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Economic, Social and Cultural Rights in Colombia

REPORT ON THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON
ECONOMIC, SOCIAL AND CULTURAL RIGHTS

REPORT PREPARED BY THE WORLD ORGANISATION AGAINST TORTURE (OMCT)
FOR THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHT

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1. Preliminary Observations

Colombia ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) on October 29th 1969, which came into force on November 3rd 1976. Colombia is also party to other international instruments with related provisions on economic, social and cultural rights, torture, and other cruel, inhuman or degrading treatment or punishment: the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination against Woman (CEDAW), the Convention on the Rights of the Child (CRC). OMCT welcomes the fact that Colombia made no reservations in accessing these instruments. Furthermore, Colombia is also a party to the Optional Protocol to the ICCPR (CCPR-OP1) providing for individual complaints procedures.

OMCT also welcomes the fact that Colombia ratified ILO Conventions No. 87 and 98 on freedom of association and collective bargaining, ILO Conventions No. 29 and 105 on the elimination of forced and compulsory labour, ILO Conventions No. 100 and 111 on the elimination of discrimination in respect of employment and occupation, and ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries.

At the regional level, Colombia is also party to the American Convention on Human Rights (Pacta de San José), to the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol de San Salvador) and to the Inter-American Convention to Prevent and Punish Torture. Colombia has also signed, but not yet ratified, the Inter-American Convention on Forced Disappearance. In terms of the rights covered, the San Salvador Protocol provides for the right to a healthy environment and singles out the right of disabled persons to enjoy, without discrimination, economic, social and cultural rights.

The Colombian Constitution guarantees the enjoyment of economic, social and cultural rights.¹ According to article 93 of the 1991 Colombian Constitution, in case of conflict with national laws, international law shall prevail.² Additionally, the Constitution provides that international human rights treaties shall constitute a source of legal interpretation of national legislation.³

The fourth periodic report presented by Colombia to the Committee on Economic, Social and Cultural Rights lists a whole series of measures and programs aimed at addressing poverty, destitution and at guaranteeing better access to basic services such as education, health, housing and social security.⁴ These measures give specific attention to indigenous communities, internally displaced persons, children, women and populations of rural areas.⁵

Despite all these commitments, both at international, regional and national levels, human rights continue to be violated on a large scale in Colombia, revealing a severe deterioration of the armed conflict. Indeed, violence has become the common lot of the Colombian population and not a day

¹ See Title II, Chapter 2, articles 42-77

² Article 93 of the Colombian Constitution reads as follows: "Los tratados y convenios internacionales ratificados por el Congreso, que reconocen los derechos humanos y que prohíben su limitación en los estados de excepción, prevalecen en el orden interno. Los deberes y derechos consagrados en esta Carta se interpretarán en conformidad con los tratados internacionales sobre derechos humanos ratificados por Colombia."

³ Article 93 of the Colombian Constitution "(...) Los deberes y derechos consagrados en esta Carta se interpretarán en conformidad con los tratados internacionales sobre derechos humanos ratificados por Colombia."

⁴ U.N. Doc. E/C.12/4/Add.6

⁵ *Ibid.*

passes without records of massacres, killings, torture, disappearances, extra-judicial executions and other forms of cruel, inhuman or degrading treatment.⁶ The majority of the victims have been civilians, and in particular the rural population. Amongst others, human rights defenders, trade unionists, peasant farmers as well as indigenous people have to face increased repression and violence.⁷

Massacres, killings, torture, forced disappearances, extra-judicial executions, kidnapping and other forms of cruel, inhuman or degrading treatment are perpetrated by all parties to the conflict, including paramilitary groups, the army and the guerrilla. However, to the knowledge of OMCT, paramilitary forces that operate with the active or tacit support of, or in collaboration with the Colombian army have perpetrated most of the violence. Most of the time, these violations go unpunished, fostering a climate of impunity, which hampers any real improvement in the human rights situation. Despite the reiteration by the Pastrana administration that the activities and violence perpetrated by the paramilitary groups will be addressed, such promises have, so far, remained a dead letter.

These developments, reveal a serious degradation of the Colombian situation, where any individual expressing views on the current conflict, its causes, consequences, problematic or main protagonists runs the risk of facing violence and repression. Social activities or voices challenging the existing socio-economic context and organisation also face increased vulnerability to violence and repression.

The socio-economic situation does not add any positive note to this grim picture. The armed conflict bears its share of responsibilities in the ongoing deterioration of the overall socio-economic context and lack of enjoyment of economic, social and cultural rights. For instance, the activities of paramilitary groups, the army and the guerrilla often lead to the isolation of rural and indigenous populations, a situation in which they often lack food, medicine and housing materials.⁸ Moreover, internally displaced persons by the armed conflict, also face severe socio-economic conditions, which are translated into ongoing denial of economic social and cultural rights.⁹ Economic reforms, while recording some positive macroeconomic outcomes, have only benefited to a small portion of the population, leaving the rest in an even more precarious position, further increasing imbalances in the distribution of income. Overall, most of the victims of the violence are poor.¹⁰

On the other hand, the socio-economic conditions, characterized by persistent economic and social imbalances, widespread poverty and violations of economic, social and cultural rights, constitute an underlying cause of the current conflict.¹¹ Indeed, what can be observed today in Colombia is the establishment of a vicious circle, in which socio-economic inequalities fuel the violence, which in turn further diminishes any prospect of improvement in the enjoyment of economic, social and cultural rights. For instance, paramilitary groups, which are responsible for most of the violence, are mostly constituted by young unemployed and poor people.¹² In this context, the implementation of measures such as those foreseen by the Plan Colombia will offer no way out of these mutually reinforcing dynamics, but rather cause further deterioration to an already critical situation.

⁶ See OMCT Urgent Appeals on Colombia, www.omct.org

⁷ *Ibid.*; Les défenseurs de droits de l'homme en première ligne, *Colombie*, Rapport annuel 2000, OMCT-FIDH, 2001, p.40-42

⁸ See for instance OMCT Urgent Appeal on Colombia of July 28th 2000, Case COL 280700

⁹ See for instance OMCT Urgent Appeal on Colombia of September 12th 2001, Case COL 120901.ESCR

¹⁰ Yepes, A., *Social Inequalities in the Nineties*, in Social Watch 1998 Report: Colombia, www.socialwatch.org

¹¹ U.N. Doc. E/CN.4/1995/111; U.N. Doc. E/C.12/1995/12

¹² ANUC-UR, January 1998

2. General Observations

2.1. The Political Trends and the Plan Colombia

No significant outcome to the peace talks that started in 1999 between the government and the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia, FARC). Similarly, recent negotiation attempts between the government and the Camilist Union-National Liberation Army (Unión Camilista-Ejército de Liberación Nacional UC-ELN) did not lead either to any significant outcome. Systematic violence has continued on the ground.

In December 2000, the Pastrana administration launched the Plan Colombia, presented as a panacea to the Colombian situation in order to build peace and prosperity.¹³ The process surrounding the formulation, elaboration and implementation of the Plan has been flawed by irregularities, including a lack of consultation with civil society, disrespect for established procedures, and a lack of democratic accountability. According to the Colombian Constitution, every government has to elaborate a National Plan for Development within the first six months of taking office and submit the plan to Congress.¹⁴ On July 29th 1999, Law 508 that had been approved by Congress, formalized the National Plan for Development of the Pastrana administration called *Changes to build peace: 1999-2002*. However, on September 21st 1999, after a discussion with William Clinton, President Pastrana replaced the initial formula with the *Plan for Peace, Prosperity and the Strengthening of the State*, the so-called Plan Colombia. This occurred without the approval of Congress or consultation of civil society.

