

COLOMBIA



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DESPITE THE APPARENT GOOD NEWS, WHEN WE COMPARE THESE SLIGHT ADVANCES WITH THE ACCUMULATED NUMBER OF KILLINGS WE CAN SEE THAT IMPUNITY CONTINUES TO PREVAIL

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PROGRAMA SOMOS DEFENSORES

IN 2018 THE COLOMBIAN GOVERNMENT FACES MANY OBSTACLES TO ACHIEVING THE IMPLEMENTATION OF THE PEACE AGREEMENTS, the creation of true peace and the protection of human rights, including: breaches of the peace agreements by the Colombian state itself; refusal by the traditional political class to engage in any process of political reform; aggressive extraction of natural resources in spite of local opposition and the impact on climate change; corruption in the country's political and economic elites; and a culture of hate exacerbated by extreme right wing segments of the population, all of which are leading the country to a state of social polarisation from which it will be difficult to return.

The practical embodiment of the commitment to building lasting peace by ending violence and empowering communities means protecting activists who actually do that work. According to Programa Somos Defensores,⁶⁵ "If local communities continue to see requests for protection denied, while HRDs are threatened, attacked, and murdered with impunity, they will come to understand that active participation in the peace process implies fatal risks to their lives and their families. And when local communities are too afraid to participate in peace building, the deal has failed. Protection for human rights defenders (HRDs) is of paramount importance for the success of the peace process."⁶⁶

In 2017, the armed conflict and its endless list of victims ceased to be daily news. The signing of the peace agreements with the FARC⁶⁷ (Revolutionary Armed Forces of Colombia), and the beginning of negotiations with the ELN⁶⁸ (National Liberation Army), resulted in a substantial decrease in political killings. However, in the midst of this positive trend, another phenomenon has emerged: the incremental increase in the killing of social leaders and HRDs.⁶⁹ During 2017, Programa Somos Defensores carried out a review of various reports published on the situation of HRDs in Colombia.⁷⁰ All the reports emphasised the critical level of risk faced by HRDs in the country and also highlighted the key role played in that violence by economic actors who have an interest in gaining control over territory and see the work of community leaders and HRDs as a potential challenge to their own political and financial interests. In recent years, there has been a large number of diagnoses, initiatives, analyses and risk warnings both from civil society and the Human Rights Ombudsman's Office, (Defensoría del Pueblo) and many official statements recognising the efforts made by the national government to address the targeting of HRDs. Nonetheless, the killing of these defenders of peace, democracy and human rights continues with almost total impunity.

While the pattern of violence and killings documented in 2016 continued into 2017, the drop in the general level of violence brought about by the peace process seemed to offer cautious grounds for optimism. However, with regard to the situation of HRDs, the implementation of the peace agreements with the FARC has been a bittersweet experience. While it is very important to recognise that the silence of the guns brought with it the lowest rate of killings among the general population in the last 30 years,⁷¹ the number of killings of HRDs increased dramatically. According to figures from Programa Somos Defensores,⁷² there has been a general increase in killings of HRDs since the beginning of the peace process: 2013 – 78 cases, 2014 – 55 cases, 2015 – 63 cases, 2016 – 80 cases, and in 2017, this figure rose to 121 cases.⁷³ The situation in 2018 has not improved and is getting even worse, with 46 HRDs killed in the first three months of the year.⁷⁴ As has been repeatedly documented, attacks against social leaders and HRDs have been a historical reality in the context of socio-political violence for more than 10 years. The failure of the state to respond adequately to this crisis is of particular concern. An analysis of the data for 2017 shows that 70% of the killings of social leaders and HRDs are still at the preliminary inquiry stage; in other words, no progress has been made.⁷⁵ In 11% of these cases a prosecution is in progress, while in 10% of cases there has been a conviction. In 4% of cases an arrest warrant has been issued, and in only 5% of the cases has the sentence of the court been carried out.⁷⁶ This situation remains a major challenge not only for the office of the Prosecutor General, but also for the judiciary. If there is no joint effort to address the issue, the rate of impunity will remain the same or even increase.

