

Human Rights Defenders in Colombia

How is the Government protecting their rights?

Bogotá, Colombia - December 2011

Monitoring the implementation of the recommendations of the United Nations Special Rapporteur on the Situation of Human Rights Defenders, following her 2009 visit to Colombia.

Contents

I.	PRESENTATION	2
II.	INTRODUCTION	3
III.	EXECUTIVE SUMMARY	4
IV.	MONITORING REPORT	7
	1. Cooperation and dialogue between human rights defenders and the Government	7
	2. Attacks against the physical integrity of human rights defenders	9
	3. Illegal surveillance of human rights defenders by State intelligence services	10
	4. Intelligence activities	11
	5. Investigations of threats and attacks against human rights defenders	11
	6. Arbitrary arrest and detention, and judicial harassment of human rights defenders	12
	7. Raids of non-governmental organisations premises and theft of information	13
	8. Effectiveness of the protection programme for human rights defenders	13
	9. Effective use of the official Early Warning System	15
	10. Support to human rights defenders by the Office of the United Nations High Commissioner for Human Rights and the United Nations Development Programme	16
V.	CONCLUSIONS	17
VI.	ANNEXES	18
	ANNEX 1: Questionnaire sent to institutions	18
	ANNEX 2: List of institutions that participated in the monitoring exercise	21

I. Presentation

There have been numerous recommendations made to Colombia through global and regional human rights bodies, including the United Nations and the Inter-American human rights system. However, the capacity of these organisations to monitor the State's compliance with the recommendations they have made is limited. Also, States have competing priorities and the governments sometimes lack technical capacity or political will to advance the implementation of these recommendations. The impact of UN reports is, thus, not optimal, and implementation constitutes the weakest link of the overall system.

Monitoring the implementation of UN and regional recommendations is a priority for ISHR. We believe that civil society plays an essential role as actor and interlocutor with human rights systems, including during the crucial implementation phase. It is on this basis that ISHR produces this report.

Pursuant to the resolutions of the United Nations General Assembly and the Human Rights Council, the Special Rapporteur on Situation of Human Rights Defenders, Ms Margaret Sekaggya, conducted an official visit to Colombia in September 2009 to evaluate the situation of human rights defenders in the country. ISHR supported some of the Colombian NGOs in preparation for their engagement with the Special Rapporteur. As a result of the visit, Ms Sekaggya presented a report with her conclusions and recommendations¹ to the Human Rights Council in March 2010.

Two years after the visit of the Special Rapporteur, and after a new President took office in Colombia, ISHR conducted a monitoring exercise to assess the implementation of Ms Sekaggya's recommendations. This report summarises the findings of that exercise. It includes the opinions of a group of human rights organisations, State entities and United Nations agencies that agreed to participate in the project.

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Director ISHR

¹ United Nations General Assembly. Report by the Special Rapporteur on the Situation of Human Rights Defenders, Mrs. Margaret Sekaggya. <http://bit.ly/rrHTDs>

II. Introduction²

This report was produced using information provided by representatives of human rights organisations, government and state institutions tasked with the protection of human rights, and different United Nations agencies.

The questionnaire used was based on a selection of the recommendations made by the UN Special Rapporteur on human rights defenders, Ms Margaret Sekaggya. The survey was sent to the range of institutions mentioned above. Some of these organisations responded in writing, others participated in structured interviews, and, in some cases, a combination of both methodologies was used.

This report does not contain judgements or opinions of the consultant or of ISHR. It merely presents summary structured synthesis of the information collected during the field work. However, ISHR keeps on file the complete information provided by the organisations interviewed.

The names of the participating civil society organisations are not mentioned in the report in relation to specific points of view, as agreed with the organisations prior to initiating the investigation. However, there is a list at the end of the report of the organisations that have provided verbal or written contributions. Some of the organisations contacted in the course of the study did not provide any information.

The field work was conducted in Bogota, Colombia, primarily during the months of September and October 2011.

² Consultant Beatriz Céspedes Sastre was in charge of the investigation and of the production of this report.

III. Executive Summary

This report was produced based on information provided by representatives of human rights organisations, government and state institutions tasked with the protection of human rights, and different United Nations agencies. The representatives voluntarily filled out a questionnaire and/or held structured interviews with ISHR, on recommendations formulated by the United Nations Special Rapporteur on human rights defenders following her visit to Colombia in 2009.

The following points are some of the principal conclusions of this follow-up exercise. They summarise the views of the interviewees and do not necessarily reflect the opinions of the consultant or ISHR.

