos-promete-defender-a-los-militares-y-fortalecer-la-justicia-penal-militar/> *El Espectador*, Juan Manuel Santos anuncio Reforma Justicia Penal Militar y al DAS. <http://www.elespectador.com/articulo198107-juan-manuel-santos-anuncio-reforma-justicia-penal-militar-y-al-das> *El Tiempo*, "Mi propósito es restituir la armonía entre los poderes": afirma Santos sobre el 'choque de trenes'. http://www.eltiempo.com/elecciones2010/juanmanuelsantos/ARTICULO-WEB-PLANTILLA_NOTA_INTERIOR-7755423.html

8 *Verdad Abierta*, Porque Mataron a los Niños? <http://www.verdadabierta.com/nunca-mas/40-masacres/1114-ipor-que-mataron-a-los-ninos-semana>

9 *Verdad Abierta*, No habrá vencimiento de términos en juicio por masacre en San José de Apartado <http://www.verdadabierta.com/nunca-mas/40-masacres/2184-no-habra-vencimiento-de-terminos-en-juicio-por-masacre-de-san-jose-de-apartado>, February 2010.

10 1,354 cases investigated by the Human Rights Unit in Bogotá, and the remaining cases handled by the regional Attorney General offices. Information provided by the Attorney General's Office to USOC.

11 Yidis-politics refers to the corruption scandal surrounding the approval of the reelection bill in 2004 that amended the Constitution allowing former president Uribe to run in the elections of 2006. Congress member Yidis Medina confessed in 2006 to the AGO that high officials of the Uribe administration had offered her benefits in order to change her vote in favor of the reelection. The benefits were public posts for friends and families.

12 There is currently a new list of three candidates that have not been voted yet by the Supreme Court. Two of the members in the new list (Attorney Margarita Cabello and State Councilor Marco Antonio Velilla) are said not to comply with the qualifications, while the third member, the ex-president of the Supreme Court of Justice, Jorge Anibal Gomez Gallego, is the only one from the list of three with a wide knowledge of criminal law.

13 *Revista Semana*, Los 10 del 2010. <http://www.semana.com/noticias-politica/10-del-2010/133281.aspx>

14 Jorge Anibal Gómez, former Supreme Court justice, Marco Antonio Velilla who was part of the Council of State and Margarita Cabello Blanco former vice-inspector delegate in Barranquilla.