ACCORDING TO FIGURES FROM PROGRAMA SOMOS DEFENSORES, THERE HAS BEEN A GENERAL INCREASE IN KILLINGS OF HRDS SINCE THE BEGINNING OF THE PEACE PROCESS

GENDER-BASED ATTACKS

With regard to gender-based attacks, of the 560 defenders attacked in 2017, 74% were men and 26% were women. This has been the pattern since 2016, though with a slight decrease recently in the number of WHRDs attacked. However these figures do not reflect the stigmatisation that WHRDs experience or the extreme nature of the violence against them. Attacks on WHRDs consistently show higher levels of violence, including sexual violence.

LEADERS MOST AFFECTED

Many of the HRDs killed are active at a purely local level and do not have a national profile.⁷⁷ Most of the HRDs killed were working in defence of the right to land or to protect the territory of indigenous peoples. At particular risk are members of ethnic minorities, peasant communities, indigenous peoples, people of African descent or members of local community action boards in rural areas. These murders are committed in places where the presence of the state is limited and people cannot fully exercise their human rights.⁷⁸ In terms of the official response, state

officials need to take into account the impact of a killing not just on the immediate family of the HRD, but also on the broader community as a whole.⁷⁹ As a result of killings, and the general climate of violence, communities are displaced, families are broken up and lose their means of earning their livelihood.⁸⁰ The departments with the highest number of killings of HRDs are Cauca, Antioquia, Valle del Cauca, Nariño, Córdoba, Bogotá, Putumayo, Norte de Santander, Risaralda, Bolívar, Chocó, Meta, Huila and Arauca.

90% of these territories have been historically affected by the armed conflict. Despite the peace process, abuses such as the targeted killing of members of Afro-Colombian communities and indigenous peoples, collective forced displacements, confinement of communities to certain areas, forced recruitment of children into paramilitary groups, sexual violence and the use of anti-personnel mines persist in these areas.⁸¹

ALLEGED PERPETRATORS

Most reports emphasise the difficulties in identifying those responsible for the killings. However, the studies and organisations consulted identify the presence of paramilitary groups, including drug dealers or people close to them, such as the *Autodefensas Campesinas de Colombia* [Colombian Peasant Self-Defence Forces], as the main source of violence against defenders.⁸² The Human Rights Ombudsman, Carlos Alfonso Negret Mosquera, recently pointed out that “one of the main causes of this phenomenon is the attempt by illegal armed groups to occupy the territory from which the FARC have withdrawn”.⁸³ At the same time, several cases of collusion between state officials and paramilitary groups have been documented in different parts of the country such as Norte de Santander or Antioquia. In the cases documented between 2009-2016, where state forces were allegedly responsible for the death of community leaders, there is a consistent pattern in the circumstances of the killings:⁸⁴ “HRDs are killed more frequently in the mornings or late at night, in rural areas, inside or in the vicinity of their homes or when travelling. And finally, the murder of these activists is carried out in most cases with the use of firearms”.⁸⁵

REASONS FOR THE KILLINGS

Most killings of HRDs are related to disputes over land and territory, the emergence of new political groupings, mining interests or the exploitation of other natural resources and drug trafficking. In most cases, the reason for these killings has been the fact that the HRD was working on issues such as denouncing or opposing illegal economic activity and criminality; claiming their own or collective rights; and supporting policies derived from the implementation of the agreements such as the programme to replace the cultivation of coca with other crops. Of the 105 killings of HRDs documented by the United Nations between January and early December 2017, 59% were allegedly perpetrated by hired killers, which highlights the need not just to bring the shooter to justice but also to bring the intellectual authors of the killings to justice as well.⁸⁶ Meanwhile, the Colombian government continues to claim that these killings are isolated incidents, denying the pattern of systematic paramilitary activity.⁸⁷ Failure by the government to acknowledge and address this situation endangers the Peace Agreement itself.