1. In the final months of President Uribe's administration, stigmatisation of human rights defenders continued in both the private and public spheres.
2. A clear change in attitude has been observed since August 2010 during the administration of President Santos: greater openness and willingness to dialogue, manifested in actions such as the National Roundtable on Guarantees for Human Rights Defenders, and a proposal to formulate a State policy on human rights. At the same time, human rights defenders in Colombia expressed their concern about government positions on military vs. civilian jurisdiction in the courts, the possibility to not prosecute persons who enter peace processes, and proposed limits to the judicialisation of economic and social rights.
3. Public officials have been instructed to engage with human rights defenders and with civil society organisations in general, in a context of respect for their opinions and activities, and for any criticism these groups may express against the Government or against any State action.
4. There is, however, a lack of understanding and agreement at the regional and local levels about these new government policies, which means that preventative measures to address threats, harassment, and murder of defenders at the local level have not been satisfactory.
5. In addition, national and international non-governmental organisations (NGOs), as well as the Office of the High Commissioner for Human Rights in Colombia, expressed their serious concern about the recent stigmatisation of defenders in the context of the Mapiripán case.³

³ In 1997, Colombia's leading paramilitary group, AUC, in close collaboration with the Colombian Armed Forces, massacred dozens of civilians in the village of Mapiripán. The case was submitted to the Inter-American human rights system by a well-known Colombian human rights organisation, and the Colombian State was eventually sentenced by the Inter-American Court to apologise and pay large amounts of compensation to the witnesses and victims. In 2011, one witness changed her testimony, now indicating that several of the victims might not have been killed or disappeared during the Mapiripán massacre. Substantial amounts of compensation would therefore have been incorrectly paid out to "false victims" and the non-governmental organisation representing them. Despite the fact that the same witness was used ("certified") by the Colombian Attorney General's Office, a series of official and non-official statements have circulated in Colombia, reportedly aimed at stigmatising the Colombian human rights movement for its cooperation with the "false" witness in the Mapiripán case.

6. According to reports by these non-governmental organisations, individual attacks against human rights defenders during the first semester of 2011 increased by 126 percent over the same period in 2010.
7. Threats have increased against women's organisations, leaders of land restitution processes, and indigenous leaders.
8. The National Roundtable on Guarantees for Human Rights Defenders is a space for high-level dialogue between civil society and the Government. Some organisations, however, believe this space no longer appears to be useful, given that the agreements reached therein continue to be insufficient to protect the rights of defenders.
9. Although the Government is taking important steps to resolve some of the structural problems mentioned in the agreements, such as the reform of protection programmes, not all of its specific commitments have been implemented.
10. There have been very few concrete responses to the cases of illegal wiretapping, and even less action taken against the perpetrators. Moreover, human rights organisations insist that illegal interceptions continue to occur.
11. The results of the criminal investigations undertaken by the Attorney General's Office tend to be limited in the cases where the victims are human rights defenders. Also, the Office of the Procurator-General (PGO) has obtained few visible results in its disciplinary investigations, despite its public commitments in this regard.
12. The Colombian Congress approved Law 263 of 2011, which sets forth mechanisms to purge the intelligence archives and procedures for handling intelligence information (approval pending in the Colombian Constitutional Court).
13. According to human rights organisations, this new law is not significantly different from the previous legislation. In fact, it contains less favourable elements, such as the right to classify documents for a longer period of time, weakened control mechanisms, and lack of mechanisms that safeguard defenders' rights.
14. In 2010, the prosecution and arbitrary detention of human rights defenders based primarily on testimonies by informants, most of whom are demobilised former combatants, or on military intelligence information, continued to be of concern.
15. The Attorney General's Office issued an internal memorandum with instructions on how to handle investigations that involve human rights defenders. However, there does not appear to be clarity on how to conduct the investigations at the local level.
16. Non-governmental human rights organisations, as well as the Public Ministry and United Nations agencies, continued to report the theft of documents and materials from the premises of human rights organisations.
17. Decree 1740 of 2010 modified and aimed to improve the Protection Programme of the Ministry of Interior and Justice (the Protection Programme), which includes the protection of human rights defenders.
18. According to some NGOs, the Decree does not introduce any changes to simplify or expedite the procedures for risk assessment or provision of protection measures. In

practice, there are still excessive delays in this process as well as in the implementation of protection measures.

19. At the time of writing, Colombian Constitutional Court Decision T-496 on protection with a gender perspective had not been implemented. In fact, there are no measures to guarantee special protection for women victims.
20. Very few of the risk reports and follow-up notes issued by the National Ombudsperson's Office result in officially issued 'early warnings' to prevent attacks against human rights defenders.
21. Human rights organisations believe that the National Ombudsperson's Early Warning System (EWS) should be strengthened and its capacity increased. They also mentioned that the National Ombudsperson should play a more decisive role in the issuance of early warnings.
22. The human rights NGOs expressed their concern about the situation of staff of the National Ombudsperson's Office, who have been the object of attacks and are not covered by the Protection Program. The National Ombudsperson's Office expressed similar concerns.
23. The United Nations Development Programme (UNDP), OHCHR and some representatives of the diplomatic corps have provided continuous support to the dialogue between defenders and the Government. Since the previous administration, they have acted as mediators in the regions, provided political protection, supported the requests of the organisations, and facilitated the functioning of the National Roundtable on Guarantees for Human Rights Defenders between the defenders and the Government.

