

## **SPECIAL NEWSLETTER**

### **VIOLENCE AGAINST TRADE UNIONISTS IN COLOMBIA**

**WHY THE INTERNATIONAL CRIMINAL COURT MUST INVESTIGATE**

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#### **Contents**

1. Introduction	3
2. The concept of strategic litigation in human rights cases	4
3. Repression against trade unions in Colombia	5
4. Persecution of trade unionists: selected cases	6
5. Impunity for acts of violence against trade unionists in Colombia and the significance of the ICC – by attorneys Alirio Uribe Muñoz and Luis Guillermo Pérez, CAJAR	8
6. Summary of the legal arguments in the communication to the ICC	10
7. The International Criminal Court and Colombia – what would be required	12
8. Final remarks	14



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## 1. Introduction

On 9 October 2012, ECCHR together with the Colombian human rights organization CAJAR and the Colombian trade union federation CUT submitted a communication to the Office of the Prosecutor (OTP) at the International Criminal Court (ICC). The communication relates to the ongoing impunity for crimes against humanity committed in Colombia against trade unionists.

The recourse to legal means is intended to ensure that trade unionists in Colombia are supported and protected in their struggle to enforce human and labor rights, and to prevent the murder of further union members. This approach may also serve as an example to other countries and regions in which trade unionists are persecuted and killed. Investigations against high-ranking perpetrators of trade union persecution would also demonstrate to Colombian society that this is not just about controversial political decisions; it involves grave international crimes.

The submission is also intended to trigger a wider debate about the selectivity and transparency of the choice of cases by the Office of the Prosecutor in The Hague, and to persuade the OTP to initiate an investigation against Colombia, its first investigation against a non-African state. The ICC has for a number of years been holding preliminary examinations into crimes committed in Colombia. The legal debate on this issue centers on whether or not the investigations and prosecutions undertaken in Colombia are genuinely being pursued, and on whether the perpetrators hold positions of power in politics and the military. But proceedings have stagnated since the initiation of the preliminary examination. No relevant

developments have at least been officially reported. The submitted communication should make clear that Colombia has, to date, been unwilling — and is, furthermore, unable — to genuinely prosecute for human rights violations against trade unionists as crimes against humanity.

It is hoped that as a result of this communication, the ICC will open a formal investigation. This would increase the pressure on the government and national prosecutors to make a genuine effort to prosecute human rights violations in Colombia and to introduce appropriate measures against high-ranking culprits. An investigation by the ICC would also help to raise global awareness of the human rights situation in Colombia and facilitate the collection of independent evidence and witness statements.

In March 2012 ECCHR, together with Colombian trade union SINALTRAINAL and with financial support from Misereor, submitted a criminal complaint against Nestlé and the company's leading directors. They stand accused of contributing to the murder of trade unionist Luciano Romero in 2005 by failing to introduce protection measures. The complaint could set a precedent, as it would be the first time a Swiss company has been held responsible in Switzerland for a crime committed abroad. This complaint is also intended to support the work of trade unionists in Colombia, to help bring about the end of impunity in Colombia, and to demonstrate the responsibility held by multinational corporations in countries where human rights are violated and where these violations go unpunished.

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## 2. The concept of strategic litigation in human rights cases

The European Center for Constitutional and Human Rights (ECCHR) is an independent and non-profit human rights organization located in Berlin and working primarily through legal means. ECCHR initiates, develops and supports exemplary cases, in order to hold state and non-state actors accountable for human rights violations. In doing so we focus on selected cases that test the existing legal framework, and that have the potential to set legal precedents for the enforcement of human rights.

We work together with those affected, their legal representatives, and with local human rights organizations. Particularly in cases where systematic human rights violations and their root causes remain unresolved, such as in this situation the widespread persecution of trade unionists in Colombia, we make use of instruments such as complaint mechanisms of UN bodies, civil claims for damages or criminal proceedings. The aim of turning to legal measures is to raise awareness of human rights problems and to support those affected, and their local organizations, beyond the context of the individual case in their wider struggle to realize their rights.

In contrast to the usual work of a lawyer, our approach is not just about the result in

a particular legal case. Even reconstructing the events and compiling the written complaint can itself be an important step for those affected by human rights violations in overcoming their trauma and in actively fighting for their rights. Regardless of whether or not a claim is successful in the courtroom, legal proceedings can significantly contribute to the political debate on accountability for human rights. Legal proceedings demonstrate that inhuman policies and behavior are not just political and social scandals, but represent a violation of the law, punishable by the courts.