The total cost of the Plan is estimated to be around 7.558 million US dollars, of which 48,5 percent is financed by the Colombian State resources, 46.6 percent by the International Community, mostly by the United States, and 4.9 percent by credit.¹⁵

On paper, the Plan is articulated around three main aspects: security, economy/development and democracy/respect for human rights. Among other measures, the plan provides for negotiations with the guerrillas, the fight against drug-trafficking, structural adjustment policies, social development, reform of the judiciary, democratisation and protection of human rights.

Despite its three dimensions, emphasis has been mostly on security issues, setting aside concerns for social development and human rights. Although it has been presented as a plan to build peace and prosperity, the Plan Colombia, by the military measures foreseen and the funds allocated to the Colombian Defence Forces, comes closer to a plan for war than a plan for peace. For instance, 70% of the bilateral US aid allocated for the implementation of the Plan Colombia is purely military aid.¹⁶ Moreover, a detailed analysis of the plan reveals that its real nature is mainly military. For example, the counter-drug strategy envisages an integrated effort of the armed forces, particularly through a significant increase in military expenditure and military operations.

¹³ *Ibid.*, Chapter 2.

¹⁴ Article 339 to 344 are dealing with the National Plan of Development, Constitution of Colombia, see: <http://www.georgetown.edu/LatAmerPolitical/Constitutions/Colombia/colombia.html>, as consulted on 03/05/01.

¹⁵ Yepes, A., *Human Rights, Peace and War in Colombia*, in Social Watch 2000 Report>: Colombia, www.socialwatch.org

¹⁶ Kolumbien-aktuell, Kolumbien Monatsbericht: *Plan Colombia*, Juni/Juli, N°6/7, 2000, p. 3. <http://kolumbien-aktuell.ch>, as consulted 22/03/01.

One can also fear, given the current Colombian context and the high threshold of violence experienced during the last decade, that besides relegating human rights and development issues to second-class objectives, the importance given to the security dimension will also have a direct and negative impact on these two other “priorities”. Indeed, most of the violence and violations of human rights and humanitarian law have been perpetrated by paramilitary forces that operate with the active or tacit support of, or in collaboration with the Colombian army. Because of the close links between paramilitary groups and the Colombian Army, there is a risk that the military aid benefits these groups directly or indirectly. Moreover, the Colombian Defence Forces are not exempt from responsibility for human rights violations. An increase in military spending and operations, given the situation, can therefore only lead to further violations of human rights and an intensification of the violence.

In addition to the inadequate attention given to its economic/development and human rights/democratisation dimensions, the Plan encompasses, from a human rights’ perspective, several contradictions and omissions that definitely put into question its ability to attain its stated objectives of peace and prosperity.

Even though the Plan laudably claims the fight against poverty as one of its main objectives (economy/development heading), no mention is made of the agrarian problem and need for measures addressing the high concentration of land that is prevalent in the country. Similarly, the Plan remains silent on the issue of paramilitary groups and their responsibility in human rights violations. Therefore, no measures are foreseen to address the activities and violence perpetrated by the paramilitary groups, as well as their close relationship with the Colombian military. Finally, in the chapter of the Plan specifically dealing with human rights, no single measure is put forward to tackle the major problem of impunity. Indeed, the Plan omits to acknowledge the fact that impunity constitutes one of the main problems in today's human rights crisis in Colombia. Overall, the Plan’s analysis is totally focused on the fight against drug trafficking, presented as the answer to the current and complex crisis.

While OMCT does not take a position concerning the merits of economic restructuring as such, there is a significant risk that the objectives of macroeconomic reforms, envisaged under the heading development/economy, will clash with the promotion and protection of human rights, and in particular economic, social and cultural rights, which is another declared priority of the Plan. Such an outcome, if realised at the detriment of economic, social and cultural rights, might well further fuel the ongoing crisis. Indeed, the interpretation and analysis of the conflict inherent to the construction of the Plan ignores the deep-rooted causes of the Colombian conflict and the human rights crisis. It is important to mention that part of the violence in Colombia is due to serious inequalities in the Colombian society, such as enormous disparities in the distribution of national wealth, including land.¹⁷

The disproportionate emphasis on security and military measures, the ignorance of human rights concerns including the role of paramilitary groups, the question of impunity and the enjoyment of economic, social and cultural rights, the risk of a clash between economic reforms and social development, and finally the simplistic interpretation of the conflict’s root causes seriously puts into question the ability of the Plan to bring a lasting and peaceful solution to Colombia, respectful of all human rights. In this regard, the fourth periodic report presented by Colombia to the Committee on Economic, Social and Cultural Rights does not address, in any part, the possible impact that the

¹⁷Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic Social and Cultural Rights*, December 1995, E/C.12/1995/12, §179.

implementation of this Plan can have on the enjoyment of all human rights, civil, political, economic, social and cultural, in Colombia.

2.2. The Socio-Economic Situation

Structural reforms have been implemented in Colombia since the beginning of the 1990s, under the governments of César Gaviria (1990-1994) and Ernesto Samper (1994-1998). The Pastrana administration, in place since 1998, has followed-up on the economic restructuring. The Extended Power Agreement concluded with the International Monetary Fund (IMF) in December 1999 provides for the decrease in public spending as a percentage of the GDP through the reform of the public pension systems, the downsizing of the public sector through privatisation, the reduction of social public spending and the reform of the tax system.¹⁸ The macro-economic reforms foreseen by the Plan Colombia, which include tight fiscal policies, go in the same direction.

Overall, the macroeconomic situation, following the implementation of the reforms, shows some encouraging developments, including positive growth and stable levels of inflation. The last decade also saw improvement in social indicators such as a reduction of the illiteracy rate, an increase in life expectancy, and improved coverage in education and health. Nevertheless, these progresses and economic performance did not benefit the majority of the population. To the knowledge of OMCT, the reforms have only benefited the wealthiest sectors, represented by domestic and international finance sectors, export sectors, latifundists and the political elite.¹⁹

For instance, in 2000, around 1.5 million of children did not get a *cupo escolar* (access to schooling), meaning that almost half of the school age population (46,78%) was excluded from the educational system during that year.²⁰ The level of health coverage in 2000 also remains broadly unsatisfactory as only 52.6 percent of the total population has access to health services.²¹ Moreover, to the knowledge of OMCT, many public hospitals have had to reduce the attention given to patients due to the contraction of debts and a lack of funding. Poor sectors of the population are reported to be the first to be hit by such measures. Finally, the health sector crisis does not only affect the patients, but also health workers, in particular due to delays in salary payments and massive lay-offs.²²

Moreover, several indicators show that inequalities are on the rise, and that a whole portion of the Colombian population experiences a severe deterioration in their standard of living. For instance, the Comisión Colombiana de Juristas, a member of the OMCT network, reports that 52 percent of Colombians belonging to the lowest-income group had to reduce their consumption of food as a consequence of unemployment and poverty.²³ Medium-size producers, peasant farmers, low-income workers, and vulnerable groups such as indigenous people, the Afro-Colombian minority and women have borne most of the burden. The social safety net, evoked by the Plan Colombia and the Extended Power Agreement with the IMF to address the negative impact of the reforms and to

¹⁸ IMF, *IMF Approves Three-Years Extended Fund Facility for Colombia*, December 20 1999, www.imf.org

¹⁹ Yepes, A., *Human Rights, Peace and War in Colombia*, in Social Watch 2000 Report: Colombia, www.socialwatch.org

²⁰ Apartes del panorama de derechos humanos y derecho humanitario en Colombia, Informe de avance: abril a septiembre 2000, Comisión Colombiana de Juristas, p. 59

²¹ *Ibid.*, p. 61.

²² *Ibid.*, p. 62-63.

²³ Comisión Colombiana de Juristas, *Panorama de Derechos Humanos y Derecho Humanitario en Colombia : Abril a Septiembre 2000*, March 2001, p. 56.

guarantee access to basic needs for the most vulnerable groups of the population, did not prevent a whole sector of the population from experiencing harsh socio-economic conditions. Deep imbalances, along ethnic, regional, and gender lines prevail and are revealed by the levels of poverty and income, as well as a lack of access to basic services such as health and education.