IV. Monitoring Report

1. COOPERATION AND DIALOGUE BETWEEN DEFENDERS AND THE GOVERNMENT.

Most of the organisations interviewed agree that after the Special Rapporteur's visit to Colombia, at the end of the Uribe administration, stigmatisation against human rights defenders continued in both the private and public spheres. According to these organisations, merely disagreeing with his government turned these dissidents into terrorists, supporters, collaborators, or persons with ties to guerrilla groups or terrorists organisations.

Similarly – with the important exception of the Mapiripán case (see below) - the organisations believe that the Santos administration has demonstrated a clear change in attitude: high level officials, such as the Minister of Interior and the Vice-President have made public statements explicitly expressing their respect for human rights defenders and their work. There is openness and a willingness to dialogue, illustrated by actions such as the National Roundtable on Guarantees for Human Rights Defenders (the National Guarantees Roundtable) process, under the leadership of the Minister of Interior, and the Vice-President's proposal to formulate a state policy on human rights.

Despite this openness at the national level, the organisations point out that at the regional and local levels there is still a lack of understanding and agreement about these national policies, in particular amongst some mayors and governors. This highlights a concerning difference between the political will at the national level and at the regional level.

Some organisations expressed their concern about actions that continue to invalidate their work, such as police attacks on young people, women leaders, and women's organisations.

According to these organisations, *“things were unambiguous in the previous administration while this administration is two-faced: it publicly recognises and respects the work of human rights defenders while acting differently behind their backs”*.⁴

Moreover, the Office of the United Nations High Commissioner for Human Rights in Colombia (OHCHR) agrees with the civil society organisations' perception of a more favourable stance and openness to dialogue of the administration of President Santos. Since August 2010, OHCHR has observed a positive change in attitude by government authorities towards human rights organisations, which the Government has called “the disarmament of words”. One visible expression of this new atmosphere was the signature, under the leadership of the Vice-President, of a joint declaration between the Government, Procurator General, National Ombudsperson, other State entities, civil society, and the international community, called “Towards a Comprehensive Human Rights and International Humanitarian Law Policy”.

In the same line as the human rights defender organisations, OHCHR noted that despite this change in attitude by the national government, effective change has not yet reached the regions; threats, harassment, and the murder of defenders continue to be reported.

The Presidential Human Rights and International Humanitarian Law Programme (the Presidential Human Rights Programme) notes that the attitude of the current administration towards human rights defenders has been characterised by the public recognition of the legitimacy of their work, by acknowledgment that this work contributes to the Colombian

⁴ Investigation interview.

democracy process, and by the decision to provide guarantees so that defenders can carry out their work without restrictions. It also states that it has invited not only human rights defenders but all sectors of civil society to participate in the efforts to jointly contribute to the formulation of a comprehensive State policy on human rights and international humanitarian law.

It also explains that the dialogue between the current administration and human rights defenders, the application of the “disarmament of the word” initiative, meant public officials have been categorically instructed to engage with defenders and with civil society organisations in general, with respect for their opinions, activities, and any criticism they may express against the Government or its actions.

Further, the Presidential Human Rights Programme has contributed to the design and implementation of a nationwide communications strategy, to recognise the work of human rights defenders and disseminate information on the State’s obligations to guarantee human rights and the protection of human rights defenders.

According to representatives of the Programme, this strategy included the provision of information to the 1,100 mayors and 32 governors in Colombia, the broadcasting of radio messages, and publication of a digital brochure on human rights defenders. The brochure features the United Nations *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms*, along with ministerial and presidential directives relevant to human rights defenders.

The Procurator General’s Office (PGO) states that although harassment against human rights defenders by some public officials may still continue today, the PGO appreciates the positive change in attitude demonstrated by the Government on this matter and the commitment of the principal authorities to investigate and punish this type of conduct.

The PGO also says it has repeatedly expressed its concern about the situation of human rights defenders in Colombia, and that it has urged authorities and public officials to comply with the provisions issued in favour of the protection of defenders.⁵ The PGO plans to have the first monitoring report on compliance with Directive 012 ready by December 2011, which urges public officials to guarantee the rights of defenders in the context of international recommendations, such as those issued by the Special Rapporteur on human rights defenders.⁶ The institution will also report on baseline data that will enable the PGO to track future progress or regression on this matter.

The National Ombudsperson’s Office reported that it has received no recent complaints of stigmatisation by public officials, of human rights NGOs or their members.

All of those interviewed recognised the National Guarantees Roundtable as a high-level space for discussion, and evidence of the willingness of the Government to dialogue with civil society organisations. However, some organisations believe the forum no longer appears to be useful, since the agreements reached therein continue to be insufficient to protect human rights defenders. Conducts that affect the legitimate work of the human rights defenders

⁵ This refers to Presidential Directive 07 of 1999, Ministry of Defence Directive 09 of 2003, and PGO Directive 012 of 2010.

⁶ Office of the Procurator General. Bulletin. 27 July 2010.

persist, endangering their lives and placing human rights organisations at risk. Furthermore, in several regions the threats, murder, prosecution and persecution have even increased.