ECCHR fights against double standards in the application of international criminal law. We are, therefore, particularly active in cases in which those responsible for international crimes are shielded from legal action, whether it is because they hold a high position in one of the powerful western states or because — like the political and military leadership of Colombia — they are closely allied to those states. We believe it is a dangerous development if, out of political considerations, international human rights standards are not enforced, and are applied only to weak states or to those states, and their representatives, that are ‘uninteresting’ to the West.

### 3. Repression against trade unions in Colombia

Colombia is one of the most dangerous countries for trade unionists in the world. 2,927 trade unionists were murdered there between 1986 and 2012. The right to form and join trade unions is one of the pillars of democratic and socially just societies. It is not surprising, then, that in 2011 the United Nations Development Programme listed Colombia, a country rich in natural resources, as one of the countries with the greatest levels of social inequality, surpassed only by Angola and Haiti.

For many years Colombia has held the unhappy record of being the location of more than half of all murders of trade unionists worldwide. The vast majority of these crimes are attributed to the paramilitaries and state security forces. A high rate of impunity is also reported. Despite the program of demobilization of paramilitary groups carried out between 2003 and 2006, trade unionists continue to be threatened and killed by paramilitaries. State security forces are also involved in the murder of trade unionists, and initiate arbitrary criminal proceedings against them. Amnesty International believes that there is a coordinated military-paramilitary strategy designed to undermine the work of trade unions through intimidation and by publicly discrediting members.

The Colombian state is not willing, or is unable, to effectively protect trade unionists. Even in cases where the Inter-American Commission of Human Rights has requested the Colombian government to take measures to protect threatened trade unionists, these measures are not

implemented. This is publicly known to have occurred in the years prior to the murder of Luciano Romero. This has been reported by, among others, Amnesty International, the International Trade Union Confederation (ITUC), and in the annual reports of the United Nations High Commissioner for Human Rights in Colombia.

In the last 30 years nearly 3,000 trade unionists have been murdered in Colombia. These numbers are currently in decline; yet in 2010 a total of 51 trade unionists were murdered, followed by 35 such deaths in 2011. As such, Colombia remains one of the most dangerous countries in the world for trade unionists.

<b>Violations of the right to life, liberty, physical integrity of trade unionists in Colombia, 2002-2012 (30 June 2012)</b>		
<b>Type of violation</b>	<b>N° Cases</b>	<b>%</b>
Trespass or breaking and entering	32	0.50%
Threats	3,785	59.66%
Assassination attempts with or without injury	133	2.10%
Disappearances	61	0.96%
Forced displacement	656	10.34%
Arbitrary detention	455	7.17%
Murder	775	12.22%
Harassment	361	5.69%
Kidnapping	57	0.90%
Torture	29	0.46%
<b>Total</b>	<b>6,344</b>	<b>100.00%</b>

Source: *Escuela Nacional Sindical*

## 4. Persecution of trade unionists: selected cases

### Our selection criteria

Of the almost 3,000 assassinations of trade unionists committed in the past three decades, we present in our communication five exemplary cases based on the following criteria:

With regard to the time frame, Colombia accepted the jurisdiction of the ICC over crimes against humanity from 1 November 2002. Therefore, only cases occurring after this date are included in our communication. 775 murders of trade unionists fall under this time period. Due to complementarity considerations, in order to award Colombia's national judicial system adequate time to deal with the cases on its own, no cases after 2009 were considered. While ratifying the Rome Statute of the ICC, Colombia, however, suspended the ICC's jurisdiction over war crimes for seven years (under Article 124). War crimes hence only fall under the jurisdiction of the Court when committed only after 1 November 2009.

