

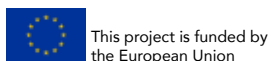
# COLOMBIA

## NO PEACE FOR HUMAN RIGHTS DEFENDERS

Fact-Finding Mission Report



May 2018



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OMCT and FIDH are both members of ProtectDefenders.eu, the European Union Human Rights Defenders Mechanism implemented by international civil society.

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## LIST OF ACRONYMS

ACHPR	African Commission on Human and Peoples' Rights
AGC	Gaitanist Self-Defence Forces of Colombia ( <i>Autodefensas Gaitanistas de Colombia</i> )
AUC	United Self-Defence Forces of Colombia ( <i>Autodefensas Unidas de Colombia</i> )
CAJAR	José Alvear Restrepo Lawyers' Collective ( <i>Colectivo de Abogados José Alvear Restrepo</i> )
CCCT	Colombian Coalition against Torture ( <i>Coalición Colombiana Contra la Tortura</i> )
CCJ	Colombian Commission of Jurists ( <i>Comisión Colombiana de Juristas</i> )
CNGS	National Commission for Security Guarantees ( <i>Comisión Nacional de Garantías de Seguridad</i> )
CSPP	Political Prisoners Solidarity Committee ( <i>Comité de Solidaridad con los Presos Políticos</i> )
ELN	National Liberation Army ( <i>Ejército de Liberación Nacional</i> )
ESMAD	Mobile Anti-Riot Squad ( <i>Escuadrón Móvil Antidisturbios</i> )
FARC-EP	Revolutionary Armed Forces of Colombia – Peoples' Army ( <i>Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo</i> )
FIDH	International Federation of Human Rights
IACHR	Inter-American Commission on Human Rights
OHCHR	Office of the United Nations High Commissioner for Human Rights
OMCT	World Organisation against Torture ( <i>Organisation Mondiale Contre la Torture</i> )
UN	United Nations
UNP	Colombian National Protection Unit ( <i>Unidad Nacional de Protección de Colombia</i> )

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## EXECUTIVE SUMMARY

### **The defence of human rights in Colombia: a high-risk activity**

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Colombia is at a key moment in its history, in which the possibility of building true and lasting peace is a reality. Within this context, the work of individuals and organisations that defend human rights is fundamental in resolving the multiple challenges facing the country. However, defending human rights continues to be a high-risk activity in Colombia.

The lowest murder rate in Colombia for 40 years contrasts with the significant increase in killings of defenders and the climate of constant threats against them. There has also been a worrying increase in killings of women human rights defenders. Depending on the source, the number of killings of human rights defenders in 2017 fluctuates between 106 and 126. All this has been occurring in the context of the negotiation, signing and implementation of the Peace Agreement.

Although the Public Prosecutor's Office has referred to multi-causality in order to explain aggressions against human rights defenders, it is possible to identify a pattern common to all cases: defenders are attacked because of their legitimate activities defending human rights and not because of lovers' quarrels or other kinds of private dispute as suggested by the Ministry of Defence.

Although killings are the most serious kind of aggression against human rights defenders, it is also important not to underestimate the impact of other kinds of attacks against them, which have considerably increased since the signing of the peace agreement with the FARC-EP.

### **Causes of vulnerability of human rights defenders**

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The perpetrators of attacks against defenders include state agents, members and dissidents of the FARC-EP and members of the ELN. However, the most frequent perpetrators are members of paramilitary structures, alleged to be responsible for 84% of all cases of aggression in 2017 where the author has been identified, as well as for 88% of aggressions registered in 2016 and, specifically, for 97% of threats and 87% of killings in that same year.

**The persistence of paramilitary structures** is therefore one of the causes of vulnerability of defenders in Colombia. It is clear that these paramilitary structures are complex and have evolved over time. However, they have also been subject to continuities over time, which makes it essential not to classify them in broader terms as "criminal groups", but rather to highlight their paramilitary nature.

It is also important to highlight the fact that during the peace process paramilitary structures have continued to exist, have reconfigured and have expanded in the country, seeking to fill the gap left by the FARC-EP, with the aim of taking control of the territory and population to continue or establish illegal activities such as drug trafficking, illegal mining and obtain ownership of the land.