The above mentioned situations led to the decision in mid-2011 by the human rights, peace and development NGO platforms and social organisations to suspend its participation in the national guarantees process with the Colombian Government. The organisations' involvement in the process was reactivated, following the mediation of UNDP and OHCHR, leading to an agreement between the conflicting parties on a clear path forward.⁷

The organisations note that while the Government is taking important steps to resolve some of the structural problems mentioned in the roundtable commitments, such as the reform of protection programmes, not all specific commitments have been implemented.

Towards the end of 2011, it was revealed that witnesses that had been 'certified' by the Attorney General in Colombia, and who had been involved in the Mapiripán case brought against the State of Colombia before the Inter-American Commission of Human Rights, appeared to be false. As a result of this revelation, a series of public statements against human rights defenders were made which, according to OHCHR, 'sought to undermine the victims' and land restitution act [...] and put the most important allies of the act – the victims' and human rights organisations - on the defensive'.⁸

2. ATTACKS AGAINST THE PHYSICAL INTEGRITY OF DEFENDERS.

According to the majority of the organisations surveyed, attacks and aggressions continue. Reports by the 'Somos Defensores' Programme indicate that individual attacks⁹ against human rights defenders in the first semester of 2011 increased by 126 percent¹⁰ compared to the same period in 2010. Of particular concern are the murders, threats and harassment against those who advocate for the rights of the displaced population, especially leaders of women's groups, and leaders of land restitution.

According to the Somos Defensores Programme, threats continue to be the most widespread form of attack against human rights defenders. Threats have also increased against women's organisations, especially threats of sexual violence. Some organisations have received letters with the logo and signature of illegal armed groups, such as 'Los Rastrojos', and 'Águilas Negras', and Autodefensas (self-defence groups).

Some organisations have complained that the Government's refusal to accept the existence and political nature of these illegal organisations, calling them instead 'criminal groups', makes it more difficult to monitor and adequately prosecute these attacks against human rights defenders. Instead, they are treated as common crimes and addressed by units of the

⁷ The path for reactivation included the following points: 1. Implementation of 14 regional Regulatory and Risk Evaluation Committee meetings; 2. Implementation of a national roundtable on accountability of the different government and state institutions that have assumed commitments in the framework of the processes, in both departmental hearings and thematic roundtables; 3. Implementation of the thematic roundtable on the right to social protest; and 4. Meeting with the President of Colombia.

⁸ Speech by OHCHR representative, Doctor Christian Salazar Volkmann, during a seminar on human rights defenders, held by OHCHR in Bogotá on 12 December 2011 (www.hchr.org.co).

⁹ Attacks are understood as murder, threats, injuries, arbitrary detentions, enforced disappearance, and the arbitrary use of the judicial system.

¹⁰ Somos Defensores Programme report "Más Allá de las Cifras" (Beyond the Numbers).

Attorney General's Office that are not specialised in human rights. These cases are thus dispersed and fragmented and are not processed in their proper context.

A sampling of the complaints received by the National Ombudsperson's Office indicates that the highest number of cases of violations of the rights to life, personal integrity and freedom of human rights defenders occurred in 2009, with a total of 75 complaints. In 2010, 29 complaints of the same nature were received, and by 20 October 2011, 24 complaints had been received.

For some human rights organisations the issues that continue to generate the most tension and most significantly affect the situation of human rights defenders are land restitution and mining. The populations most affected by these issues are indigenous peoples and Afro-descendent communities. Human rights organisations also mentioned the deaths of union members as an ongoing concern.

The Presidential Human Rights Programme underscores the risk identified by the Intersectoral Early Warning Commission (CIAT). According to CIAT, the main violations leading to the issuance of 'early warnings' are intimidation and threats to members of the local community action boards (CAB), as well as homicides, disappearances and the forced displacement of CAB presidents.

The Programme acknowledges that, although the Government is in the process of implementing a contingency plan to counteract the risks affecting the safety of the population, threats against victims' organisations and leaders have increased. It also notes that one of the most significant objectives of the national government is the regulation and implementation of the Victims' and Land Restitution Act. This process is viewed by the illegal armed actors as a threat to their economic and strategic interests, which increases the levels of vulnerability of human rights defenders, victims and social leaders.

Moreover, the Presidential Human Rights Programme expresses its concern about the actions of illegal groups aimed at influencing the local administrations and the political process, and limiting the representation and participation of important social groups, such as community action boards, organisations of internally displaced persons, trade unions, and organisations of human rights and sexual diversity advocates, among others.

3. ILLEGAL SURVEILLANCE OF HUMAN RIGHTS DEFENDERS BY STATE INTELLIGENCE SERVICES.

The human rights organisations surveyed say they are particularly concerned about the issue of illegal surveillance by State intelligence services.

Some investigations into such cases have been instigated, including against the Department of National Security (DAS), and some measures have been taken against public officials, such as the conviction of former DAS director Jorge Noguera. There are also ongoing investigations taking place against two former directors of DAS, and the closing or restructuring of this security agency have been announced. Despite these few developments, there have been insufficient concrete responses to the cases of illegal surveillance reported, and even fewer consequences for those who committed the violations.