For instance, wide disparities prevail between rural and urban areas, with around 72 percent of the rural population living in poverty, while the national average population living under the poverty line is 17.7 percent.²⁴

Women continue to face severe socio-economic conditions and are often, due to explicit or implicit discriminatory practices, worse-off than their male counterparts, therefore more likely to experience economic hardship and poverty. Imbalances are revealed, amongst other indicators, by the higher illiteracy rate for women, evident discrimination in wage allocation, as well as their increasing representation in the informal sector where they often do not benefit from labour regulations and social security. To the knowledge of OMCT, the situation of women has deteriorated throughout the nineties.

Indigenous communities, as well as the Afro-Colombian minority also experience strong discriminatory practices that directly impact on their socio-economic condition, often characterised by destitution and poverty.

Unequal distribution of income and access to resources, including land, reveal that Colombia is one of the most unequal countries of the world.²⁵ According to the 2001 UNDP Human Development Report, the poorest 10 percent of the population only get 1.1 percent of the national income, while the richest 10 percent get 46.1 percent.²⁶ The Gini index, which measures the distribution of income within a given country, is particularly high for Colombia as it reaches 57.1, showing the wide disparities cutting across the Colombian society.²⁷ Disparities in the allocation of land remain one of the most appalling features of this trend, as 1.3 percent of landowners possess 48 percent of the land.²⁸

3. The Justiciability of Economic, Social and Cultural Rights

Besides the full integration of economic, social and cultural rights in the 1991 Colombian Constitution and in subsequent legislation, important procedural mechanisms have been established to guarantee their implementation: the recourse of unconstitutionality (*recurso de inconstitucionalidad*), the right of Habeas Corpus (article 30 of the Constitution), the action of *tutela* (article 86 of the Constitution and Decree 2591 of 1991), and the popular action (*acción popular* (article 88 of the Constitution and Law 472 of 1998)).²⁹ Moreover, the Law 288 of 1996 recognises

²⁴ Yepes, A., *Social Inequalities in the Nineties*, in Social Watch 1998 Report: Colombia, www.socialwatch.org; UNDP, 2001 Human Development Report, p. 149

²⁵ See UNDP, 2001 Human Development Report, p.

²⁶ UNDP, 2001 Human Development Report, p. 183

²⁷ *Ibid.*

²⁸ Yepes, A., *Who benefits from adjustments, war and free market?*, in Social Watch 2001 Report, www.socialwatch.org

²⁹ See The Observatory for the Protection of Human Rights Defenders, *Colombia: Los Defensores de los Derechos Humanos: estigmatización – eliminación*, October 2000, p. 14

as mandatory the decisions on individual cases of the Human Rights Committee and of the Inter-American Commission on Human Rights with respect to matters of compensation to the victims.³⁰

The action of *tutela*, or tutelage, constitutes an important mechanism, enshrined in article 86 of the Colombian Constitution, that provides for legal remedies in case of violations of human rights, including economic, social and cultural rights. Indeed, under article 86, individuals can have rapid access the courts in order to seek protection against a current or imminent violation of "fundamental rights" protected by the Constitution.³¹ Only the right to work is included under the heading "fundamental rights", while other economic, social and cultural rights appear under the chapter of the same name. The Constitutional Court, which has the competence to review first instance decisions in *tutela* actions, expanded the category of rights that can be addressed in such a procedure to economic, social and cultural rights on the basis that the *tutela* action can also apply to rights, which are connected to fundamental ones.³² Consequently, the *tutela* mechanism has benefited sectors of society that have traditionally had restricted access to rapid and effective judicial protection, such as children, worker, indigenous communities and women.³³ Other mechanisms such as the habeas corpus constitute interesting avenues for obtaining protection and redress in case of violations.

While Colombia can be lauded in terms of the existing mechanisms that guarantee the justiciability of economic, social and cultural rights, many violations are indeed not addressed, showing the inadequacy or lack of functioning of the current procedure. In this regard, OMCT deplores the fact that Colombia failed to "provide a detailed account of the role played by the *tutela* mechanism (...) for the protection of economic, social and cultural rights" in its fourth periodic Report, as required by the Committee on Economic, Social and Cultural Rights, in its 1995 Concluding Observations.³⁴

4. The Colombian Conflict and the Agrarian Problem

The ongoing land question in Colombia represents one of the root causes of the Colombian conflict, and is responsible for widespread and ongoing violations of economic, social and cultural rights, mostly affecting peasant farmers and their families as well as indigenous communities.

High concentration of land in the hand of a few and lack of access to land represent the principal features of the land issue in Colombia, where, as mentioned, 1.3 percent of landowners possess 48 percent of the land.³⁵ Moreover, the majority of peasant farmers (65.9%) share 2.8 percent of arable land while a few landowners monopolise around 60 percent of the arable areas.³⁶

³⁰ *Ibid.*, p. 17

³¹ Chapter 1 of the Constitution, Articles 11-41.

³² OAS: Inter-American Commission on Human Rights, *Third Report on the Human Rights situation in Colombia*, Chapter II, §49. <http://www.cidh.oas.org/countryrep/colom99en>, as consulted on 05/04/01.

³³ *Ibid.*, §50.

³⁴ Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic Social and Cultural Rights*, December 1995, E/C.12/1995/12, §176; Implementation of the International Covenant on Economic, Social and Cultural Rights, Fourth periodic report submitted by States parties under articles 16 and 17 of the Covenant, E/C.12/4/Add.6, 31 August 2000. <http://www.unhchr.ch/html/menu2/6/cescr/cescrs25.htm>, as consulted on 10/05/01.

³⁵ Yepes, A., *Who benefits from adjustments, war and free market?*, in Social Watch 2001 Report,

In many instances, this high concentration of land has been realised at the detriment of indigenous communities and peasant farmers, through illegal means including forced evictions, threats, recourse to violence and repression. The collusion between landowners, paramilitary groups and the authorities, including police forces and the military, often prevented the affected persons from receiving protection and redress. In such cases, they are often forced to leave, swelling the ranks of internally displaced persons.

While the land issue is one factor lying at the origin of the conflict, the ongoing violence, with its implications, contributes to further deterioration of the situation. Indeed, the conflict and accompanying violence constitute today one of the main causes of evictions from land. In many instances, the violent seizure of agrarian land from internally displaced persons, which often benefits large landowners, by contributing to the phenomenon of land concentration, further deteriorates the whole agrarian question. Indeed, among the displaced peasant farmers, around 61 percent owned their land, while following the displacement around 5 million of hectares, representing one third of arable land in Colombia, have ended up in the hands of latifundists or drug-dealers.³⁷

So far, the agrarian reform has not been able to address the problem of land concentration, lack of access to land and evictions in a satisfying manner. Indeed, the process of colonisation of unoccupied land, such as the Amazon forest, by evicted peasant farmers is replacing the state's response to the issue.³⁸ Under these conditions, the evicted peasant farmers occupying uncultivated land often do not have title deeds over this land, and risk therefore to face further evictions.³⁹

Evictions from land also take place as part of the implementation of development schemes, which often favour large mining, oil or hydroelectric projects. In such cases, indigenous communities and peasant farmers are seen as obstacles to the projects' implementation.

Finally, the implementation of the Plan Colombia, with its measures aimed at eradicating the culture of illicit crops in the South-Eastern part of the country, is likely to lead to further displacement of peasant farmer communities, thus aggravating the agrarian problem and lack of access to land for the majority of peasant farmers.

4.1. The Case of the Hacienda Bellacruz

The case of the *Hacienda Bellacruz*, by its on-going nature, its cycle of repression, the involvement of paramilitary groups, the collusion between landlords and the Colombian police, the army and paramilitary groups, as well as the high concentration of land exemplifies a common pattern throughout the country in which dispossession of resources goes hand in hand with violence, impunity, denial of human rights and forced displacement.