The information gathered by the Observatory, including various testimonies that we received during the mission, clearly illustrates the persistence of certain levels of relationship between these structures and members of the state security forces as well as local and regional political and economic powers. The different people interviewed by the mission described

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the level of social control sought by these paramilitary structures. One example of this were the threats received by Eison Valencia Sinisterra after meeting the Observatory mission in Buenaventura, one of the main port cities of Colombia.

For all the above reasons, the fact that the Colombian authorities deny the existence of paramilitary structures is problematic because, as one defender from Antioquia reflected: "if something is not named then it does not exist, and it cannot be confronted using the necessary measures".

According to the Observatory mission's findings, significant progress has been made regarding **stigmatisation and criminalisation of human rights work**, and the public authorities now tend to show greater recognition for the legitimacy of defenders' work. The Procurator General's Directive for the protection of human rights defenders, for example, is seen as an important step in the right direction if it is applied with determination.

However, there are still signs and alarming examples of stigmatisation against defenders due to the impact of the internal enemy doctrine within Colombian institutions. The armed conflict in Colombia has meant that this doctrine has been maintained over time and has not been limited to the state security forces but has instead affected the institutional culture throughout the country. Therefore, cases of stigmatisation against the human rights movement have been and, unfortunately, continue to be frequent in Colombia.

To exemplify this, the report documents extremely serious examples of stigmatisation against human rights defenders in 2017 carried out by representatives of all levels of the state with a consequent increase in risks for defenders:

- By the executive power in statements made by the Minister of the Interior in which he referred to murders of defenders as lovers' quarrels.
- By the legislative branch in the approval by the Colombian Senate of a provision that discriminates against and stigmatises defenders, as part of the discussion on the Statutory Law for the Special Jurisdiction for Peace.
- By the judiciary in the case of criminalisation against defender Milena Quiroz in the Sur de Bolivar department, in which she was linked to the ELN because of her role organising marches.
- By the armed forces in statements against Soraya Gutiérrez from the CAJAR lawyers' collective, in which she was accused of waging a "legal war" against them.
- By the police in cases like that of Camilo Aguiar, a member of the Ríos Vivos Antioquia Movement, in which police authorities made public statements attempting to link him to the guerrilla.

In a post-conflict scenario, it is fundamental to change this political culture, as it views human rights defenders as obstacles rather than guarantees for the rule of law and a democratic system.

In the same way, history has shown on all continents that social protests have served as engines for change in the attainment of civil, political, economic, social and cultural rights and, in many cases, have served to channel social conflicts and prevent the escalation of social and political conflicts. However, despite the transition to a post-conflict scenario, in Colombia there continues to be an **environment in which social protest is stigmatised and criminalised**, and in which excessive force is used by the state security forces and, particularly, by members of the Mobile Anti-riot Squad (ESMAD) as reflected for example in the case of the Buenaventura Civic Strike in 2017.

In a Colombia without armed conflict it is foreseen, and the figures seem to confirm it already, that social protest will increase, with citizens expressing disagreement with public policies, economic projects that they consider go against their way of life and for many other reasons.

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The peace agreements represent a historic opportunity to change the attitude of the authorities towards human rights defenders and social protest. However, the state's response to this expected increase in peaceful protest has so far been limited to increasing the number of members of the police and adopting a new police code in February 2017 that includes provisions contrary to human rights standards.

### **Weak state response to aggressions against human rights defenders**

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Historically, **high levels of impunity** in Colombia related to aggressions against human rights defenders have been one of the structural causes for the repetition of these serious crimes. If there are no sanctions against aggression, the perpetrators continue to act without fear of the consequences.

Human rights organisations report impunity rates close to 90% in cases of attacks against defenders. The Public Prosecutor's Office has reported historic progress in the clarification of murder cases of defenders due to an increase in the accusation rate. The Observatory, for its part, has stressed that, although it is true to say that progress has been made, given that the starting point was almost absolute impunity, it is important to highlight the triumphalism of the Prosecutor's Office.