Human rights organisations also maintain that the illegal interceptions by DAS officials, including wiretapping, surveillance, and harassment, continue. The results of the investigations appear to indicate that both the so-called 'G3 Group' and the National and International Observation Group (NIOG), whose members were accused of committing these

illegals acts, were part of the formal structure of the institution. The illegal activities are said to have been funded with DAS resources, the use of which requires approval by the director of the agency.

4. INTELLIGENCE ACTIVITIES ON DEFENDERS.

The non-governmental organisations draw attention to a new intelligence law, Act 263 of 2011, which deals primarily with mechanisms for a process to correct, update and eliminate information within each of the intelligence agencies; procedures for drafting reports to the agencies in charge of intelligence and counter-intelligence activities; and the creation of an advisory commission to establish the criteria for implementation of a system for purging intelligence and counter-intelligence archives and databases.

The human rights organisations interviewed expressed belief that the new Act does not substantially modify the previous legislations, and contains elements that are even less favourable, such as the right to classify documents for a longer period of time, weakened control mechanisms, and limited mechanisms to protect rights. The proposed advisory commission is not a permanent institution and can only make recommendations.

According to OHCHR, the National Police has taken steps to establish a data protection system that prevents the collection and storage of information based on criteria that are in violation of human rights. The military forces are still in the initial stages of designing similar procedures. No substantial progress has been made in purging the archives on the part of the PGO or the intelligence services.

Moreover, OHCHR said it continues to receive complaints about the interception of e-mails, surveillance, harassment and threats, information theft, alteration of web pages, and illegal raids of the premises and homes of civil society organisations, sometimes attributed to members of military intelligence services. According to OHCHR, these events and those previously denounced in 2009 have gone unpunished.

The human rights organisations noted that in the context of the National Guarantees Roundtable they hope to hold a meeting at the end of the year on intelligence.

5. INVESTIGATIONS OF THREATS AND ATTACKS AGAINST DEFENDERS.

Many human rights organisations believe that most of the criminal investigations undertaken by the Attorney General's Office (AGO) in cases where the victims are human rights defenders have obtained meagre results. Also, despite its public commitments, the Office of the Procurator General (PGO) has obtained few visible results in its disciplinary investigations.

The NGOs interviewed said the disciplinary process is exceedingly slow. This complaint is corroborated by the AGO report presented to the National Guarantees Roundtable on 25 August, which shows that only six convictions have been handed down in the 192 cases presented by the NGO Platforms.¹¹

¹¹ According to the mentioned report, 64 legal-technical committees were carried out, with the following results: Law 600 of 2000: of 49 inhibitory rulings 40 were reopened, 35 of which were murder cases. Law 906 of 2004: of 11 decisions to close, three preliminary investigations were reopened. Nine investigations were reassigned to the Human Rights Unit and two decisions were made to open investigations.

Notwithstanding the opinions of the human rights organisations, the PGO says it has investigated all cases of aggression against human rights defenders, both in the regions and at the national level. According to information provided by the PGO, the investigations are ongoing. It noted that, in some cases, it has invoked its preferential powers of investigation and administrative oversight, whereby the PGO replaces other investigative entities and mechanisms and becomes directly involved in the processes.

In addition, the PGO delivered a report on the cases that are currently being processed by the Attorney General's Office. The report mentions nine processes underway for crimes that occurred between 2004 and 2010: six murders, including one of a protected person, one disappearance, two cases of torture, one case of sexual violence and theft. Five cases were in the investigative phase, three in preliminary investigation, and one in the formulation of charges phase.¹²

The Presidential Human Rights Office highlights the following results of the National Guarantees Roundtable on investigation and prosecution, held on 21 February 2011 in the Attorney General's Office:

- Progress in judicial investigations related to the protection of the rights of human rights defenders, social leaders and organisations, and organised communities;
- Closing of the AGO offices within military and police bases;
- Transfer of cases of human rights violations from the military jurisdiction to the ordinary justice system;
- Elimination of inter-administrative agreements between the AGO, its Technical Investigative Body, and the Army's regional military intelligence offices;
- Respect for due process and guarantees in the prosecution process.

The Office also points to the strengthening of the process at the local and regional level thanks to programming and implementation of Regulatory and Risk Evaluation Committee (CRER) meetings in the regions where National Guarantees Roundtable sessions were held in 2009 and 2010.

6. ARBITRARY ARREST AND DETENTION, AND JUDICIAL HARASSMENT OF HUMAN RIGHTS DEFENDERS.

The organisations interviewed expressed their ongoing concern about politically motivated prosecution and arbitrary detention of human rights defenders in 2010; penalties based primarily on unreliable testimonies by informants or demobilised former combatants, or on unsubstantiated military intelligence reports. The UN Special Rapporteur on human rights defenders formulated several recommendations in this regard. The Colombian Constitutional Court has noted that intelligence reports cannot be part of the trials of human rights defenders, nor be used as evidence or as probable cause.