HRDS ARE KILLED MORE FREQUENTLY IN THE MORNINGS OR LATE AT NIGHT, IN RURAL AREAS, INSIDE OR IN THE VICINITY OF THEIR HOMES OR WHEN TRAVELLING. AND FINALLY, IN MOST CASES WITH THE USE OF FIREARMS

JOSÉ YIMER CARTAGENA ÚSUGA



The body of José Yimer Cartagena Úsuga was found at noon on 11 January 2017, in a paddock near the hospital in the municipality of Carepa, in Antioquia Urabá. He had been stabbed multiple times and the body showed signs of torture. José Yimer had worked, for more than seven years, as a peasant leader in the south of Córdoba state, where, in the 1990s, the FARC and the AUC had carried out massacres, kidnappings and the forced displacement of communities. Since 2012, he had worked with the “Marcha Patriótica” movement and then, joined the

“Asociación Campesina para el Desarrollo del Alto Sinú” (Asodecas), of which he was vice president. Yimer worked with the farmers, encouraging them to enter programmes to promote substitution of illicit crops, but also lobbied the government to prevent the implementation of a policy of forced eradication.

BERNARDO CUERO



On 07 June, 2017, Bernardo Cuero was at home watching a football match in Malambo, when two armed men walked in and shot him dead in front of his partner and other family members. Bernardo Cuero was the “Fiscal”, (lead investigator), of the National Association of Displaced Afro-Colombians (AFRODES), and legal representative of the Association of Displaced Persons in Malambo, (ADEVIM). Bernardo took part in the 149th session of the Inter American Commission on Human Rights in 2013, during which he reported on the risks Afro-Colombian HRDs faced

from paramilitary groups. Bernardo had been himself a victim of forced displacement in 2000, when he had to leave Tumaco in the province of Nariño because of threats by paramilitary groups. Prior to his killing, he had been the frequent target of threats and assassination attempts. On 19 March 2018, Bernardo’s sons Silvio Duban and Javier Bernardo were shot dead in their business because of their campaign to get justice for their father.

STATE ACTION, INSTITUTIONAL FAILURE AND LACK OF A FULLY INTEGRATED STATE RESPONSE

According to President Santos, his government firmly believes in protecting HRDs and community leaders. He has publicly declared that “we will not allow the repetition of tragedies such as that which occurred with the Patriotic Union (UP) in the 1980s and 1990s...⁸⁸ We will not allow violent people, intolerant people, and criminals to get away with it.”⁸⁹ However, the level of violence experienced by civil society organisations and HRDs in general, as well as the specific dangers faced by members of peasant and ethnic minority communities and women’s movements, shows the extent of the state’s failure to protect human rights in Colombia.⁹⁰

Over the last nine years, the investigation of crimes against HRDs has been an isolated function within the Prosecutor General’s office and managed, or not, at the discretion of the rotating Prosecutor General. There has been a complete failure to develop a properly resourced and integrated policy by that office. The efforts to resolve outstanding cases made by the *Mesa Nacional de Garantías* (National round table on guarantees) and supported by the OHCHR (Office of the High Commissioner for Human Rights) have resulted in progress in only 13% of the investigations initiated in the last 8 years. It is time to establish a new policy within this entity that would meet all internal guidelines and regulations, allowing for comprehensive action on attacks against HRDs. A single coordinated policy, administered by the Office of the Prosecutor General would establish an integrated, comprehensive and quantifiable response to the surge in killings. However, one of the problems for the Office of the Prosecutor General is that trials are scattered around the country. Obviously the solution is not to centralise these in Bogotá. The ideal solution would be for these trials to be carried out in the corresponding region and for the regional offices of the Prosecutor General to have the technical, conceptual and material resources to deal with these investigations in an effective and impartial way.