We must bear in mind that the accusation rate indicates the percentage of cases for which the alleged perpetrators have been identified. However, it is not an index that necessarily shows that a case is being clarified because every person is innocent until proven guilty and, logically, the judicial process could end in acquittal or even in the absence of charges against the accused person due to lack of evidence. In other words, the figures from the Prosecutor's Office actually show that the clarification rate only represents 5.5% of the 253 murder cases, far below the reported 39.13% and, furthermore, well below the general rate for murder cases in the country that stands at around 10%.

According to the Observatory's information, none of the investigations in which significant progress has been made have gone further than identifying the material authors to determine the masterminds behind these crimes and the motive for the murders. Thus, the authorities would seem to be responding to the symptoms, the commission of murders, but are not confronting the disease itself, that is to say, the structural causes for so many killings of human rights defenders. The non-prioritisation of investigations into revealing those who planned these crimes remains one of the great challenges in the fight against impunity for these attacks.

In addition, progress in investigations should not be limited to murders but also to other types of attacks such as threats. In addition to the fact that the threats are sufficiently serious by themselves, it should be noted that, in many cases, the threats can be considered to be an early warning sign of the risk for a human rights defender. Colombian institutions should therefore address these threats in a more diligent way, both in terms of providing security guarantees and ensuring investigations are initiated by the Prosecutor's Office.

For all of the above reasons, despite the fact that the Observatory recognises the improvement in the fight against impunity in cases of murders of defenders, figures continue to show levels of generalised impunity that require even more forceful actions by the Prosecutor's Office. The Observatory welcomes the adoption on December 1, 2017 of a mandatory directive under which prosecutors will have to consider as their first hypothesis that crimes against defenders are the product of their work and only if this hypothesis has been discarded, can they move on to consider other theories as motives for the incident, in line with international standards.

Another worrying element is **the state's inability to protect human rights defenders**. One of the problems identified by the Observatory mission was the inadequacy of some of the measures offered by the National Protection Unit (*Unidad Nacional de Protección* -UNP).

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Other problems were also identified, including the response time for risk situations and the fact that it may take months from the reporting of the threats to the decision to grant measures and to the actual handover of the measures. Those interviewed by the mission repeatedly stressed the need for a detailed reflection on gender-differentiated measures and collective protection for communities.

The Observatory mission also identified the risk that new mechanisms created under the Peace Agreement could contribute to the duplication of efforts, and create confusion for potential beneficiaries and confusion about the responsibilities of each institution: multiplying programs does not enable a clear pathway to be forged for the protection of human rights organisations and defenders and this confusion creates neither efficiency, nor trust, nor enables proper accountability.

Only a comprehensive policy (and determined political will to implement it) that addresses not only physical protection but also all the factors that reinforce the vulnerability of human rights defenders, can enable a move towards dynamic change which goes beyond the protection of human rights defenders and establishes guarantees for the defence of human rights.



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## I. INTRODUCTION

In the context of the peace process in Colombia, the country is reporting the lowest murder rate in 40 years. However, threats against human rights defenders continue and there has been a significant increase in murders against them. The number of killings of human rights defenders in 2016 is somewhere between 59 and 134, depending on the source<sup>1</sup>. On December 20, 2017, the Office in Colombia of the United Nations High Commissioner for Human Rights (OHCHR), had verified 105 murders of defenders who were killed that year because of the work they do. The majority of these murders were committed in areas where there is a lack of state presence<sup>2</sup>. Meanwhile, the *Programa Somos Defensores*<sup>3</sup> registered 106 murders in 2017 (26 more than in 2016, that is to say, an increase of 32%)<sup>4</sup>.