According to the human rights organisations surveyed, many of the cases being prosecuted in the regions have been investigated on the basis of intelligence reports or witness testimonies deriving from these reports, such as those by demobilised former combatants,

¹² This information was not provided directly by the AGO because they responded only seven weeks after the ISHR request, when the investigation had already concluded.

the majority of which are false testimonies. Furthermore, the organisations say the investigations are advancing at a very slow pace and use inadequate investigative strategies and methodologies.

According to the defenders, the Attorney General's Office has issued an internal memorandum with instructions on how to handle investigations involving human rights defenders. However, there do not appear to be clear guidelines for conduct by officials at the local level.

The Office of the Procurator General said it has issued a series of instructions for regional and provincial inspectors to prevent and investigate these conducts, such as Directive 012 of 2010 on the protection of human rights defenders.

7. RAIDS OF PREMISES OF HUMAN RIGHTS ORGANISATIONS AND THEFT OF MATERIALS.

Human rights NGOs, the Public Ministry and United Nations agencies all reported the continued theft of materials.

The cases reported by the organisations for this investigation had also been reported to the competent authorities and, in some cases, protection measures had been granted. However, no results have yet been obtained in the investigations undertaken by the Attorney General's Office.

8. EFFECTIVENESS OF THE PROTECTION PROGRAMME FOR DEFENDERS.

Decree 1740, issued in 2010, modified and aimed to improve the Human Rights Protection Programme (the Protection Programme) of the Ministry of Interior and Justice, which includes the protection of human rights defenders.¹³ However, according to some NGOs, the decree does not introduce any changes to simplify or expedite the procedures for risk assessment or provision of protection measures. In practice, there are still excessive delays in these procedures and in the implementation of protection measures. This issue was addressed by the Special Rapporteur in her recommendations to the Government.

Some organisations mentioned the persistence of the following problems, among others:

- Lack of timely response to protection requests from individuals in risk situations.
- Many defenders and leaders are not accepted into the Protection Programme after the risk evaluation stage has been completed, despite being in imminent danger.
- The Protection Programme does not have a gender approach or differential focus. Consequently, these issues have not been mainstreamed into the operation of the programme. It was noted that Constitutional Court decision T-496, which refers to protection with a gender focus, has not yet been implemented. In practice, no measures exist to guarantee special protection for women victims.
- The protection schemes are exclusively for the direct beneficiaries; they do not include mechanisms to protect the families of persons at risk. The families are also

¹³ Since the research for this report was finalised, a new decree, Decree 4912 from 26 December 2011, was issued as a replacement of Decree 1740.

frequently victims of threats, harassment and persecution, and this has a differential impact on women, young people and the elderly.

- With regard to Afro-Colombian and indigenous communities, the protection measures do not take into account the cultural and contextual needs of these beneficiary groups.
- Lack of coordination with regional and local authorities, and lack of cooperation and action between these and the defenders/leaders at risk.
- Despite their very high levels of risk, the defenders that live and work in rural areas do not receive the necessary protection.
- There are concerns about the protection provided being by agents of the highly criticised security agency, DAS.
- The refusal of the DAS to assign bodyguards and drivers selected by the organisations subject to protection schemes.
- Concerns about the privatisation of the protection schemes.
- The defenders are concerned about recently issued Decree 3775, which modifies and amends Decree 1740 of 19 May 2010, but does not cover leaders involved in land restitution processes. This is an issue of serious concern due to the increased vulnerability of this group.

According to OHCHR, the Protection Programme should be reformed in order to ensure greater flexibility and effectiveness. OHCHR also expressed its belief that the programme should include public officials, such as personnel working in the Early Warning System, or those involved in land restitution processes.

OHCHR has called for a comprehensive review of the protection policies and programmes that are implemented by the Government and other State entities. It has also urged the State to create a comprehensive protection programme for the land restitution process that includes public security measures; political, technical, and financial support to the communities, peasant farmers and victims' organisations; a joint risk assessment at the local level with relevant State and non-State organisations; and the pursuit of a broad-based social mobilization to defend this right.

According to OHCHR, the Ministry of Interior has announced it is in the process of making fundamental reforms to all the protection programmes.¹⁴

Representatives of the Presidential Human Rights Programme say the office has continued to participate in the regional Risk Evaluation Committees, which have taken measures to guarantee the security of human rights defenders, at both the national and departmental levels. It has also served as liaison between the organisations and the institutions to attend urgent cases and seek solutions to their needs.

¹⁴ ISHR made written requests for information and a meeting with representatives of the Ministry of Interior and Justice Protection Programme on several occasions, but did not receive a timely response.