Another challenge is to eliminate corruption and pressure by illegal armed groups and other local power players that might prevent investigations from being carried out. This will only be possible through strict monitoring of these cases from Bogotá. In tandem with this, the judiciary as a whole must focus on attacks against HRDs, since these are attacks against elements central to the building of democracy and peace. Institutions such as the Ministry of Justice, the high courts and the various judges across the country have shown a marked indifference to the issue of crimes against HRDs, and the impact of their lack of engagement is keenly felt. These institutions should initiate discussions on this issue with all the relevant government departments including those monitoring bodies that already have detailed knowledge of the issues, such as the Human Rights Ombudsman and the Office of the Attorney General, to coordinate an overarching strategy.

In 2017, the Office of the Prosecutor General made more progress than ever before in investigations into crimes against HRDs, and, for the first time in the country’s recent history, the institution demonstrated the political will to prioritise cases of killings that occurred since 2016. However, it is worth highlighting that these so called “historic advances” resulting from the implementation of its “Strategy of Investigation and Judicialisation of Killings Against Human Rights Defenders”⁹¹ showed that there had been progress in only 30% of the previous year’s cases.

ANOTHER CHALLENGE IS TO ELIMINATE CORRUPTION AND PRESSURE BY ILLEGAL ARMED GROUPS AND OTHER LOCAL POWER PLAYERS THAT MIGHT PREVENT INVESTIGATIONS FROM BEING CARRIED OUT

JUANA BAUTISTA ALMAZO URIANA (EPIAYÚ)



On Sunday, 24 September 2017, Juana Bautista Almazo Uriana left her farm in a community of the indigenous Wayuu people in Camino Verde, to do some business in the centre of the village of Uribia, about 15 minutes away. When she didn’t return at lunchtime or even by evening her family alerted the police and began a search for her, including appealing for help on various social media networks. On 26 September her body was found, in an advanced state of decomposition, close to the village of El Pájaro, by a group of men who were heading to work. Juana

Bautista was a teacher and community leader who had spoken out strongly to defend the rights of the Wayuu people.

GONZALO ANTONIO MARTÍNEZ GUISAO



Community and peasant leader Gonzalo Antonio Martínez Guisao, was traveling by minibus, with his wife in the city of Carepa, department of Antioquia, when the minibus was intercepted by heavily armed gunmen, who claimed to be members of the paramilitary AGC, (Autodefensas Gaitanistas de Colombia). Gonzalo was taken off the bus and his body was found the next day. He had been shot four times and his body showed signs of torture. Gonzalo Antonio was President of the Community Action Board of the village of Pechinde. He was also a member of the

Asociación Campesina para el Desarrollo del Alto Sinú (Asodecas). His relatives reported that they, and other families in the area, feel very threatened because of the paramilitary activity.

IMPUNITY STRIKES BACK.

The *STOP WARS, Páren la Guerra contra los Defensores* report,⁹² produced by Programa Somos Defensores, flagged the fact that the rate of impunity for killings of HRDs in Colombia in 2013 was 95%. In the 458 killings of HRDs that took place between 2009 and 2016, there is an 87% impunity rate. The limited progress achieved in recent investigations is not keeping pace with the increase in killings of HRDs in recent years. The majority of cases remain at the preliminary inquiry stage, even eight years after the killings, thus effectively ensuring that there can be no further investigation, since it is virtually impossible to collect evidence from a crime scene or to interview witnesses after such a long gap. There is still a lack of structural analysis of this violence to identify possible patterns among these crimes. It is imperative that the government initiate a thorough system of investigations to ensure that there are more than 28 convictions out of more than 450 cases of killings in eight years. Despite what seems like good news, in terms of the limited progress made in more recent cases when we compare these advances with historical data, it is clear that impunity continues to prevail in the vast majority of cases.