Perpetrators, in the majority of cases (77%), enjoy absolute impunity with neither the wider group of perpetrators nor any principal authors of the crime being identified. Yet, of the remaining cases in which the (alleged) perpetrators could be identified, it is clear that the actors principally responsible for crimes committed against trade unionists are the paramilitaries (13% of the cases solved) and state security forces (3% of the cases solved), as well as the guerillas (5% of the cases solved). As the investigation rate of guerilla groups is comparatively high and higher ranking guerilla commanders are being investigated, the focus of this communication is on the other two groups. Moreover, paramilitaries and state security forces have frequently collaborated in order to implement common policies and

reach joint goals. Hence, two cases have been chosen in which the crimes were committed by paramilitaries (Luciano ROMERO and Maria LUCERO HENAO), while in the remaining three cases the acts were attributed to the military (Arauca and Alejandro URIBE) or police forces (Guillermo RIVERA). The involvement of an increasing number of political and governmental actors with paramilitary crimes came to light through the "parapolitica" and DAS-scandals. These are reflected in two cases, one where members of the Colombian Secret Service Departamento Administrativo de Seguridad (DAS) are implicated (Luciano ROMERO), and the other where the name of the future victim was passed on to the paramilitaries by a local politician (Maria LUCERO HENAO). Finally, the sometimes close collaboration between military and paramilitary groups in the course of Colombia's armed conflict is being increasingly ascertained, and is also evidenced in one of the cases (Maria LUCERO HENAO).

### The five selected cases

(1) The first case concerns Maria LUCERO HENAO who was a trade unionist and a social activist in the region of Alto Ariari in the department of Meta. On 6 February 2004, paramilitaries of the "Bloque Centauros", which forms part of the paramilitary group „Autodefensas Unidas de Colombia“ (AUC), took Maria LUCERO HENAO and her 16 year old son Yamid Daniel HENAO out of their house and executed them.

(2) The three Colombian unionists – Jorge Eduardo PRIETO CHAMUCERO, Héctor Alirio MARTÍNEZ and Leonel GOYENECHÉ GOYENECHÉ – were killed by members of the Colombian army on 5 August 2004, in the department of

Arauca. They had not been carrying weapons, nor had they tried to resist the militaries in any way. Nevertheless, the three unionists were shot to death, and proclaimed by the army as guerrillas killed in combat. Prior to their assassination and as a result of their union, political and social activism in the department of Arauca, the three trade unionists had been the object of constant harassment. The risks associated with trade unionism and social activism in Arauca had previously been recognized by a 2002 resolution of the Inter-American Commission of Human Rights, in which Colombia was urged to take provisional measures to protect the life and the integrity of 14 unionists in Arauca, among them ALIRIO MARTÍNEZ and PRIETO CHAMUCERO. Instead of protecting the trade unionists, state officials – in particular high-ranking members of the army – before and after the assassinations falsely accused the three of being associated with the guerrillas – a pattern occurring repeatedly in crimes against trade unionists.

(3) Luciano Enrique ROMERO MOLINA was for many years an employee in the Cicolac factory of the Swiss company Nestlé in Valledupar and active in the local management of the trade union SINALTRAINAL (Sindicato Nacional de Trabajadores del Sistema Agroalimentario). On the evening of 10 September 2005, he was kidnapped by paramilitaries of the Bloque Norte of the AUC, mistreated, and stabbed 50 times. His assassination had been preceded by surveillance and repression by state

authorities, in particular the Colombian secret service DAS as well as defamations and false accusations by Nestlé-Cicolac staff members, and – subsequently – death threats by the paramilitary.

(4) Alejandro URIBE CHACÓN was a 29-year old miner living in the district of Mina Gallo, municipality of Morales, department of Bolívar. He was a trade unionist and a social activist in San Lucas, a mountain region located between the northeast of Antioquia and southern Bolívar, an area traditionally extensively mined for gold. Alejandro URIBE was involved in the defense of the rights of miners to have access to the mines and against the attempts of massive gold exploitation of several multinational companies. Alejandro URIBE was killed on 19 September 2006 by officials of the anti-aircraft battalion Nueva Granada.

(5) Guillermo RIVERA FÚQUENES was a trade unionist and a political and social activist in the city of Bogotá who disappeared on 22 April 2008, in a street in the neighborhood of “El Tunal”. At the time of the incident, several police cars were present in the street, and the police are alleged to be responsible for his disappearance. His dead body was found two days later 179 kilometers away in the city of Ibagué (department of Tolima) and buried anonymously. The identification occurred almost three months later on 15 July 2008, when prosecutors ordered the exhumation of the corpse and identified it as the body of Guillermo RIVERA.