- 15 Semana, Catastrofe! <http://www.semana.com/noticias-nacion/catastrofe/143695.aspx>
- 16 http://www.usofficeoncolombia.org/uploads/application-pdf/Climate%20of%20Fear%20Report_for%20web.pdf
- 17 Sneider Rivera y Luis H. Barreto, La impunidad en el sistema penal acusatorio en Colombia, 2008. <http://www.mij.gov.co/eContent/library/documents/DocNews-No4362DocumentNo2463.PDF>
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- 20 Ibid.
- 21 Information provided by the AGO's human rights unit.
- 22 Philip Alston, United Nations Special Rapporteur on Extrajudicial Executions: final report on his visit to Colombia June 8-18 2009.
- 23 The Justice and Peace Law (975, 2005) is a legal framework that sought to facilitate the process of demobilization of the paramilitary structures by offering in exchange for voluntary confessions of those participating in the process, judicial benefits such as the reduction of sentences. The constitutional Court in sentence C-370 of 2005 revised many of the dispositions within the law as the high tribunal found that they were in clear violation of the victim's constitutional rights to truth, justice and reparation.
- 24 El Espectador, Fuimos Carne de Buitre, March 2, 2009. <http://www.elespectador.com/impreso/tema-del-dia/articuloimpreso123316-fuimos-carne-de-buitre>
- 25 Information provided to USOC in September 2010 by the AGO's human rights unit.
- 26 El Tiempo, "Qudan libres otros seis militares por 'falsos positivos': http://www.eltiempo.com/colombia/justicia/libertad-de-seis-militares-acusados-de-falsos-positivos_6934207-1
- 27 Law 1123 of 2007, Lawyers Disciplinary Code. Article 33 establishes what conducts are subject to disciplinary sanctions, including "intervene in the judicial or administrative proceedings in a way that prevents, disturbs or interferes with the normal development of the mentioned proceedings. To advise, sponsor or intervene in any act that results in the displacement of the functions of the officials of justice. Paragraph 8 same article: "Propose incidents, interpose resources, formulate oppositions or exceptions manifestly seeking to hinder or delay the normal development of the legal processes and, in general, the abusive use of the legal means or their use in a contrary form to their end."
- 28 Caracol Radio. Conceden 10 días de permiso a militares involucrados en 'falsos positivos', January 26, 2010. <http://www.caracol.com.co/nota.aspx?id=944135>
- 29 Information provided to USOC from the IGO.
- 30 El Espectador. Entrevista al General Cortés, March 2, 2009. <http://www.elespectador.com/impreso/tema-del-dia/articuloimpreso123316-fuimos-carne-de-buitre>
- 31 Philip Alston, United Nations Special Rapporteur on Extrajudicial Executions: final report on his visit to Colombia June 8-18 2009.
- 32 Observatorio de Derechos Humanos y Derechos Humanitario, Coordinación Colombia Europa Estados Unidos, Condicionamientos de la ayuda militar de Estados Unidos a Colombia incumplimientos y retrocesos Documentos Temáticos N0 5, June 24 2010.
- 33 Information provided to USOC by the AGO.
- 34 The Superior Judicial Council is one of the four 'high courts' within the judicial branch along with the Constitutional Court, the Supreme Court of Justice and the Council of State. The SJC is divided into two branches; the Disciplinary and the Administrative. The disciplinary is in charge of investigating the conduct of the justice officials and lawyers and to resolve jurisdictional conflicts between the different courts. The administrative is in charge of managing the operations of the judicial system.
- 35 Philip Alston, United Nations Special Rapporteur on Extrajudicial Executions: final report on his visit to Colombia June 8-18 2009.
- 36 Noticias, Juan Manuel Santos promete defender a los militares y fortalecer la justicia penal militar. <http://www.noticias.com.co/2010/05/11/juan-manuel-santos-promete-defender-a-los-militares-y-fortalecer-la-justicia-penal-militar/> El Espectador, Juan Manuel Santos anuncio Reforma Justicia Penal Militar y al DAS. <http://www.elespectador.com/articulo198107-juan-manuel-santos-anuncio-reforma-justicia-penal-militar-y-al-das> El Tiempo, "Mi propósito es restituir la armonía entre los poderes": afirma Santos sobre el 'choque de trenes'. http://www.eltiempo.com/elecciones2010/juanmanuelsantos/ARTICULO-WEB-PLANTILLA_NOTA_INTERIOR-7755423.html
- 37 Philip Alston, United Nations Special Rapporteur on Extrajudicial Executions: final report on his visit to Colombia June 8-18 2009.
- 38 La Semana Capitán nunca juzgará a coronel, July 17, 2010. <http://www.semana.com/noticias-nacion/capitan-nunca-juzgara-coronel/141923.aspx>
- 39 Observatorio de Derechos Humanos y Derechos Humanitario, Coordinación Colombia Europa Estados Unidos, Condicionamientos de la ayuda militar de Estados Unidos a Colombia incumplimientos y retrocesos Documentos Temáticos N0 5, June 24 2010.
- 40 According to the Human Rights Observatory of the CCEEU.
- 41 Ibid.
- 42 Observatorio de Derechos Humanos y Derechos Humanitario, Coordinación Colombia Europa Estados Unidos, Condicionamientos de la ayuda militar de Estados Unidos a Colombia incumplimientos y retrocesos Documentos Temáticos N0 5, June 24 2010.
- 43 Philip Alston, United Nations Special Rapporteur on Extrajudicial Executions: final report on his visit to Colombia June 8-18 2009.
- 44 El Tiempo, Joven de Montería es el nuevo caso de falso positivo revelado por el ministro de Defensa, May 4, 2009, http://www.eltiempo.com/colombia/justicia/joven-de-monteria-es-el-nuevo-caso-de-falso-positivo-revelado-por-el-ministro-de-defensa_5129447-1
- 45 Caracol, Cifras sobre 'falsos positivos' han sido infladas, según Mindefensa, April 21, 2009, <http://www.caracol.com/noticias/politica/articulo136288-cifras-sobre-falsos-positivos-han-sido-infladas-segun-mindefensa>
- 46 Philip Alston, United Nations Special Rapporteur on Extrajudicial Executions: final report on his visit to Colombia June 8-18 2009.
- 47 Margaret Sekaggya, United Nations Special Rapporteur on the Situation of Human Rights Defenders, Mission to Colombia, March 4, 2010.
- 48 Ibid, p.23.
- 49 Programa Somos Defensores, Sistema de Información sobre Agresiones a Defensores y Defensoras de Derechos Humanos en Colombia.
- 50 Programa Somos Defensores, Sistema de Información sobre Agresiones a Defensores y Defensoras de Derechos Humanos en Colombia.
- 51 For example, MOVICE was forced to submit an official request for information to the AGO, IGO and the Ombudsman's office in February 2010 as they had very little information on the status of these 170 cases.
- 52 MOVICE, La falta de garantías para la víctimas de crímenes de Estado: la persecución al Capítulo Sucre de MOVIIICE. www.movimientodevictimas.org
- 53 Ibid.
- 54 Campaign for the Right to Defend Human Rights. Serie Impunidad No.1. Bogotá, Abril, 2010.
- 55 Interview with the Director of the AGO's Human Rights Unit, Hernando Casteño, July 9, 2010.
- 56 Ibid. According to Mr. Casteño there are 8,000 cases in the unit and only 100 prosecutors.

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