Over many years, the Marulanda family of the Cesar department has gradually encroached on more than 27'000 hectares previously belonging to peasant farmers in La Gloria, Pelaya and Tamaleque

www.socialwatch.org

³⁶ Yepes, A., *Social Inequalities in the Nineties*, in Social Watch 1998 Report: Colombia, www.socialwatch.org

³⁷ Yepes, A., *Human Rights, Peace and War in Colombia*, in Social Watch 2000 Report: Colombia,

www.socialwatch.org

³⁸ ANUC-UR

³⁹ *Ibid.*

municipalities.⁴⁰ The seizure of land by the Marulanda family has been carried out through different means, including land purchases, violent evictions of peasant farmers, and other illegal processes, including the destruction of cultivated lands, assassinations as well as the use of torture and other ill-treatments, with the explicit help of paramilitary groups, the Colombian police and military (battalion of Ayacucho).⁴¹ The attempt by the peasant farmers' attempt to resist the violence and expulsions has been met by increased violence and repression, including assassination of their leaders. Vehicles used by those responsible for the assassinations allegedly belonged to the Hacienda Bellacruz.

From 1987 on, families of landless peasants, often the descendants of those previously evicted by the Marulanda family, started occupying land situated on the perimeter of the Hacienda. On April 1994, Resolution 01551 of the INCORA (Colombian Institute of Agrarian Reform), acknowledged the right of these families to occupy and cultivate seven plots of land, which formed part of the Hacienda (los Bajos, Venecia, San Simon, Potosi, Cano Negro, Maria Isidra). This decision was contested in appeal by the Marulanda family, and reconfirmed by both the INCORA and the Council of the State.

The loss of the judicial battle by the Marulandas marks a new episode in the conflict, characterised by increased violence and the involvement of paramilitary groups. In early 1996, private armed vigilantes, accompanied by an employee of the Marulanda family, Edgar Rodriguez, attacked and burned the homes of more than 280 families – nearly 1000 people.⁴² According to eyewitness accounts, this intervention took place in presence of the Ayacucho Batallion of the Colombian Armed Forces.⁴³

Since this incident, ongoing violations have taken place against the peasant farmers and their families, including the use of torture and other ill-treatment, destruction of houses, sequestrations, death threats, assassinations and forced displacements perpetrated by paramilitary groups with the consent of and sometimes in collaboration with the Colombian military. For the sole period between 1996 and 1997, 40 persons have been assassinated and 170 families expelled from their lands.⁴⁴

Attempts by the victims and displaced families, with the help of the ANUR-UR, the National Farmers Association (Asociación Nacional de Usuarios Campesinos), to obtain protection and defence of their lands have since 1996 remained a dead letter.⁴⁵ While local military and civil constituencies, as well as departmental authorities have failed to provide protection and redress to the families, they explicitly advised them to flee from the region.⁴⁶ As a result, the families went to the national level, denouncing the facts and asking the Ministry of Agriculture, the INCORA, the National Prosecutor, and the Defensora del Pueblo for redress. Again, they were met with negative answers.⁴⁷

Following pressure by the families, including non-violent occupation of the INCORA building, the Colombian government signed a letter of agreement in 1996 stating its determination to combat paramilitary groups, to guarantee protection of the displaced families as well as the recovery of their

⁴⁰ ANUC-UR, Asociación Nacional de Usuarios Campesinos

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

land.⁴⁸

Since the Colombian Government failed to honour its commitments, the case of the *Hacienda of Bellacruz* has been marked, from 1996 to 1997, by a series of non-violent occupations by the families.⁴⁹ On the ground, the violence and evictions by paramilitary groups continue to take place.

In 1997, the majority of the displaced families were relocated in three different regions (Ibague, Armero and in the North of the Santander Department). However, access to basic services such as water, electricity, education and health, has been conditioned to the payment of a sum corresponding to the 30 percent of the value of the land that they were attributed by the authorities.⁵⁰ Moreover, as they have no title deeds over the land they are currently cultivating, they risk further evictions. Despite their relocation, the families continue to face death threats by paramilitary groups controlling the regions where they have been relocated. Paramilitary groups have executed already six leaders of the displaced families.⁵¹

4.2. Development projects and evictions: the case of indigenous communities

Article 246 of the Constitution provides that indigenous people can exercise jurisdictional functions within their community according to their own norms and rules, according to the constitution and the rule of law. Moreover, article 329 provides for the establishment of indigenous territorial entities, while article 330 enumerates the functions, which can be exercised by the indigenous community. The last paragraph of this article explicitly mentions that exploitation of natural resources shall not lead to the violation of the economic, social and cultural integrity of indigenous communities.

Despite these constitutional guarantees, members of indigenous communities continue to face widespread discrimination in the socio-economic realm, particularly regarding to access to health, education and other social services. Indeed, a large proportion of indigenous people live in extreme poverty and face serious economic hardship. This constant disregard for the economic, social and cultural rights of indigenous people often goes hand in hand with frequent encroachments of their civil and political rights.⁵² In the regions affected by the conflict, indigenous communities continue to be heavily victimized by all the warring parties.

Among violations of their civil and political rights, indigenous communities continue to face blatant denial of their right to prior consultation, as guaranteed by the ILO Convention No. 169. The ongoing exclusion of indigenous communities from decision-making processes regarding issues affecting them directly has, in turn, severe repercussions on a whole range of their economic, social and cultural rights. Mining, oil, or hydroelectric projects situated on territory of indigenous communities are quasi systematically agreed upon and granted licences without prior consultation and agreement of the affected communities.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² Commission on Human Rights, *Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia*, E/CN.4/2001/15, §182.

This recurrent trend seriously puts into question the genuineness of the government's declared objective to improve the overall situation of indigenous communities and guarantee respect for their human rights. At best, it clearly impairs the efficiency and impact of the government programmes focussing on the empowerment of indigenous people.

4.2.1. *The Embera Katio*

The major party of the indigenous community of Embera Katio lives in the territory of *Alto Sinu*. The implementation of the Urrà I hydroelectric project has give rise to severe violations of human rights and unprecedented levels of violence and repression. While these have not stopped yet, the whole project, by its impact and implications, is threatening the very survival of the Embera Kation community of *Alto Sinu*.

Absence of consultation with the affected communities, acquisition of land through questionable methods bordering on legality, repression of indigenous leaders demanding respect for their rights, lack of transparency and the government's reluctance to guarantee the constitutional rights of the affected populations form the main features of the process of alienation of the basic rights of the Embera Katio of *Alto Sinu*.

The implementation of the Urrà I project started in 1993 when the Institute for the Defence of Renewable Natural Resources (INDERENA-Instituto para la Defendsa de los Recursos Naturales Renovables)⁵³ awarded the environmental licence to the Electricity Corporation of the Atlantic Coast (CORELCA-Corporacion Electrica de la Costa Atlantica) for the construction of the project's infrastructure.⁵⁴ The resolution made clear that the corporation had to obtain other environmental licences regarding the next steps of the project, including its operation and the filling of the dam.⁵⁵

While the project impacts negatively on the Ember Katio people, the affected communities of *Alto Sinu* have never been consulted regarding its formulation and implementation, including the construction of the infrastructure, the filling of the dam and the general operation of Urrà I.⁵⁶ For instance, the deviation of the course of the river, in which the Embera Katio found their main source of protein, has led to the disappearances of fish.