**Beyond this difference in figures, which are scandalous at both ends of the scale, it is important to highlight the fact that the different national state institutions, international bodies and Colombian civil society organisations who gather these figures coincide in reporting a significant increase in the number of killings of human rights defenders in comparison with previous years, precisely in the context of the negotiation, signing and implementation of the Peace Agreement.**

Similarly, state institutions such as the Human Rights Ombudsman's Office (*Defensoría del Pueblo*) have repeatedly alerted to this situation, in particular in a risk report in March 2017<sup>5</sup>. Carlos Alfonso Negret Mosquera, the Human Rights Ombudsman, has stated that "leaders and human rights defenders today find themselves exposed to unusual levels of risk because of the violence which terrorises the most vulnerable territories in the country, however, they are also the most committed to peace and national reconciliation (...)killings of social leaders and human rights defenders are not only attacks against life, but are also a direct violation of the right to freedom of thinking and opinion, to participate in public life and defend human rights. This is an overall attack against the right to peace for all Colombians".

These acts of aggression have historically remained in impunity and organisations which defend human rights report impunity rates of close to 90% in cases of attacks against defenders. For example, the *Programa Somos Defensores* detailed in its September 2017 report an impunity rate of 87% for the 458 crimes committed against human rights defenders between 2009 and 2016 according to its figures<sup>6</sup>. In 2017 the Public Prosecutor's Office (*Fiscalía General de la Nación*) reported progress in comparison with past statistics; however, huge challenges continue to exist, as we will explain later in this report.

International standards for the protection of human rights defenders are applicable in Colombia not only because the country has ratified international treaties, but also because its own Constitution establishes, in Article 93, that "the rights and duties enshrined in

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1 The figure of 59 is from the Office in Colombia of the United Nations High Commissioner for Human Rights. The *Programa Somos Defensores* registered 80 killings. The figure of 134 corresponds to data from the Human Rights Ombudsman's Office.

2 See: <http://www.hchr.org.co/index.php/informacion-publica/comunicados-de-prensa/ano-2017/8855-nu-derechos-humanos-expresa-preocupacion-por-homicidios-estigmatizacion-y-hostigamientos-a-defensores-y-defensoras-de-derechos-humanos-en-colombia>.

3 The *Programa Somos Defensores* is an initiative of the Asociación MINGA, the Colombian Commission of Jurists and Benposta which works towards the creation of a comprehensive mechanism to prevent aggressions and protect the life of people who are at risk due to their work as human rights defenders, when they work to safeguard the interests of social groups and communities affected by socio-political violence in Colombia.

4 *Programa Somos Defensores*, Annual Report 2017 "Piedra en el zapato", available here: <https://goo.gl/R2kG8x>.

5 Human Rights Ombudsman's Office (*Defensoría del Pueblo Colombia*), *Informe Especial De Riesgo: "Violencia y Amenazas Contra Los Líderes Sociales y Los Defensores De Derechos Humanos"*, March 30, 2017, available here: [http://desarrollos.defensoria.gov.co/desarrollo1/ABCD/bases/marc/documentos/textos/INFORME\\_ESPECIAL\\_LIDERES\\_30-03-17\\_\(1\).pdf](http://desarrollos.defensoria.gov.co/desarrollo1/ABCD/bases/marc/documentos/textos/INFORME_ESPECIAL_LIDERES_30-03-17_(1).pdf)

6 *Programa Somos Defensores*, Stop Wars – Paren la Guerra Contra los Defensores, Septiembre 2017, available here: <https://www.somosdefensores.org/index.php/en/sala-de-prensa/noticias/148-stop-wars-paren-la-guerra-contra-defensores-as>.

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this Charter will be interpreted in accordance with international treaties on human rights ratified by Colombia". Moreover, Colombia's international obligations have been reinforced by commitments acquired by the country's authorities with the international community in multilateral spaces such as the Universal Periodic Review in 2013 in which the Colombian State accepted 126 recommendations related to the protection of human rights defenders<sup>7</sup>.

**Colombia stands at a key moment in its history, in which the possibility of starting to build true and lasting peace is a reality. However, the work of individuals and organisations that defend human rights is fundamental to making progress to resolve the multiple challenges facing the country.** A society that cares for those who demand the fulfilment of human rights is a society that can move towards peace and the consolidation of the rule of law. That is why one of the most important challenges facing the Colombian State is to ensure guarantees for human rights defenders to exercise their work without risks or obstacles.