## 5. Impunity for acts of violence against trade unionists in Colombia and the significance of the ICC – lawyers Alirio Uribe Muñoz and Luis Guillermo Pérez, CAJAR\*

*\*Alirio Uribe Muñoz and Luis Guillermo Pérez are members of the Colombian human rights organization Colectivo de Abogados José Alvear Restrepo, which for 25 years has supported victims of the gravest human rights violations in Colombia and acted on their behalf in court proceedings. In this capacity it provides legal advice to the trade union SINALTRAINAL. The Collective has taken emblematic cases of torture, extrajudicial executions and disappearances before Colombian courts, the Inter-American Court of Human Rights and the United Nations. Because of its courageous work, the Collective and its members are continually subjected to intimidation and defamation.*



### ***Why it is important that the ICC opens a case on Colombia?***

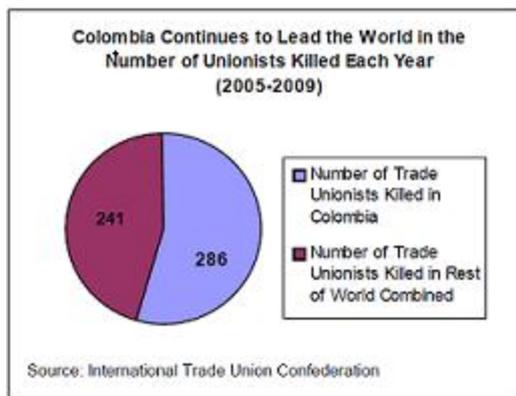
The Rome Statute entered into force on 1 November 2002 in Colombia, yet for the lawyer's collective José Alvear Restrepo, it has not had the anticipated preventive effect. Paramilitary groups are reportedly responsible for at least half of the 3,000

murders of trade unionists. Today it is said that they have demobilized and that as a consequence the number of murdered trade unionists has decreased. Yet Colombia remains at the top of the list of most dangerous countries for union members. In 2011, 35 trade unionists were murdered and thirteen have died to date in 2012. We have therefore requested that the chief prosecutor of the ICC initiate an investigation into the 775 murders of trade unionists that have occurred since the entry into force of the ICC.

The International Trade Union Confederation (ITUC) has determined that more than half of all murders of trade unionists worldwide occur in Colombia, making it the most dangerous country in the world to exercise the right to unionize. The ongoing impunity and long term effects of these crimes on the affected unions have led to a repressive environment for trade union freedom and the defense of labor rights. This is reflected today in the sinking membership numbers of trade unions: of the economically active population of Colombia, only 4% are active in trade unions, a figure which once stood at 20%. This contributes to deepening inequality as well as to social and political violence. According to the Human Development Report 2011 of the UNDP Colombia is one of countries with the highest social inequality in the world, followed only by Angola and Haiti.

The communication to the International Criminal Court sets out the context and documents five emblematic cases of extrajudicial executions of trade unionists. It shows examples of the joint actions of

state and paramilitaries as well as the direct actions of Colombian security forces, such as for example in the case of the three trade unionists in Arauca. In investigating the instigators of the crimes, the Prosecutor should seek to examine the stigmatization of trade unionists as supporters of the guerrillas as well as the impunity for perpetrators.



Due to international complaints and in light of the ongoing impunity, a special unit called the ILO Subunit was created in 2007 within the human rights department of the Office of the Attorney in response to calls from the international community for justice in cases of murders of and attacks on trade unionists.

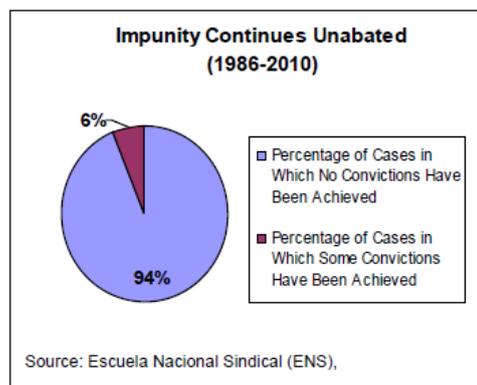
Arising from the negotiation and ratification of the Free Trade Agreement with the USA, an “Action Plan Related to Labor Rights” was signed by Presidents Obama and Santos, providing for measures to enhance the capacity of the Office of the Attorney General when it comes to investigating crimes against trade unionists in Colombia, as well as measures for the fulfillment of obligations relating to the protection of trade union leaders and activists.

There was an increase in the number of investigating prosecutors and police. Between 2010 and 2011, the number of prosecutors in the ILO Subunit rose from 10 to 25, with an increase from 100 to 243 in the number of investigators devoted

solely to crimes against trade union members, such as murder, threats, kidnapping and torture.

