

## Colombia Human Rights Update

February 2012

- Santos Administration presses for step backwards on human rights: Human rights crimes by soldiers may return to military jurisdiction
- Historic Victims' Law put into effect; protection for communities is a grave concern
- Human rights defenders' verification mission finds situation of defenders remains perilous

### **1. Santos Administration Presses for Step Backwards for Human Rights: Human Rights Crimes by Soldiers May Return to Military Jurisdiction**

The Santos Administration is pushing through Congress a provision regarding military jurisdiction that threatens to undo much of the progress achieved since early 2007 in ensuring justice for severe human rights crimes committed by members of the military. In particular, it would unravel key reforms instituted to address the "false positive" scandal in which more than 3,000 civilians were allegedly killed by soldiers, often to up their body counts and obtain incentives. Soldiers detained or purchased from criminal "recruiters" live young men whom they believed would not be missed, killed them and dressed them up in guerrilla uniforms, in order to claim them as killed in combat.

An article of the justice reform bill (currently article 13) would modify the Colombian Constitution to provide that all acts committed by security force members during military operations would be presumed to be acts of service, and thus would be subject to military jurisdiction. This initial presumption would apply to any crime—including rape, torture, forced disappearance and extrajudicial executions. [According](#) to the United Nation's Office of the High Commissioner on Human Rights' representative in Colombia, this would amount to an "historic step backwards for human rights" in the country.

As the provision would modify the Constitution, it needs to be approved in two congressional sessions. It was approved in one round last year, and is likely to come up again in March for final consideration.

The proposed provision would result in the military justice system opening the initial investigations into all alleged human rights abuses committed by security forces during operations. This will nullify Directive 19, emitted by Juan Manuel Santos as defense minister in 2007, which called for the investigative body (CTI) of the Attorney General's office to be the first to investigate deaths in combat. The agency that first investigates a

potential crime scene has the capacity to set the investigation on the right or wrong course. “Even when a case is transferred to civilian jurisdiction, after military jurisdiction has carried out the initial steps, it becomes almost impossible to correct the skewed direction of the investigation,” [according](#) to a leading Colombian human rights network. This change will not only affect investigations of new crimes, but could also lead to the transfer of hundreds of extrajudicial execution cases—the false positives—from civilian jurisdiction back to military justice authorities, a tremendous step backwards.

While the Colombian government maintains that human rights crimes would be subsequently transferred to civilian authorities, practice has shown that when the military justice system initially investigates, human rights crimes are rarely brought to light or to justice. “This is evidenced by the military courts’ glaring lack of results in obtaining convictions against those responsible for cases of false positives,” according to [Human Rights Watch](#). Many of the false positive cases were closed by military justice officials, according to the UN. Despite clear jurisprudence (prior to this new proposal) regarding the obligation to investigate and prosecute human rights crimes in civilian jurisdiction, military authorities have a very poor track record when it comes to promptly transferring alleged cases of human rights violations to civilian jurisdiction. [According](#) to UN Special Rapporteur on Extrajudicial Executions Philip Alston, “the most significant obstacle to effective prosecution of extrajudicial executions by members of the security forces are the continuing jurisdictional conflicts [between military and civilian justice systems] and the failure of military judges to transfer cases to the civilian justice system.” Even without this proposed step backward, too few cases are being transferred to civilian courts. After a brief period in which hundreds of cases of alleged extrajudicial executions were moved to civilian courts, the transfers of cases from military to civilian jurisdiction slowed again in 2010, [according](#) to both the Office of the UN High Commissioner for Human Rights and State Department.

The military justice system's reluctance to investigate human rights crimes, and its lack of independence from the military's retired and active leadership, are qualities far too deeply engrained for some technical fix of the military justice system to resolve. Moreover, unlike in the United States, the Colombian military on a daily basis conducts law enforcement operations within Colombia's national territory and interacts with the civilian population, making it all the more urgent that the military be accountable to Colombia's civilian authorities for human rights crimes. However, there is no objection to efforts to improve the military justice system's handling of appropriate matters, such as violations of military discipline.