This report analyses the situation of human rights defenders in Colombia with the aim of contributing to the construction of protection strategies, by taking a close look at some of the main causes of their vulnerability. The report also proposes specific recommendations for measures that the Observatory has identified as necessary to establish guarantees for the defence of human rights in Colombia.

This report is dedicated to all the courageous human rights defenders in Colombia, who continue to work day after day in spite of their risk of suffering attacks for the work they carry out and, in particular, to all those people who have given their life to defending the human rights of all people.

## **Context of the Observatory's fact-finding mission**

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The Observatory and its member organisations in Colombia are concerned about the situation of human rights defenders in Colombia, and in particular about the high number of killings of human rights defenders in past months and the constant levels of violence against them, and so they decided to strengthen their work calling for guarantees for human rights defenders in the country, by issuing two reports. The first of these was published jointly with CAJAR in October 2017 under the title of *"Defending land and the environment in contexts of extractive industries"*<sup>8</sup>. This report draws attention to the specific role of economic actors in the vulnerability of individuals and groups who defend land and the environment. The report specifically examines the Colombian State's business strategy, which has affected the security, tranquillity and even the lives of these defenders. This phenomenon has been identified as one of the most relevant issues in the current Colombian context, as well as within the context of a foreseeable increase in foreign investment in the country in the post-conflict scenario. This is why this situation requires specific analysis.

The other report is this one, which details the findings of an Observatory fact-finding mission organised by the OMCT in July 2017. This is the fourth mission of the Observatory to Colombia since it began its activities in 1997, and aimed to analyse the situation of human rights defenders and identify the causes leading to their level of risk. Vincent Vallies, international expert on the human rights situation in Colombia and the protection of defenders, and Miguel Martín Zumalacárregui, Director of the OMCT Brussels Office, were in charge of the mission. The delegates were accompanied by Jahel Quiroga, Director of Corporación Reiniciar and member of the OMCT Executive Council, and Ana María Rodríguez, Representative before the United Nations in the Colombian Commission of Jurists (*Comisión Colombiana de*

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7 «Colombia entregó las respuestas a las 160 recomendaciones del Examen Periódico Universal», Colombian Foreign Office (*Cancillería Colombiana*), April 26, 2013.

8 The Observatory (OMCT-FIDH) and the *Colectivo de Abogados José Alvear Restrepo* (CAJAR), *Defending land and the environment in contexts of extractive industries*, available here: <http://www.omct.org/human-rights-defenders/reports-and-publications/colombia/2017/10/d24565/>.

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*Juristas - CCJ*). The mission was organised as part of the activities of ProtectDefenders.eu, the European Union mechanism for human rights defenders implemented by international civil society.

The Observatory mission held meetings with authorities from different public institutions, which we would like to thank for their collaboration:

- Ministry of the Interior.
- Public Prosecutor's Office.
- Human Rights Ombudsman's Office.
- Procurator General's Office.

The mission also met with:

- OHCHR.
- Embassies of the European Union, United Kingdom and Northern Ireland, the Federal Republic of Germany, the Kingdom of Sweden, Romania and the Swiss Confederation.

In addition, the mission heard testimonies from human rights defenders and representatives from civil society organisations in a number of different meetings:

- In Bogotá<sup>9</sup> the mission met with human rights coordination groups, women's organisations, LGBTI+ organisations, ethnic organisations and a number of research centres. The mission also met with representatives of civil society organised in the National Commission for Security Guarantees and with Congressman Alirio Uribe regarding his investigative and political work on the situation of human rights defenders in Colombia.
- In Cúcuta with the invaluable support of the *Fundación Progresar*, the mission met with representatives of human rights organisations and coordination groups who work in the department of Norte de Santander.
- In Medellín the mission met with the *Escuela Nacional Sindical* – ENS (National Trade Union School) and with representatives of human rights organisations and coordination groups who work in the department of Antioquia, with the invaluable support of the Antioquia Chapter of the *Coordinación Colombia-Europa-Estados Unidos* (CCEEU).
- In Cali we met with representatives of human rights organisations and coordination groups who work in the departments of Cauca and del Valle del Cauca, thanks to the support of the *Corporación para el Desarrollo* and of the South-Eastern Chapter of the CCEEU.
- In Buenaventura (Valle del Cauca), the mission held meetings with representatives of human rights organisations, afro-descendant communities and indigenous peoples, and with members of the *Comisión veeduría de derechos humanos paro cívico para vivir con dignidad y en paz en el territorio* (Human Rights Monitoring Committee of the Civic Strike for Life with Dignity and Peace in the Territories) thanks to the support of the Pastoral Social de Buenaventura, *Comisión Intereclesial de Justicia y Paz* and Nomadesc.