Moreover, the construction of the Urrá dam has also resulted in the inundation of the Embera Katio's most fertile lands, sacred places and traditional cemeteries, as well as in the apparition of numerous illnesses, such as malaria, whose emergence is favoured by the presence of stagnant water.⁵⁷ Overall, this situation affects the whole population of the region whose economy is highly dependent on the river.⁵⁸

A four-month sit-in at the Ministry of Environment in Bogotá by Mr. Kimi Dokicó Pernía, a leader of the community, led to the opening of negotiations between the Embrerá-Katío, the government and the company in charge of the hydroelectric project. On April 19th 2000, an agreement was

⁵³ This institute does not exist anymore

⁵⁴ Amicus Curiae, Accion de tutela instaurada por Rogelio Domico Abaris y otros, Radicada en la Corte Constitucional bajo el No. 168.594, escogida para revision por la H. Corte, September 13th 1998, p. 3

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ OMCT Urgent Appeal, Caso COL 050601 – Colombia, June 5th 2001

⁵⁸ *Ibid.*

signed that guaranteed the implementation of measures to ensure the survival and well being of the Emberá-Katío.⁵⁹ While it was expected that the signing of an agreement would reduce the level of violence and violations, these continue to occur in *Alto Sinu*.

Indeed, the fight of the Embera Katío against the Urrà I project has developed within a climate of extreme violence, since many leaders of the community have been assassinated, kidnapped or have disappeared.⁶⁰ The year 2001 alone has been punctuated by several assassinations and kidnapping of leaders or members of the Embera Katio community of *Alto Sinu*. This ongoing and recurrent violence culminated, in June 2nd 2001 in the kidnapping and sequestration of Mr. Kimi Dokicó Pernía, one of the principal leaders of the indigenous community Embera Katío.⁶¹ Mr. Kimi Dokicó Pernía, aged 60 at that time, was abducted at 6.20 a.m. in front of the Cabildo Mayor office by three armed men. Paramilitary groups reportedly carried out the action.⁶² Until this date, Mr. Kimi Dokicó Pernía has so far not reappeared.

5. The Plan Colombia and its Impact

Concerns over the overall human rights impact of the Plan Colombia have already been raised, in particular with respect to the risk of escalation of the conflict and violence. Besides such concerns, the implementation of the Plan, and particularly measures foreseen to eradicate the culture of illicit crops, have widespread implications on the affected communities, their living standards, and ability to provide for themselves.

5.1 Fumigation: relevance and impact

For peasant farmers, the decision to grow illicit crops often constitutes a coping strategy to a desperate socio-economic situation, characterised by severe violations of economic, social and cultural rights, poverty and destitution. In many departments of Colombia, mostly in the Southern ones, peasant farmers and indigenous communities are replacing traditional crops with illicit ones in order to alleviate poverty and economic hardship. Indeed, hundreds of thousands of peasant farmers have migrated to the Southern zones of the country, fleeing the violence. As they often lack development alternatives and face harsh economic conditions, they are forced to grow illegal crops in order to guarantee their subsistence.

The counter-drug strategy constitutes a main pillar of the Plan Colombia and aims to "reduce the cultivation, processing, and distribution of narcotics by 50%" in the Southern departments within a period of 6 years, and in particular the department of Puntamayo.⁶³ The aerial eradication envisages massive chemical fumigation of this region, which is under the control of the FARC. The elimination of the illicit cultivation by aerial eradication programs, also called fumigations, constitutes one of the main measures, if not the first, envisaged to attain such reduction. Due to the

⁵⁹ International Rivers Network, Urgent Action, June 2001, <http://irn.org/programs/latamerica/010604/kidnap.html>, as consulted 07.06.01.

⁶⁰ Urgent Appeal, Case COL 050601, OMCT, June 2001.

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ *Plan for Peace, Prosperity and the Strengthening of the State*, Counter-drug Strategy: Strategic objectives, <http://www.presidencia.gov.co/webpresi/index.htm>. As consulted on 17/05/01

disproportionate emphasis on security measures and fumigations, too little attention is given to the need to properly address the concentration of land among peasant farmers.⁶⁴

In the 1990s, more than 230'000 hectares of Colombian illicit crops were sprayed from the air with herbicides. Despite the huge areas sprayed, net coca cultivation roughly tripled over this same period⁶⁵. The side effects of the fumigations have proven disastrous, raising the toll of internally displaced persons and migrations due to the destruction of the means of subsistence of numerous peasant farmers and indigenous communities. The scenario shows that the displaced either move further into the rainforest where they often end up growing illicit crops in new plots and accelerate the pace of deforestation, or migrate to large cities where they end up living in miserable conditions. The new plots are eventually fumigated and the cycle starts all over again.⁶⁶

In human rights term, fumigations have a direct impact on the economic, social and cultural rights of the affected communities. Overall, given that it is not possible to fumigate accurately because of the mountainous terrain, the farmers' homes, the legal crops, the sources of water and the livestock are fumigated together with illicit crops. Apart from the material damage, and human rights implications, this policy completely eliminates any possible development of a climate of trust and cooperation with the communities, an indispensable element for the adequate implementation of alternative development programs.

Among other serious impacts, fumigation threatens the enjoyment of the right to health, to food and to adequate housing. Indeed, exposure to harmful substances has an undeniable impact on the health of the affected population.⁶⁷ Since fumigations often destroy licit plantations, livestock and pollute water plants, they have a direct impact on communities' ability to feed them. Additionally, fumigation, as it destroys the very means that allow communities to provide for themselves, in rendering the affected areas inhabitable, amounts to a form of forced eviction. Indeed, a cycle of destruction, destitution and displacement is generated in the wake of fumigation of a given area. For the moment, to the knowledge of OMCT, some 1'500 persons have already crossed the border to Ecuador as a result of the fumigation carried out as part of the Plan Colombia.⁶⁸ CINEP also reports that the recent fumigation of coca fields in the region of Putumayo has led to wide scale displacement of farmers and indigenous people. As this area is one of the priority regions for the implementation of the Plan Colombia and subsequent fumigations, it is likely that a growing number of persons will be forced to leave.⁶⁹

5.2. Displacement of populations as a measure of the eradication programme

In addition to the fumigations, the Plan Colombia envisages offering "legitimate income opportunities" to small farmers and labourers working in coca-producing areas through their relocation to land that has been seized from drug-traffickers.⁷⁰ Indeed, the Plan provides that

⁶⁴ *Ibid.*, Plan for Peace, Prosperity and the Strengthening of the State, Counter-drug Strategy: Strategic objectives

⁶⁵ Colombia Peace Association, *Breaking the silence: What is really happening in Colombia*, March/April, 2001, p.70.

⁶⁶ *Ibid.*, p.70.

⁶⁷ Committee on Economic, Social and Cultural Rights, *General Comment No. 14*. E/C.12/2000/4.

⁶⁸ Oficina Internacional de Derechos Humanos-Acción Colombia(OIDHACO), *State of Compliance with the Statement by the Chairperson of the UN Commission on Human Rights in the 56th Session*, Summary N°5, Brussels, February 2001.

⁶⁹ OMCT Urgent Appeal on Economic, Social and Cultural Rights, Case COL 120901. ESCRC, September 12th 2001

⁷⁰ *Plan for Peace, Prosperity and the Strengthening of the State*, Plan for democratization and social development: Alternative Development Strategy. <http://www.presidencia.gov.co/webpresi/index.htm>, as consulted on 17/05/01

"farmers and others in similar occupations will be offered the opportunity to move from coca-producing areas and resettle on land that has been seized from drug-traffickers".⁷¹

While serious doubts can be raised regarding the efficiency of displacement and resettlement of populations as a solution to the problem of illicit plantations and as an alternative development measure, these also bear serious implications on these communities' welfare and personal security. Moreover, given the existing problem of internally displaced persons in Colombia, the simple fact that the Plan envisages additional displacements is in itself worrying. As highlighted above, the resettlement in areas and on land taken from drug-traffickers might well expose the population to violence and repression perpetrated by paramilitary groups. In addition, the lack of clarity regarding the attribution of title deeds to the displaced communities might well render them vulnerable to eviction from the lands attributed by the authorities as part of the resettlement programme. (for the socio-economic situation of internally displaced persons, see part 6.)