Unprecedented efforts were invested to achieve gains since 2007 to ensure justice for human rights crimes committed by the military. The State Department and U.S. Embassy under Republican and Democratic administrations since early 2007 invested political capital in ensuring the transfer of hundreds of extrajudicial executions to civilian courts. The U.S. Senate held up significant portions of Colombia's military aid over the issue of impunity for extrajudicial executions. The United Nations made an intensive effort via the UNHCHR office and the landmark visit of the UN Special Rapporteur on Extrajudicial Executions. Colombia's human rights networks and relatives of victims of extrajudicial executions made well-coordinated, heroic efforts to document and expose the “false positives” crimes, even as their allegations were dismissed and they faced constant threats. *Semana* magazine

shone with its investigative journalism on the subject. Then-Defense Minister Juan Manuel Santos chose to embrace reforms. This not only resulted in advances in justice for these cases, but also led to a dramatic drop in new extrajudicial executions. This constellation of Colombian and international effort is unlikely to be resurrected if these gains slip away.

The proposal would make it impossible for the State Department to certify compliance with the human rights conditions provision that, “The Colombian Armed Forces are suspending those members, of whatever rank, who have been credibly alleged to have violated human rights, or to have aided, abetted or benefitted from paramilitary organizations or other illegal armed groups; all such cases are promptly referred to civilian jurisdiction for investigation and prosecution, and the Colombian Armed Forces are not opposing civilian jurisdiction in such cases; and the Colombian Armed Forces are cooperating fully with civilian prosecutors and judicial authorities.”

In addition, this backward step would make it difficult for the Colombian government to comply with its obligation to “prevent violence against labor leaders, and prosecute the perpetrators of such violence,” in cases involving members of the military. Such cases are not just in the past. On January 9, 2012, a member of the Sintrapaz union, Victor Manuel Hilarion Palacios, was traveling to work when he was allegedly killed by Colombian army troops. As noted in a February 1 letter from AFL-CIO President Richard Trumka to President Obama, “According to reports, the soldiers who later delivered his body to the Technical Investigation Unit (CTI) of the Fiscalía office in the town of Villavicencio stated that he had been killed in crossfire—yet the colleagues and relatives who went to collect his body discovered it bore signs that he had been brutally beaten and tortured.”

**U.S. policymakers should urge the Colombian government to withdraw this proposal to expand military jurisdiction. If this proposal goes into effect, the State Department cannot in good conscience certify Colombia meets the human rights conditions attached to U.S. security assistance. This proposal would also affect Colombia’s ability to meet its commitment under the Labor Action Plan to “prosecute the perpetrators” of violence against trade unionists.**

## **2. Historic Victims Legislation Put into Effect; Concern about Protection for Returning Communities**

On a positive note, the historic legislation that provides reparations for victims of violence as well as land return for some of Colombia’s 5 million internally displaced persons came into effect on January 1<sup>st</sup>. [President Santos](#) said in a celebratory act, “An indigenous Wayu leader told me that this policy can’t restore the song of the birds or the shade of the trees. I responded: it can’t erase wounds, but it can heal the scars.”

However, there are grave concerns that this initiative is unfolding without adequate attention to protecting the lives of land rights activists and communities who have already returned or who are planning to return to their stolen lands. Twenty-two [land rights activists](#) have been killed since the Santos Administration took office. Without serious attention to protection and to dismantling the paramilitaries and other illegal groups behind the violence, as well as to addressing the links with economic interests that at times

act in collaboration with the armed groups, people will face a serious risk of returning only to meet their deaths or be displaced again.

Even in cases such as Curvaradó and Jiguamiandó river basins where the Colombian government is attempting to provide protection and national and international nongovernmental groups are providing accompaniment, protection is inadequate and communities and leaders remain at risk. To its credit, the Colombian government in this particular case is attempting to follow the Constitutional Court's order to carry out a census and implement restitution. But community leaders continue to denounce death threats and killings by paramilitary successor groups who operate in the region, often in close proximity to army and police checkpoints. Community members who have participated in meetings with the government regarding the census and land restitution have been particularly targeted.