9. EFFECTIVE USE OF THE OFFICIAL EARLY WARNING SYSTEM.

In the context of the National Guarantees Roundtable, the National Ombudsperson’s Office presented the following figures with respect to the risk reports and follow-up notes issued by the official Early Warning System (EWS):

EWS Reports to July 2011

Year	RR/FN	EW
2010	25	4
2011	9	6
Total	34	10

RR: risk reports
 FN: follow-up notes
 EW: early warnings

- In the past two years (August 2009 – July 2011), the National Ombudsperson issued 34 risk reports and follow-up notes through its EWS, warning of risk to human rights defenders and social and community leaders. These reports were sent to the Inter-sectoral Early Warning Commission (CIAT).
- In 2010, 25 risk reports and follow-up notes were issued about the risk situation of defenders and social and community leaders throughout the national territory. Of these risk situations, four led to the issuance of official early warnings.
- To 31 July 2011, the EWS had issued nine risk reports for defenders and social and community leaders. Of these, six led to early warnings.

The National Ombudsperson’s Office has supported the work of indigenous and Afro-Colombian organisations, provided information for risk assessment of their leaders, and offered technical instruments for prioritising the protection requested, taking into consideration their special needs. Between 2010 and 2011, the National Ombudsperson issued 22 risk reports and follow-up notes about the risk situation of ethnic communities.

The human rights NGOs also expressed their concern about the situation of the National Ombudsperson personnel who have been the victims of attacks. The NGOs believe that the EWS should be strengthened, and its logistical capacity increased, and also note that the National Ombudsperson should play a more definitive role in the issuance of early warnings, as recommended by the Special Rapporteur in 2009. In this regard, human rights defenders are concerned by the strong influence of the Ministry of Defence in the decision to issue early warnings, evidenced by the difference between the number of suggested early warnings issued by the EWS and the number of early warnings issued by the CIAT.

The National Ombudsperson confirmed the concerns of the human rights organisations when it noted the lack of progress with respect to the inclusion of public authorities responsible for protecting human rights in the Protection Programme. In the framework of the National Guarantees Roundtable, the organisations of human rights defenders and the National Ombudsperson's Office proposed a definition of the term 'human rights defender'¹⁵ that is inclusive of public servants, to be considered in the formulation of the amendment to Decree 1740 of 2010. This proposal was not taken into account by the Government. The proposal reflected not only the essence of the recommendation of the Special Rapporteur, Ms Sekagya,¹⁶ but also the opinion of the Inter-American Commission on Human Rights in its 2006 *Report on Human Rights Defenders in the Americas*, and the content of a government brochure on protection of human rights defenders,¹⁷ released by the Presidency and Vice-Presidency of Colombia in July 2010.

10. SUPPORT BY OHCHR AND UNDP TO HUMAN RIGHTS DEFENDERS.

The non-governmental organisations report that they have received continuous support from UNDP, OHCHR and some members of the diplomatic corps throughout the National Guarantees process. These entities have played an important role in mediation of the dialogue between civil society and the Government, especially with the previous administration. They have also provided support as facilitators in the regions, in providing political protection, in backing the NGOs' requests, and in facilitating logistical aspects of the process.

OHCHR has played a role as mediator between the State and the human rights organisations and its continued presence is a valuable asset for the country. However, some organisations report that the Government appears to be interested in closing the local OHCHR office, given the apparent improvement in the human rights situation in the country.

They also mention the work of UNDP as the Technical Secretariat for the national guarantees process at its different levels: support group, monitoring group, National Guarantees Roundtable, and territorial hearings. UNDP also acts as the Technical Secretariat for the National Human Rights Conference process.

¹⁵ Letter dated 26 August 2011 from the National Directorate for Processing of Complaints "(...) We endorse the proposed definition of human rights defenders presented by the civil society organisations of human rights defenders, as follows: "a person who individually or as a member of a non-governmental organisation or state entity works to advocate, defend, denounce, advise on human rights or provides legal representation or psycho-social assistance to persons or groups that are at risk of human rights violations".

¹⁶ Paragraph 155 of Ms Sekagya's report on Colombia.

¹⁷ Brochure entitled Protection of human rights defenders, a task of the State: Which public officials are human rights defenders?

V. Conclusions

According to the information provided by the human rights defenders, representatives of the State, the Government, and the United Nations in Colombia, it is clear that different measures have been taken to address several of the issues mentioned by Special Rapporteur Ms Sekaggya in her 2009 report, and in the reports of other United Nations agencies and the Inter-American human rights system. These measures have been political, technical, financial and normative-judicial in nature. It is, thus, surprising that most of the challenges identified by the Special Rapporteur in 2009 appear to persist, to a greater or lesser extent, including attacks on the physical integrity of human rights defenders.

This comes as no surprise, however, to the defenders interviewed. As mentioned in this report, they have clearly denounced the flaws, not only in the Protection Programme for defenders but also in the measures and factors that today affect their effective realisation of the right to advocate for human rights. According to the human rights organisations, the widespread impunity for crimes against defenders is the most important of these factors, in addition to the weak structures and processes that enable this level of impunity to continue.

Impunity affects human rights defenders around the world. Nevertheless, considering the new open relationship between defenders and the Government, as well as the explicit commitments acquired by the Colombian State vis-à-vis civil society, ISHR hopes this phenomenon will be overcome and that Colombian society may fully benefit from the work of its defenders.