Finally, the Plan remains silent regarding the fate of farmers or labourers who refuse to move away from a coca-growing area to resettle on other land. There is room for concern that the alternative left to these persons would be, in the last resort, to choose between staying on fumigated land, with all the implications, or to leave and resettle elsewhere.

6. Internally Displaced Persons: the Socio-Economic Dimension

The deterioration of the armed conflict has worsened the problem of internal displacement. Since 1985, around 2.5 million persons have been displaced from their place of origin.⁷² Since the beginning of the Pastrana administration in 1998, around 800'000 persons have been displaced, of which 66 percent come from the countryside and 57 percent are women.⁷³ During the first trimester of 2001 alone, a total of around 91'166 persons is reported to have been displaced, revealing the magnitude of the phenomena.⁷⁴ Indeed, the Centro de Investigacion y Educacion Popular (CINEP), a member of the OMCT network, reports that the issue of displaced persons represents today a national problem and is, in fact, on the increase in terms of numbers and affected areas.⁷⁵ In general, most of the displaced persons are peasant farmers, while the paramilitary groups are said to be responsible for the majority of displacement, followed by the guerrilla and the army.⁷⁶

After displacement, most of the internally displaced persons end up living in shantytowns in large cities such as Bogota and Medellin, in precarious conditions, facing destitution, extreme poverty and economic hardship.⁷⁷ Access to basic services such as adequate housing, education, health and social security often remain illusory to the lot of displaced persons. Moreover, they often face difficulty in finding employment, a factor that directly impacts on their ability to provide for themselves and their families. When they do, they often end up working in the informal sector.⁷⁸

⁷¹ *Ibid.*

⁷² Yepes, A., *Who benefits from adjustments, war and free market?*, in Social Watch 2001 Report, www.socialwatch.org

⁷³ Consultoria sobre Derechos Humanos y Desplazamiento Forzado (CODHES), *Deplazados : Rostros Anonimos de la Guerra*, June 2001

⁷⁴ *Ibid.*

⁷⁵ OMCT Urgent Appeal on Economic, Social and Cultural Rights, Case COL 120901. ESCRC, September 12th 2001

⁷⁶ ANUC-UR ; Consultoria sobre Derechos Humanos y Desplazamiento Forzado (CODHES), *Deplazados : Rostros Anonimos de la Guerra*, June 2001

⁷⁷ *Ibid.*, ANUC-UR

⁷⁸ *Ibid.*

Displaced persons also face food shortages, seriously restricting their enjoyment of the right to food. For instance, the United Nations World Food Programme reports that most of the displaced persons do not have an adequate daily intake of calories.⁷⁹

Under the Law 387 of 1997 on principles regulating internal displacement, the government has to provide emergency humanitarian help to displaced persons, including food, health care, temporary housing and decent living conditions. However, emergency help is limited to a period of 3 months (article 15). After this period of time, the law provides that the government has to promote actions to generate conditions allowing for economic and social sustainability of the displaced persons (article 17). The Law further details respective responsibilities of various governmental institutions regarding the establishment of specific programmes guaranteeing, *inter alia*, the development of micro-enterprises, access to health services, solidarity programmes and access to education for the displaced population (article 19).

However, to the knowledge of OMCT, families are often left to themselves once the humanitarian help ends. The Centro de Investigacion y Educacion Popular (CINEP), a member of the OMCT network, reports that the Colombian authorities have yet to implement an effective policy to address the socio-economic problems of displaced persons.⁸⁰ In this regard, the Colombian Constitutional Court ruled that the State has so far failed to enforce the Law No. 387 and is, therefore, in violation of its duties.

While the situation of internally displaced persons is often characterised by a lack of enjoyment of economic, social and cultural rights, they often also encounter State violence and repression when asserting these rights.

The situation of some 50 displaced families, currently living in the settlement “*Ciudadela de Paz*” located in the southwest of Baranquilla, highlights the harsh conditions experienced by internally displaced persons characterised by destitution, poverty, vulnerability, violence and repression, in the absence of a concerted and coherent State response.⁸¹ These families, comprising around 600 children, live in homes with no proper walls and with plastic or paper roofs. These constructions fall short of guaranteeing the right to adequate housing for the families living in the settlement. Furthermore, these homes are often not resistant to heavy rain and wind and as a result, personal belongings are often lost or damaged. Malnutrition and a lack of safe drinking water are also prevalent in the settlement. It is also reported that children living in “*Ciudadela de Paz*” do not enjoy their right to education due to a lack of basic educational material. While this situation has been going on for three years, attempts by families to assert their economic, social and cultural rights have been met with State violence. Indeed, on August 26th 2001, the families were violently expelled by the police from the cathedral of Baranquilla as they tried to be heard by the Public Defender (Defensoria del Pueblo), the Red Cross, the Human Rights Commission and the Church.⁸²

Finally, while displaced persons often flee from their home to escape violence and the conflict, they are often facing new forms of violence in their new place of settlement. For instance, the leader of the community of displaced persons living in the settlement “*La Reliquia*” in Villavicencio, was assassinated on August 19th 2001 by two heavily armed men.⁸³ Around 18’000 displaced persons, of

⁷⁹ OMCT Urgent Appeal on Economic, Social and Cultural Rights, Case COL 120901. ESCRC, September 12th 2001

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² OMCT Urgent Appeal, Case COL 050901, April 5th 2001

⁸³ *Ibid.*

which 40 percent are children, living in this settlement also face severe housing conditions as they live in houses built with plastic, wood and paper.⁸⁴

7. Repression of Trade Unionists and the Right to Work

Developments in the labour situation in Colombia are a source of concern in terms of increased unemployment, instability and involvement of the labour force in informal sector activities, as well as in terms of violent repression faced by trade unionists.

The ILO condemned Colombia after a mission carried out in February 2001, due to the serious and lasting inconsistency between legal guarantees and practice. The ILO Report concludes in particular that " there is no historic precedent for the number of assassinations, disappearances, death threats and other violent assaults directed against Colombian union leaders and associated workers."⁸⁵ Indeed, trade union leaders and members have to operate in a climate of extreme and unprecedented violence, which constitutes a de fact restriction and impediment to their right of freedom of association. Not a single week passes in Colombia without records of trade union leaders, members or families being menaced, sequestered, kidnapped, tortured or killed. Overall, the Colombian context shows today a worrying repression of any type of social protest or attempt aimed at improving socio-economic conditions.

The Central Unitaria de Trabajadores de Colombia (CUT), a member of the OMCT network, reports that for the period going of January to October 8th 2001 alone, 112 trade unionists have been assassinated, while 65 have disappeared or have been sequestered, showing a significant increase in repression.⁸⁶ Moreover, 23 trade unionists have been victims of aggressions during the same period.⁸⁷ Finally, the CUT also recalls that numerous trade unionists have been facing threats, pressures or had to leave the country to protect themselves and the lives of their families.⁸⁸

To the knowledge of OMCT, paramilitary groups are responsible for most of the violence, while the Colombian government has failed to take appropriate measures to guarantee the security of trade unionists and punish those responsible of the attacks and threats.⁸⁹ For instance, the governmental Programme for the Protection of Social Leaders does not receives enough funds to address the magnitude of the problem, thus rendering its efforts and limited initiatives completely inefficient.⁹⁰ In addition, most of the time those responsible for the violence enjoy a complete impunity, as around 95 percent of the cases involving physical or psychological violence against trade unionists are not investigated and those responsible not brought to justice.⁹¹

The following cases are but a few examples of the repression and violence faced by trade unionists in Colombia. Their violence and repression reveals the gravity of the problem that occurs on a large and unprecedented scale.