Our Colombian civil society partners are emphatic in insisting that protection is not created by a primarily military presence that indeed often places civilian populations at greater risk. See this [letter](#) to Secretary Clinton from U.S. nongovernmental organizations describing the kind of protection that should be provided to returning and returned communities and their leaders.

**U.S. policymakers should encourage the Colombian government to develop and implement fully a workable, comprehensive, and adequately budgeted plan, led by civilian government agencies, to provide protection, created in close consultation with the communities it benefits.**

### **3. Human Rights Defenders Verification Mission Found that Defenders' Situation Remains Perilous**

A human rights defender verification mission made up of 40 human rights defenders from around the world, including participants from the Latin America Working Group and U.S. Office on Colombia, visited Colombia at the invitation of the National and International Campaign for the Right to Defend Human Rights in Colombia. The mission visited 8 regions and met with hundreds of defenders in addition to local, regional and national authorities. The mission used the United Nations' broad definition of defenders, which is anyone who defends their human rights and those of others, including those representing peasants, women, African descendants and indigenous people, family members of victims, IDP leaders, trade unionists, and human rights lawyers. See the preliminary report [here](#); see our blog on the mission [here](#).

The mission [found](#) that human rights defenders throughout the country continue to face severe threats, harassment, and attacks. It observed that "the vast majority of attacks against human rights defenders, including such serious crimes as murders and forced disappearances, remain unpunished." The mission maintained that in many cases attacks, threats, and break-ins to defenders' offices are treated as isolated incidents and classified as common crimes unrelated to their work in defense of human rights.

The mission noted that the government's human rights protection program has saved lives. However, it observed a number of deficiencies, including slow and bureaucratic risk

assessments, a failure to provide protection that allows defenders to keep carrying out their important work, and a lack of differentiated approaches for distinct populations. The mission heard a number of concerning cases of defenders who had recently had their protective measures withdrawn. The mission found “virtually no progress in investigations” to bring to justice those who attack defenders and concluded, “protective measures are of little use if attacks go unpunished.”

Moreover, some state agents have taken actions that place human rights defenders in jeopardy. Human rights defenders continue to face criminal investigations with multiple irregularities, including the use of uncorroborated intelligence files as evidence, and a number of human rights defenders known for their legitimate human rights work remain in jail. The mission heard about individual and mass arrests and prosecutions of defenders who engaged in social protests, such as opposition to large-scale mining and infrastructure projects as well as student protests. The mission received extensive information that defenders continue to be concerned that government surveillance persists, reporting information theft from their offices, their belief that their phones continue to be wiretapped, and that state security forces film or take their pictures at public events. The mission underscored the large number of recent reports of information theft from human rights defenders' offices throughout the country.

Finally, President Santos's initially welcome change in rhetoric towards human rights defenders is not being adhered to by regional and local authorities and is seriously undermined by the national government's new rhetoric on “false victims.” The mission found that some regional and local authorities continue to discredit human rights defenders. Civilian and military authorities stigmatize human rights defenders who participate in social protests, for example. The army and police are distributing pamphlets and airing radio ads that call on specific communities, community organizations and individuals to “demobilize,” thus labeling them insurgents and putting entire communities at risk. The mission noted “with great concern the increasing trend to discredit and insult victims who are seeking justice by branding them as 'opportunists.'” The Santos Administration has even issued a monetary reward for those who provide information on “false victims,” which could incentivize the manufacture of false evidence to discredit valid cases.

**U.S. policymakers should urge the Santos Administration to more vigorously investigate and prosecute attacks and threats against defenders; to address continuing problems with the valuable protection program; to ensure government and security forces do not make statements or take actions that place defenders at risk; and to secure the release of human rights defenders who have been jailed on baseless charges, among other recommendations from the human rights defenders' verification mission.**

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