The OMCT and the FIDH would like to extend their thanks to the representatives from different institutions, members of the diplomatic corps and human rights defenders, representatives from civil society and victims; for their availability to receive the mission,

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<sup>9</sup> The mission met with the following organisations and coordination groups: Alianza de Organizaciones Sociales y Afines por una Cooperación Internacional para la Paz y la Democracia en Colombia, Asamblea Permanente de la Sociedad Civil Por La Paz, Asociación Nacional de Afrocolombianos Desplazados (Afrodes), Centro de Investigación y Educación Popular (CINEP), Colectivo de Abogados José Alvear Restrepo (CAJAR), Colombia Diversa, Comisión Colombiana de Juristas (CCJ), Comisión Intereclesial de Justicia y Paz, Comité de Solidaridad con los Presos Políticos (CSPP), Conferencia Nacional de Organizaciones Afrocolombianas (CNOA), Congreso de los Pueblos, Coordinación Colombia-Europa-Estados Unidos (CCEEU), Corporación Reiniciar, Cumbre Agraria, Cumbre Mujeres y Paz, Instituto de estudios sobre paz y desarrollo (Indepaz), Movimiento Nacional de Víctimas de Crímenes de Estado (MOVICE), Plataforma 5 Claves (Corporación Humanas, Corporación Sisma Mujer, Red Nacional de Mujeres), Plataforma Colombiana de Derechos Humanos, Democracia y Desarrollo, Proceso de Comunidades Negras (PCN), *Programa Somos Defensores* y la comunidad de Paz de San José de Apartadó.

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and for the information they shared. In particular, the mission would not have taken place without the kind support of the Corporación REINICIAR and the Colombian Commission of Jurists (CCJ).

The FIDH also carried out a mission to Colombia in May 2017, in which one of its main objectives was to document killings of human rights defenders. The mission members included FIDH President, Dimitris Christopoulos, and they also met with civil society and authorities in Bogotá, Medellín and San José de Apartadó.

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## II. CURRENT CONTEXT

The signing of the Final Peace Agreement between Colombia and the FARC-EP Guerrilla is certainly a key step forward in achieving peace in Colombia, bringing to an end a long period of more than 50 years of internal armed conflict. Indeed, according to official figures, the homicide rate in Colombia has seen a significant decrease due to the cessation of the armed conflict with the FARC-EP. On January 10, in an intervention before the UN Security Council, Vice President Luis Carlos Villegas affirmed that 2017 was the least violent year in the last 42 years both in terms of the number of homicides and the homicide rate, which stood at less than 24 per 100,000 inhabitants<sup>10</sup>.

The implementation of the Agreement also includes an agenda for sustainable peacebuilding, to contribute to solving the various sources of violence that have caused the current humanitarian crisis in the country. The Peace Agreement includes, for example:

- The fight against the problem of illegal drugs, combining legal action against organised crime with a public health approach for drug users and viable and sustainable economic alternatives for farmers.
- Comprehensive rural reform.
- State actions against crimes committed by paramilitary and other criminal organisations. Guarantees for political opposition and the participation of former guerrilla members in politics.
- Demobilisation and reintegration of the guerrilla into society.