⁸⁴ OMCT Urgent Appeal on Economic, Social and Cultural Rights, Case COL 120901. ESCRC, September 12th 2001; OMCT Urgent Appeal, Case COL 290801, August 29th 2001

⁸⁵ International Office for Human Rights, *Colombia: State of Compliance with the Statement by the Chairperson of the UN Commission on Human Rights in the 56th session*, Brussels, 2001, p. 13.

⁸⁶ CUT, October 8th 2001

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ CUT, August 31st 2001

⁹⁰ *Ibid.*

⁹¹ CUT, August 23rd 2001

- Hernando Montoya, President of the trade union Sintramunicipio (Cartago) receives daily threats and menaces by phone or letter from paramilitary groups, including a Security Cooperative called COPROSEG.⁹² These threats also extend to his family members.⁹³ Despite the fact that Mr. Hernando Montoya is part of a security programme implemented by the Ministry of the Interior, the menaces, threats and persecution have not ended.⁹⁴
- During 1999 and 2000, the Secretary for Agrarian and Indigenous Affairs of the Central Unitaria de Trabajadores (CUT), also President of the Trade Union of small farmers in Cundinamarca (SINPEAGRICUN), Mr. Gerardo Gonzalez, was constantly subjected to threats against his life.⁹⁵ His family has also been seriously affected.⁹⁶ For instance, on May 5th 2000, a pamphlet was published, warning of a coming paramilitary offensive in Bogotá and announcing the execution of various persons, including Gerardo Gonzalez. Prior to that, in August 1999, a group called “Ejercito Rebelde Colombiano» published a list of 21 persons to be killed, including Gerardo Gonzalez. His name was also included in a document given to the Central Unitaria de Trabajadores (CUT), which announced a plan of extermination of trade union leaders.⁹⁷
- On August 16th 2001, at 5.30 pm., three members of the Executive Committee of SINTRAELRCOL, the trade union of workers working in the electricity, were attacked while walking out of their workplace in Fusagasuga, Department of Cundinamarca.⁹⁸ One person died in the attack and another one was seriously injured.⁹⁹
- It is reported that Gustavo Soler Mora -President of the workers of the multinational Drummond as well as President of the national trade union of mining and energy workers (SINTRAMINENERGETICA)- was forced by armed men to leave the public bus in which he was travelling from Valledupar to Chiriguana and to get into a white minibus. The next day, on October 7th 2001, he was found dead in the small village of Rincon Hondo, municipality of Chiriguana, with two bullets wounds in his head.¹⁰⁰
- On December 15th 2000, while Wilson Borja was driving on street 102 of Barrio Bachica, he was victim of an armed attack.¹⁰¹ Mr. Borja was the president of the National Federation of State Workers (Federacion Nacional de Trabajadores al Servicio del Estado – FENALTRASE) and peace activist.¹⁰² He had previously lodged a complaint before the Fiscalia Regional de Bogotá concerning the death threats he had been receiving by telephone and letters.¹⁰³

⁹² The Observatory for the Protection of Human Rights Defenders (OMCT and FIDH), Urgent Action, COL 014/0109/OBS 076, September 21st 2001

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ The Observatory for the Protection of Human Rights Defenders (OMCT and FIDH), Urgent Action, COL 008/0008/OBS 079, August 7th 2000

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

⁹⁸ The Observatory for the Protection of Human Rights Defenders (OMCT and FIDH), Urgent Action, COL 013/0108/OBS 072, August 20th 2001

⁹⁹ *Ibid.*

¹⁰⁰ The Observatory for the Protection of Human Rights Defenders (OMCT and FIDH), Urgent Action, COL 017/0110/OBS 084, October 11th 2001

¹⁰¹ The Observatory for the Protection of Human Rights Defenders (OMCT and FIDH), Urgent Action, COL 019/0012/OBS 130, December 19th 2000

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

The ongoing violence against trade unionists occurs against the background of a serious degradation of labour conditions, including increasing instability, precariousness and unemployment. In this respect, violent response to those who raise their voice against violations of labour rights, human rights, the closure and liquidation of companies, as well as unfair wages might well contribute to the degradation of the employment situation in Colombia is even more disturbing.

The 1990 Labour Reform marks a turning point in the organisation of the Colombian labour market and labour conditions as it introduced the liberalisation of the hiring and lay-off system, as well as a reduction of tenure costs.¹⁰⁴ Overall, the enactment of Law No. 50 of 1990 and the following implementation of the Labour Reform have introduced greater flexibility in the labour market, often to the detriment of workers and respect of their labour rights. Among the effects, one can observe the increased modification of work contracts from permanent employment schemes to short-term or casual ones, as well as recourse to the so called “service rendering contracts”, which clearly downgrade the protection afforded to workers, particularly with regard to social security, unemployment insurance and paid holidays.¹⁰⁵ According to the Escuela Nacional Sindica, about 25 percent of workers have been hired under a “service rendering contract”, allowing the employer to engage them without recognising their right to social security, unemployment insurance, paid holidays, etc.¹⁰⁶

The overall trend towards job instability is also revealed by the growing size of the informal sector. In 1990, around 43 percent of the labour force was employed in the informal sector, while this figure amounts today to around 60 percent, i.e. 3’480’000 workers.¹⁰⁷ Working conditions in this sector are generally characterised by the absence of labour regulations, as well as a lack of access to social security, unemployment insurance, and health benefits.

Structural adjustment policies have also contributed to the increased instability of employment in Colombia. Around 48’000 workers have been dismissed following the liquidation or merger of 34 public sector entities.¹⁰⁸ Following the liquidation of Prosocial in October 2000, a State compensation enterprise, its 220 workers, besides having lost their jobs, are still awaiting the payment of their wages for the last seven months of work.¹⁰⁹ Overall, unemployment has increased in Colombia and affects around 22 percent of the population.¹¹⁰ Finally, the reduction of real wages of workers in the private and public sectors also contributes to the overall deterioration of employment in Colombia and affects the standards of living of the whole population through a reduction of purchasing power.

8. Conclusions and Recommendations

The overall human rights situation in Colombia shows a serious deterioration. Violence has become the common lot of the Colombian population, and not a single day passes without reports of massacres, killings, executions, torture, disappearances, kidnapping and other forms of cruel,

¹⁰⁴ Yepes, A., *Social Inequalities in the Nineties*, in Social Watch 1998 Report: Colombia, www.socialwatch.org

¹⁰⁵ Yepes, A., *Social Inequalities in the Nineties*, in Social Watch 1998 Report: Colombia, www.socialwatch.org

¹⁰⁶ *Ibid.*

¹⁰⁷ Comissión Colombiana de Juristas, *Panorama de Derechos Humanos y Derecho Humanitario en Colombia : Abril a Septiembre 2000*, March 2001, p 56-57.

¹⁰⁸ *Ibid.*, p 56-57.

¹⁰⁹ *Ibid.*, p 58.

¹¹⁰ Yepes, A., *Human Rights, Peace and War in Colombia*, in Social Watch 2000 Report: Colombia, www.socialwatch.org

inhuman or degrading treatment or punishment. The majority of the victims are civilians, and in particular the rural population. Human rights defenders, trade unionists, peasant farmers, indigenous people or any individual challenging the socio-economic context or taking position with regard to the conflict have to face increased repression and violence. To the knowledge of OMCT, paramilitary groups that operate with the active or tacit support of, or in collaboration with the Colombian army have perpetrated most of the violence. Most of the time, these violations go unpunished, fostering a climate of impunity, which hampers any real improvement in the human rights situation.