Since 2007 specialized judges have been assigned to the issue of violence against trade unionists. Yet the results of these institutional changes remain uncertain. A verdict is delivered in ca. 10% of the cases relating to the killing of trade union members, more than half of those convicted are still at large and 98% of the convicted are those who actually and directly committed the acts; there are no convictions of the persons who instigated and contracted the crimes. The latter also includes corporations. In the Justicia y Paz proceedings paramilitaries testified that they had been financed through national and multinational companies, a fact that has yet to be investigated.

Impunity is also a grave problem in the case of threats. Between 1986 and May 2011 there was at least 5,315 threats made against union members. These resulted,



however, in just two convictions relating to the intimidation of six victims. The vast majority of these crimes went unpunished. In this communication to the ICC we advise on potential principal offenders and instigators, none of whom have, to date, stood trial for these crimes before the Colombian courts. We are requesting an investigation into the potential principal offenders and instigators, who held or still hold leading positions within the armed forces and government.

We hope that this will contribute to the protection of trade unionists in Colombia, help bring about the end of anti-trade union violence, and remind the Colombian judiciary to meet its obligations. The work

of the ICC is complementary to efforts underway within Colombia and is absolutely essential as a deterrent, to prevent further crimes against trade unionists and other human rights defenders.

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## 6. Summary of the legal arguments in the communication to the ICC

There is a reasonable basis to believe that since 1 November 2002 crimes against humanity have been committed against trade unionists as part of the broader attack against human rights defenders in Colombia. Emblematic examples are the cases presented in this communication: the murder of the trade unionists of Arauca as well as of Maria LUCERO HENAO, Luciano ROMERO, Alejandro URIBE, and Guillermo RIVERA. These cases fulfil all the elements required by Article 7(1) of the ICC Statute, particularly as the crimes committed can be described as part of a widespread and systematic attack directed against a civilian population. The element of a State policy to commit such an attack can be inferred from national policies and counter-insurgent doctrines targeting trade unionists as “guerrilleros” and hence enemies of the State. This stigmatization and public discreditation of trade unionism is combined with the cooperation of State actors with illegal armed groups in a series of cases. The number of crimes committed against trade unionists in the past decades, including 3,000 murders (775 of these being from 2002 alone), amounts to such a level that it constitutes a widespread attack. The attack may, moreover, be described as systematic in character since it can be firmly excluded that anti-union violence in Colombia occurred randomly. Those qualifying as most responsible under the criteria of the ICC Statute – paramilitary commanders, high government officials as

well as military and police commanders in charge in the past decade –, should be investigated for their individual criminal responsibility for these crimes.

Regarding the admissibility criteria under Article 17 of the ICC Statute, we conclude that the investigative steps undertaken by the Republic of Colombia since 2002, are insufficient. Impunity for those most responsible is absolute in the cases under consideration, so that the complementarity criteria are met. Since the cases presented in this communication meet the gravity threshold and an investigation would serve the interests of justice, we suggest that there is a reasonable basis to proceed with the investigation. Therefore, we urge the Prosecutor to submit a request for authorisation of an investigation to the Pre-Trial Chamber according to Article 15 (3) of the ICC Statute.

As the ICC shows continued reluctance to start formal investigations into the situation of Colombia, crimes under its jurisdiction are still being committed there on a daily basis. In particular, trade unionists are continuously targeted. Further, the situation is by no means improving, rather it is worsening. In 2011, 35 trade unionists were murdered or forcibly disappeared.<sup>i</sup> Thirteen have been killed already this year.<sup>ii</sup> Intimidations and death threats are still the norm for trade unionists. Until today, Colombia is still one of the most

dangerous countries in the world for trade unionists.

Ongoing impunity for such crimes creates an inverse incentive for potential perpetrators who feel encouraged to continue committing these crimes, instead of being deterred by examples of accountability. The impunity rate amounts to 92% of all cases of assassinations (with only 230 judgments having been rendered from 2,972 cases<sup>iii</sup>). Prosecutions, moreover, very rarely target State actors, and hardly ever investigate the intellectual authors of those crimes. However, those most responsible must be investigated and prosecuted in order to interrupt this continuous State policy of committing such an attack. In February 2011, an ILO high-level tripartite mission to Colombia concluded that “the majority [of trade unionist killings] have not yet been investigated nor have the perpetrators, including the intellectual authors of these crimes, been brought to justice.”<sup>iv</sup>

The admissibility criteria, of which the complementarity test is a part, must not

only be fulfilled at the preliminary examination stage before an investigation is opened and the case is brought before the ICC, but have to be evaluated on an ongoing basis at every stage of the proceedings. A decision to take a step forward now and open an investigation does not preclude the option of closing the investigation at a later stage, should the complementarity test lead to a different result. There is a reasonable basis to believe that Colombia is not complying with its obligations under the complementarity principle. Therefore, complementarity considerations should no longer prevent the OTP from requesting the opening of a formal investigation.