THE ROLE OF THE MINISTER OF THE INTERIOR

The Colombian Minister of the Interior is the key government minister in relation to human rights, with specific responsibility for fast-tracking the legal framework supporting the Peace Agreements through Congress, including the provisions for the protection of human rights and the work of HRDs. Despite this, it is clear that the Minister has failed to deliver on his obligation to take action on the issue of attacks on HRDs as set out in decree 1066 of 2015.⁹³ In 2017, the Minister of the Interior received the Ombudsman's 010-17 Risk Report which provided a detailed warning of the danger faced by more than 300 social organisations in 265 of the country's municipalities.⁹⁴ This document should have been analysed and evaluated with a view to taking the necessary urgent action. However this was done only four months after the Risk Report was received by the Ministry of the Interior, and in the meantime, dozens of community leaders and HRDs had been killed. As indicated by the Ombudsman in an official communiqué,⁹⁵ the Minister did not make correct use of this important preventative resource that might have saved the lives of many social leaders. The salient point is that it is the exclusive remit of the Minister of the Interior to decide whether or not to issue an early warning and send the appropriate instructions to the competent authorities – something that was simply not done in this case.

ANOTHER ELEMENT RESULTING FROM THE END OF CONFLICT WITH THE FARC WHICH INFLUENCES THE INCREASE IN MURDERS TO A GREAT EXTENT IS THE STATE'S ABSENCE AND THE VOID IN LOCAL DEMOCRACY IN AREAS WHICH WERE CONTROLLED BY THE FARC

PEACE PROCESS AND THE WAY FORWARD

The slow and difficult implementation of the Peace Agreement has encouraged the increase in the killings of leaders, as evidenced by the fact that many victims have been active in campaigning in favour of implementing one or more of the agreement's five central points (Rural Development; Guarantees for Political Participation; End of Violence; Drug Trafficking; Victims' Rights). Another element resulting from the end of conflict with the FARC which influences the increase in murders to a great extent is the state's absence and the void in local democracy in areas which were controlled by the FARC. These areas

have not been effectively taken over by the civil authorities and the state's presence has been limited to the presence of the state security forces. These areas are currently under dispute by groups of paramilitary ancestry; other guerrillas; drug traffickers; FARC dissidents who did not enter into the reintegration process or who entered and left the process; and organised crime groups.⁹⁶

One of the required changes identified in the Peace Agreement is that justice should become more effective, specifically in relation to the dismantling of paramilitary activity and the prevention and investigation of attacks against social leaders and HRDs. The creation in 2017 of a Special Investigations Unit (*Unidad Especial de Investigación*) within the Office of the Prosecutor General raised hopes that finally there would be an effective state mechanism to investigate the killings of HRDs.⁹⁷ Pending its establishment, it remains to be seen whether all these changes will come to pass or whether, as in the case of the state protection mechanism for HRDs,⁹⁸ its ultimate local application will remain minimal and weak.⁹⁹ In this context, the role of judges and the courts in the administration of justice is highly important in cases of crimes against HRDs. Even if new initiatives by the Prosecutor General have produced results, the fact remains that if the justice system has not been sensitised to understand the legitimacy and importance of the work of HRDs in the construction of peace and democracy, progress will be minimal and these cases will not be given the priority demanded by the larger political context.



Campaign poster from Colombia. The main text reads: "We defend the reserve area of the valley of the Cimitarra River." It highlights ongoing environmental issues in the region.

INDIVIDUAL PROTECTION VS COLLECTIVE PROTECTION

Over the last eight years the Constitutional Court has repeatedly urged the national government to implement a programme of collective protection which would, through the use of a collective risk evaluation matrix, manage the risks of forced displacement and at the same time deal with other aspects of the internal armed conflict.¹⁰⁰ Additionally, in 2017, the third section of the Council of State called on the President of the Republic to protect social leaders and their organisations given the alarming number of attacks and killings. The human rights community has been calling on the government to implement a collective protection strategy for many years, not only because it is already an existing obligation under the protection programmes currently in force, but because individual, physical and armed protection is no longer sustainable on a financial, operational or political level. As time goes on the number of killings keeps increasing; now is the time to build an effective collective protection system.¹⁰¹