Similarly, the socio-economic situation does not bring any significant positive note to this picture. While macroeconomic indicators show some positive improvement, notably in term of inflation and growth, socio-economic data reveal that the benefits arising from the economic reforms and restructuring have not trickled down to the whole Colombian population. Economic and social imbalances and unequal access to resources such as land along regional, gender and ethnic lines remain prevalent. For instance, the enjoyment of the right to health and the right to education, despite the several measures and plans implemented by the government, has yet to become a reality for an important number of Colombians. The social safety net, mentioned by the Plan Colombia and the Extended Power Agreement with the IMF to address the negative impact of the reforms and to guarantee access to basic needs for the most vulnerable groups of the population, has not prevented a whole sector of the population from experiencing harsh socio-economic conditions. *In this respect, OMCT would urge Colombia to consider the allocation of more funds to its system of safety nets following a thorough review of the existing system in order to identify factors limiting or impairing their efficiency in guaranteeing essential basic needs for the most vulnerable groups of the population.*

The implementation of the Plan Colombia, a new and unavoidable variable of the socio-economic and political Colombian picture, is to take place in such context. Throughout the report, emphasis has been put on the serious risks involved by the application of the plan, in particular on a possible escalation of the conflict and the enjoyment of all human rights. Indeed, the disproportionate emphasis on security and military measures, the ignorance of human rights concerns including the role of paramilitary groups, the question of impunity and the enjoyment of economic, social and cultural rights, the risk of a clash between economic reforms and social development, and finally the simplistic analysis of the conflict's root causes seriously put into question the ability of the Plan to bring a lasting and peaceful solution to Colombia, in the respect of all human rights. In concrete terms, the fumigation and displacement of populations recommended by the plan, which are being currently implemented, bear serious socio-economic consequences for the affected population, their living standards and ability to provide for themselves.

Overall, OMCT believes that the Plan Colombia, as it is currently formulated and applied, is incompatible with the human rights obligations of the State Party under the ICESCR and other human rights instruments. In this respect, a guarantee that the implementation of the Plan does not negatively impact on the enjoyment of human rights, requires subsequent amendments and modifications. Impunity, the dismantlement of paramilitary groups, emphasis on security and military concerns to the detriment of the human rights and socio-economic components, and the possible clash between the human rights and the socio-economic parts need to be addressed. Such reforms need to be formulated in consultation with actors from civil society, who have been left out of the consultations leading to the elaboration of the Plan Colombia. *In the short term, OMCT would urge Colombia, to put an end to the fumigation of coca-grown areas and the displacement of communities living in these regions, given the negative impact such measures have on the security socio-economic situation of the affected persons.*

While the human rights implications of the Plan and its implementation are unavoidable, the fourth periodic report presented by Colombia to the Committee on Economic, Social and Cultural Rights remains silent on this issue. *Given such an omission and the incompatibility of the Plan with Colombia's human rights obligations, OMCT would ask the State party to submit additional information to the Committee on Economic, Social and Cultural Rights before the submission of its fifth periodic report on the Plan Colombia, its human rights impact and the concrete steps taken, including reforms and amendments, in order to guarantee its compatibility with the whole human rights framework.*

The Agrarian question remains an acute problem in the current Colombian context. Indeed, the high concentration of land, along with a lack of proper measures undertaken by the government, represents one of the root causes, together with socio-economic disparities, of the Colombian conflict. What can be observed today in Colombia is the establishment of a vicious circle, in which socio-economic imbalances together with a lack and unsecured access to land fuel the violence, a situation that in turn further jeopardises any prospect for improvement. Indeed, the conflict and the violence accompanying it constitute today one of the main causes of eviction from land. Overall, the high concentration of land has been brought about to the detriment of indigenous communities and peasant farmers, through illegal means including forced evictions, threats, recourse to violence and repression. The collusion between landowners, paramilitary groups and the authorities, including police forces and the military, often prevented the affected persons from receiving protection and redress. In such cases, they are often forced to leave, swelling the ranks of internally displaced persons. So far, the agrarian reform has not been able to address the problem of land concentration, lack of access to land and evictions in a satisfying manner. Finally, evictions from land also take place as part of the implementation of development schemes, which often favour large mining, oil or hydroelectric projects. In such cases, indigenous communities and peasant farmers are seen as obstacles to the projects' implementation, as highlighted by the situation of the Embera Katio people. Oppositions or claims surrounding land issues are often met with violence and repression. *In this regard, OMCT would urge the Colombian Government to take effective action to address the serious imbalances in the distribution of income and land, as well as to guarantee that economic growth and benefits resulting from economic restructuring trickles down to the whole population and in particular, peasant farmers, indigenous communities and women, through, inter alia, the adoption of a redistributive agenda that would guarantee the full social-economic integration of these groups. In addition, evictions of peasant farmers and indigenous communities should be immediately addressed through, inter alia, the punishment of those responsible, protection of the affected communities, restitution and compensation.*

Evictions from land, implementation of the Plan Colombia and the overall deterioration of the armed conflict have worsened the problem of internal displacement, by an unprecedented scale. After displacement, most internally displaced persons end up living in shantytowns in large cities such as Bogota and Medellin, in precarious conditions, facing destitution, extreme poverty, economic hardship and the violence they were escaping. So far, and despite the enactment of the Law 387 of 1997 on principles regulating internal displacement, the Colombian authorities have failed to implement effective policies to address and remedy the socio-economic problems and lack of enjoyment of economic, social and cultural rights of the internally displaced. *In this regard, OMCT would urge Colombia to take effective and immediate measures to implement its Law No. 387 and guarantee the security of the internally displaced.*

Repression and violence targeted against trade unionists and social activists has led the ILO to strongly condemn Colombia. Indeed, trade union leaders and members have to operate in a climate

of extreme and unprecedented violence, which constitutes a de fact restriction and impediment to their right of freedom of association. Not a single week passes in Colombia without reports of trade union leaders, members or families being threatened, sequestered, kidnapped, tortured or killed. Overall, the Colombian context shows today a worrying repression of any type of social protest or attempt aimed at improving socio-economic conditions. To the knowledge of OMCT, paramilitary groups are responsible for most of the violence, while the Colombian government has failed to take appropriate measures to guarantee the security of trade unionists and punish those responsible for the attacks and threats. Such criminalisation of any form of social protest occurs in the context of increased insecurity, instability and precariousness of the labour market, rising unemployment, as well as growing representation of the labour force within the informal sector. Massive lay-offs have also accompanied the privatisation and liquidation of State enterprises. *In this respect, OMCT would urge Colombia to take adequate and immediate measures, as required by the situation, in order to put an end to the violence perpetrated against trade unionists and social activists. This will require, inter alia, increased funding to the Programme for the Protection of Social Leaders. Moreover, OMCT would urge the authorities to address the labour situation in Colombia, through, inter alia, the banning of the so-called “service-rendering contracts” as well as any type of contracts denying workers’ labour rights, as well as the establishment of a programme guaranteeing that workers in the informal sector benefit from social insurances and labour rights protection. Finally, OMCT also considers as fundamental that Colombia takes rapid measures to guarantee the reinsertion of dismissed workers into the labour market following privatisation and liquidations of companies, as well as to provide those unemployed with adequate reinstatement packages.*

Given the Colombian context, the guarantee that remedies and compensation can be sought in cases of violations of economic, social and cultural rights takes all its relevance and importance. Despite the full integration of economic, social and cultural rights in the 1991 Colombian Constitution and subsequent legislation, and the various procedural mechanisms guaranteeing their justiciability and legal remedies in case of violations, many violations are indeed not addressed, showing the inadequacy or lack of functioning of the current procedures. OMCT deplores that Colombia failed to “provide a detailed account of the role played by the *tutela* mechanism (...) for the protection of economic, social and cultural rights” in its fourth periodic report, as was required by the Committee on Economic, Social and Cultural Rights in its 1995 Concluding Observations. *In this regard, OMCT would urge the State party to provide such information in its next periodic report. The information should include a thorough evaluation of the tutela action, highlighting the limits and factors limiting the efficiency of the procedure.*

Finally, the dismantling of paramilitary groups, and of their close connections and collaboration with the Colombian army remains an essential element and condition for the enjoyment of all human rights in Colombia and the establishment of a long and lasting peace.