ISHR, as part of international civil society, is fully committed to continuing to support this process and we are sure the Office of the High Commissioner for Human Rights in Colombia will continue to monitor the situation of defenders and support the dialogue process with the Government. We also believe that the United Nations Special Rapporteur on human rights defenders should make a follow-up visit to the country. Moreover, Colombia's second report to the United Nations Human Rights Council in 2013 under the Universal Periodic Review mechanism will be an important opportunity to further assess and promote protection measure for defenders in Colombia.

VI. Annexes

ANNEX 1:

Questionnaire sent to institutions

Monitoring of the implementation of the recommendations made by the United Nations Special Rapporteur on the Situation of Human Rights Defenders after her visit to Colombia in 2009.

Introduction

Ms Margaret Sekaggya, United Nations Special Rapporteur on human rights defenders, visited Colombia in September 2009 to assess the situation of human rights defenders in the country. As a result of this visit, Ms Sekaggya delivered a report to the Human Rights Council with her conclusions and recommendations in March 2010.

Two years after the visit of the Special Rapporteur and after a new President took office in Colombia, the International Service for Human Rights (ISHR) is conducting a review of the degree of implementation of some of her recommendations. The results of this investigation will be presented to State and non-State actors during the session of the Human Rights Council to be held in March 2012 in Geneva, Switzerland.

As part of the monitoring strategy, a questionnaire was prepared on the basis of Ms Sekaggya's recommendations, to be completed by a group of organisations, institutions and representatives of the human rights NGO platforms in Colombia, the government and State entities responsible for defending human rights and the protection of defenders, the judicial branch, and the Office of the United Nations High Commissioner for Human Rights in Colombia.

In order to fulfil this objective, we would appreciate it if you would complete the attached questionnaire as clearly and precisely as possible, referring to the period between 2009 and 2011. Your responses may be illustrated with examples and testimonies, if appropriate.

QUESTIONNAIRE

Name of Institution and office:

DATE: _____

1. Please comment on the stigmatisation of human rights defenders by public officials and non-State agents. What changes in this situation have you noticed since 2009?
2. What is the attitude of the current administration with regard to this issue?
3. In your opinion, have the attacks and aggression against the physical integrity of defenders in Colombia continued? Have proper judicial investigations been initiated in these cases? What have been the results of these investigations?
4. What is the current situation of the dialogue and cooperation between defenders and the Government? What changes have occurred since 2009? Have the agreements to protect defenders reached during the National Guarantees Roundtable process, been fulfilled?
5. What progress has been made in the case of illegal surveillance of human rights defenders by State intelligence services, especially by the DAS and the Police? Please mention any progress in the judicial investigations of these crimes. Also mention if the victims have received redress for these illegal actions (reestablishment of their good name and reputation, compensation).
6. Please provide information on the investigations of threats of attacks against defenders that participate in the National Guarantees Roundtables for human rights defenders.
7. Comment on the progress made in relation to the control of illegal intelligence activities against defenders, their families and organisations, in compliance with international norms: review and purging of intelligence archives; access by defenders to intelligence service information about them and their organisations; enforcement of the Intelligence and Counterintelligence Act.
8. Kindly explain how the relevant institutions have implemented measures to control and possibly stop the arbitrary arrest and detention and judicial harassment of human rights defenders (Attorney General, Police, Procurator General). Please comment on the current situation.
9. Please comment on whether the raids of human rights NGOs' premises and the theft of materials have continued. If the answer is yes, what measures have been taken to address these situations?
10. Please comment about the effectiveness of the Protection Programme for Defenders. List and comment on the actions taken to simplify and expedite the process of adopting the protection measures provided for under the Protection Programme and

on how immediate protection has been provided to defenders while their risk situation is evaluated.

11. Please comment on the use of the Government's early warning system. Have the proper early warnings been issued in the case of defenders? Have the appropriate measures been taken in response to the early warnings issued?
12. How have OHCHR and UNDP provided support to human rights defenders, especially those most at risk, and what has been their role as intermediaries with the Government since the visit of the Special Rapporteur?

ANNEX 2:

List of organisations that participated in the monitoring exercise

Human Rights Organisations

- Asomujer y Trabajo.
- Colombian Commission of Jurists.
- Coordinación Colombia-Europa-Estados Unidos.
- Corporación Colectivo de Abogados “José Alvear Restrepo”.
- Corporación Reiniciar.
- DIAL: with the participation of Diakonia Alemania, Diakonia Suecia, Help Age Internacional, Civis Suecia, PCS, Christian Aid, Oxfam, CNR, Heks, Lutheran World Relief, Swefor (observer), PBI (observer).
- Grupo de Trabajo sobre Protección.
- Iniciativa de Mujeres por la Paz -IMP.
- Sisma Red Mujer.

State Entities

- National Ombudsperson’s Office.
- Procurator General – Delegate for Prevention on Human Rights
- Vice-President of Colombia – Presidential Human Rights and International Humanitarian Law Programme.

United Nations Agencies

- Office of the United Nations High Commissioner for Human Rights (OHCHR), Colombia.
- United Nations Development Programme (UNDP).