Article 53(1) of the ICC Statute only requires that there be “a reasonable basis” in order to grant the opening of investigations into a situation. The anti-union violence that remains rife throughout Colombia more than satisfies this standard. As such, we urge the OTP to submit a request to the Pre-Trial Chamber in order to obtain authorisation to open an investigation into the situation of Colombia.

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## 7. The International Criminal Court and Colombia – What would be required

The International Criminal Court in The Hague has jurisdiction over Colombia since 1 November 2002. For all crimes against humanity committed in Colombia since this date – if committed as part of a widespread or systematic attack – the Prosecutor can independently apply to the Pre-Trial Chamber to request authorization of an investigation. A referral by a state party or through the UN Security Council is not necessary.

In order to maintain a certain degree of control over the Office of the Prosecutor, he or she must formally request authorization to investigate from the Pre-Trial Chamber. This has not yet happened in the case of Colombia, even after almost ten years of preliminary examinations and despite the very low threshold for doing so set out in the Rome Statute of the International Criminal Court. The Prosecutor must simply demonstrate that there is a “reasonable basis” to proceed with an investigation. This involves an initial evaluation to establish that the ICC has jurisdiction, a crime within the jurisdiction of the Court has been or is being committed, the case is or would be admissible, which means that the state party does not investigate the same acts and persons, and whether taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice. An initial summary of the crimes must name the time and place the crime was committed as well as any potential (groups of) suspects. A chronology of the alleged acts should be provided as well as maps and a glossary giving an overview of persons, groups, places and institutions relevant to the

overall situation. At this stage, in requesting authorization to open investigations, victims should be informed and given the opportunity to contribute to the Prosecutor’s request in the form of a written statement. To date the Prosecutor has twice submitted a request to the Pre-Trial Chamber to open an investigation. In both cases, involving Kenya and Ivory Coast, the request was granted.

The initiation of an investigation has the advantage of enabling the Prosecutor to dispatch its own investigation team in order to gather evidence, question important witnesses and request documents from other states as well as from international organizations. The investigation can freely follow all leads, restricted only by considerations of time and the classification of the crimes as genocide, war crimes or crimes against humanity, and must focus on those bearing the greatest responsibility. If sufficient evidence can be gathered, the investigation might conclude with an application for a warrant to arrest individual suspects. At every stage of the process it must be determined if the case still would be admissible, and particularly that there are no ongoing proceedings in the state in question against the same suspects in relation to the same acts. This also means that for the purposes of the Prosecutor’s request for authorization to open an investigation, no final judgment needs to be handed down regarding the admissibility; indeed any investigatory measures introduced in the country in question may be examined in further detail. Directly after assuming office in June 2003, the Prosecutor of the ICC identified Colombia, along with the Democratic Republic of the Congo and Uganda, as one

of the countries in which crimes of an international nature have been committed and which fall under the jurisdiction of the Court. Preliminary examinations were subsequently opened and the Chief Prosecutor at the time visited the country in 2007 and 2008. In the nearly ten years that have now passed since the beginning of the preliminary examinations, further crimes have been committed in Colombia, acts over which the ICC has jurisdiction. During this period the Colombian judiciary has opened numerous investigations, directed mainly against low and mid-level paramilitaries, military personnel and politicians as well as high-level members of the guerilla groups. According to the Rome Statute of the International Criminal Court, the ICC should only act in cases where criminal prosecution is not achieved by the state itself. Precisely this situation is occurring in Colombia, where for political and security reasons those military officers and politicians most responsible for crimes are left out of investigations. The OTP has to date failed to clarify whether, and if so, in what timeframe and for what reasons a decision was reached to refrain from

submitting a request to investigate. Colombia is briefly mentioned in public announcements relating to preliminary examinations, without any sufficient explanation for the inaction on the matter. There are no guidelines of any kind setting out time limits for preliminary examinations or deadlines for the publication of reports on the status of preliminary examinations. One of the consequences of this is that in Colombia, through two presidencies and various governments, these crimes continue to be committed and the overarching criminal structures remain in place. The hopes within Colombian society that the ratification of the Rome Statute would bring an end to violence have long been dashed. To date Colombians have been denied a process of coming to terms with the long history of violence in Colombia and a period of transition towards lasting peace. While low-level perpetrators are prosecuted, criminal structures in the military, in politics and in business remain intact, leading to the formation of new criminal networks and rendering it ultimately impossible for society to overcome the country's legacy of violence.