SPECIAL INVESTIGATION UNIT

According to the provisions of point 3.4 of the Peace Agreement, the Special Investigation Unit is to design strategies and policies related to the investigation of killings, acts or behaviour targeting HRDs, social movements, political movements, the implementation of agreements and the building of peace; the identification of criminal structures and their support networks coming under their competence and the analysis of political and social contexts that allow for the establishment of common patterns of aggression.¹⁰² This unit must be completely open to ongoing dialogue with organisations that also document violence against HRDs in order to encourage joint work in the interest of removing impunity from a certain percentage of the more than 3,000 cases of violence documented over the last four years. This is likewise an opportunity for HRDs, in that a single and fluid channel of communications must be established so that this office is made aware of all reports of violence against HRDs. It is imperative to enable this unit to overcome impunity by providing precise and accurate information.

COMPREHENSIVE SECURITY PROGRAMME

One of the great opportunities that may play a leading role in the search for wider protection for HRDs, their organisations and communities is the newly established *Programa Integral de Seguridad y Protección para comunidades y organizaciones, líderes, lideresas, dirigentes, representantes y activistas de organizaciones sociales, populares, étnicas, de mujeres, de género y defensoras de derechos humanos en los territorios* (Comprehensive Security and Protection Programme for communities and organisations, leaders, directors, representatives and activists of social, popular, ethnic, women's, and gender equality organisations and human rights defenders in the national territory).¹⁰³ While it is too early to speak of a platform that has not yet been formalised, it is true that in terms of the implementation of the Peace Agreement this will be the framework programme that will coordinate a large part of the efforts through which the Colombian state protects HRDs, organisations and communities in a comprehensive manner.

HOWEVER, IN SPITE OF THE BROAD INSTITUTIONAL FRAMEWORK DEDICATED TO THE PROTECTION OF HRDS IN COLOMBIA, THE INSTITUTIONAL RESPONSE CONTINUES TO BE WEAK

TIME TO TAKE PREVENTIVE ACTION

Various national governments have made significant efforts to generate a regulatory framework, adapt institutions and gather resources to address the situation of risk HRDs confront. However, in spite of the broad institutional framework dedicated to the protection of HRDs in Colombia, the institutional response continues to be weak for the following reasons: lack of recognition of the legitimacy and importance of the work of HRDs, including their key role in the implementation of the peace process; lack of resources to address the structural causes that place them at risk; lack of implementation at the local level of national guidelines and plans; lack of a fully integrated and adequately resourced protection programme which would coordinate the activities of all the relevant bodies to ensure maximum protection for HRDs. In addition such a strategy should consider the different needs of various groups, taking into account issues such as age, ethnicity, gender and socio economic level.

RECOMMENDATIONS TO THE GOVERNMENT OF COLOMBIA

The government of Colombia has received many warnings about and is fully aware of the dangers faced by HRDs across the country. It is time to start developing and implementing real prevention plans that have clear political leadership at both the national and local levels. It is an injustice that more defenders are killed when there are ways to prevent them from being killed. The government of Colombia should:

- ❖ Develop an overarching policy within the Public Prosecutor's Office that brings together all the internal guidelines and regulations to ensure that there is a properly integrated programme of action to protect HRDs;
- ❖ Carry out an integrated situational analysis to identify and prosecute the perpetrators of attacks;
- ❖ Ensure that the Ministry of the Interior, the Office of the Attorney General, the national police, the National Protection Unit and regional and local authorities meet, in a coordinated manner, to implement the political and technical commitments, agreed with HRDs, with respect to prevention, protection and investigation;
- ❖ Ensure that the judicial branch as a whole focuses on violence against HRDs, since this violence is an attack on efforts to build democracy and peace;
- ❖ Begin discussions within these institutions as a matter of urgency, in partnership with those state bodies that have already made some progress such as the offices of the Human Rights Ombudsman and the Attorney General;
- ❖ Take effective action to combat the culture of stigmatisation and the smear campaigns against HRDs which are often the precursor to an attack;
- ❖ Design and implement, with public participation, the strategic, institutional, budgetary and operational changes to guarantee citizen security, especially in rural areas, in accordance with international standards and the Constitution.