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## 8. Final remarks

Our partners in Colombia and in many other countries often put themselves at great risk to ensure that human rights violations are punished under the law, in the hope that legal sanctions handed down for past wrongdoings can act to deter future crimes. In the course of this work they often come up against the limits of their respective legal systems and, in such cases, hope for action to be taken on an international or European level. Of course, bringing cases before international courts cannot fully make up for deficiencies in local judicial systems. Indeed, in accordance with the so-called principle of complementarity, the ICC is intended only to prosecute the major perpetrators of international crimes where the state in question is unwilling or unable to do so. It remains the responsibility of each state party to prosecute the lower-level direct perpetrators of such crimes.

In order to make progress on the deadlocked Colombian situation, the International Criminal Court in The Hague must now, after nearly ten years of preliminary examinations, initiate a formal

investigation. The submitted communication is intended to contribute to the efforts of numerous human rights organizations in Colombia and around the world who are working to achieve this goal. It draws attention to a particularly alarming aspect of the human rights violations committed in Colombia: the persecution of trade unionists. That this repression is ongoing implies a special obligation on the member states of the European Union to press for compliance with fundamental individual and collective rights and to resort to trade restrictions, if necessary, in order to bring about this compliance. In this situation, bringing the Free Trade Agreement between the EU and Colombia into force would send the wrong signal. Instead, European states must support the work of the International Criminal Court, financially as well as through the gathering of evidence by their own prosecution authorities. Criminal proceedings aid the establishment of truth, justice and, in the case of the ICC, reparations for victims, all of which are important components for the achievement of lasting peace.

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## Footnotes

- <sup>i</sup> *ITUC*, “Annual Survey of violations of trade unions rights”, 2012, available under <http://survey.ituc-csi.org/Colombia.html?edition=336&lang=en#tabs-5> (last accessed on 5 October 2012). The ITUC further reports 10 attempted killings, 342 threats and 16 imprisonments.
- <sup>ii</sup> *El Nuevo Siglo*, “En 2012 13 sindicalistas han sido asesinados”, 17 August 2012, available under <http://www.elnuevosiglo.com.co/articulos/8-2012-en-2012-13-sindicalistas-han-sido-asesinados.html> (last accessed on 5 October 2012), according statistics by the CUT. The CUT furthermore had registered 146 cases of threats.
- <sup>iii</sup> *Fiscal General Viviane Morales et al.*, Informe: „Judicialización de los crímenes contra sindicalistas. Análisis de las sentencias proferidas de 2000 a 2011 por la justicia colombiana“, 2011, p. 9, available under [www.verdadabierta.com/archivos-para-descargar/category/58-sindicalistas?download=1023%3Ainforme-de-la-fiscalia-sobre-crmenes-contra-sindicalistas](http://www.verdadabierta.com/archivos-para-descargar/category/58-sindicalistas?download=1023%3Ainforme-de-la-fiscalia-sobre-crmenes-contra-sindicalistas) (last accessed on 5 October 2012).
- <sup>iv</sup> *International Labour Organization*, “Conclusions of the High-level Tripartite Mission to Colombia”, 18 February 2011, p. 7, available under [http://waysandmeans.house.gov/uploadedfiles/ilo\\_high\\_level\\_mission.pdf](http://waysandmeans.house.gov/uploadedfiles/ilo_high_level_mission.pdf); see also: *Human Rights Watch*, Letter to Attorney General Morales of 29 September 2011, p. 3, available under [http://www.hrw.org/sites/default/files/related\\_material/Letter%20from%20HRW%20to%20Attorney%20General%20Morales\\_Sept%2029%202011.pdf](http://www.hrw.org/sites/default/files/related_material/Letter%20from%20HRW%20to%20Attorney%20General%20Morales_Sept%2029%202011.pdf) (last accessed on 5 October 2012).

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## **Imprint**

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