However, many other sources of violence have become more visible since the FARC disarmed. It is important to note that the Colombian State is still engaged in an armed conflict with the guerrilla of the National Liberation Army (*Ejército de Liberación Nacional* - ELN), with whom peace negotiations began in Quito in February 2017. On September 4, 2017, the Government and the ELN signed a bilateral agreement declaring a ceasefire and the end of hostilities with an initial term of 102 days, which was the first time that the ELN has accepted a ceasefire. Unfortunately, on January 9, 2018, the ceasefire was not renewed, attacks were resumed and Colombian President Juan Manuel Santos unilaterally declared the suspension of negotiations on January 29<sup>11</sup>. This shows the need for a continuous ceasefire during peace negotiations, to bring relief to communities and their defenders in conflict zones.

The challenges for peacebuilding are enormous, varied and complex, and human rights violations continue to be committed at an extremely high rate, for reasons such as political persecution, abuse of authority and social intolerance, as shown by figures from the Data Bank on Political Violence in the Centro de Investigación y Educación Popular / Programa por la Paz (CINEP/PPP).

	Year 2016	January-June 2017
Human Rights Violations due to Political Persecution, Abuse of Authority and Social Intolerance	1 217	727
Main alleged perpetrators:		
Paramilitaries	550	390
Police	548	295

Source: Table produced with statistics from the Data Bank on Political Violence in the Centro de Investigación y Educación Popular / Programa por la Paz (CINEP/PPP)<sup>12</sup>

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<sup>10</sup> Office of the Colombian President, Press Release of January 10, 2018, available here: <http://es.presidencia.gov.co/noticia/180110-Colombia-reitera-en-Consejo-de-Seguridad-de-la-ONU-que-cumplira-el-Acuerdo-de-Paz-y-no-claudicara-en-el-combate-del-crimen-organizado>.

<sup>11</sup> "El gobierno de Colombia suspende las negociaciones de paz con el ELN después de una serie de atentados", <http://www.bbc.com/mundo/noticias-america-latina-42866073>

<sup>12</sup> The 2016 figures are taken from the *Noche y Niebla* No 54 magazine corresponding to the period July-December 2016. The 2017 figures are taken from the *Noche y Niebla* No 55 magazine corresponding to the period January - June 2017.

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One specific challenge in the current context is related to the fact that campaigns have already begun in Colombia for the upcoming 2018 presidential elections. The elections will represent a key moment, as the new Government will be responsible for implementing the peace agreement and moving forward the peace negotiations with the ELN guerrilla. Indeed, the campaigns are causing Colombian citizens to once again become polarised, between those who are the "friends" and those who are the "enemies" of the peace agreement. This was also the case during the referendum campaign, and could have a potential impact on the work of human rights defenders.

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### III. THE DEFENCE OF HUMAN RIGHTS IN COLOMBIA: A HIGH-RISK ACTIVITY

#### 1. A defender is a person who defends human rights

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There is no formal, exhaustive definition of a human rights defender. The concept of human rights defenders in the UN Declaration on human rights defenders avoids highly restrictive interpretations. **What defines a defender is their commitment to human rights, regardless of their profession, identity or level of leadership.**

The Observatory considers that the term “human rights defender” refers to any person who, individually or in association with other people, acts peacefully on behalf of certain individuals or groups to promote, defend and protect human rights and fundamental freedoms, as recognised by the Universal Declaration of Human Rights and guaranteed under different international instruments. As a result of their active commitment to the defence of human rights, defenders run the risk of being submitted to acts of repression, harassment and violations of their rights.

On December 9, 1998 the United Nations (UN) General Assembly adopted the Declaration on the right and duty of individuals, groups and institutions to promote and protect universally-recognised human rights and fundamental freedoms (the Declaration on human rights defenders). In spite of the fact that the Declaration is not in itself a legally binding instrument, it establishes a series of rights and principles based on human rights standards contained in other legally-binding international instruments, including the International Covenant on Civil and Political Rights. The Declaration also establishes a series of specific obligations for states and for each and every individual to promote and protect human rights.

**One particular element in the case of Colombia is that the terms *social leader, community leader and human rights defender* are all used indistinctively.** These terms can often be applied to the same person at the same time, as they may be both a leader, a person who represents others and a spokesperson for a certain group of people who claim a particular interest. If that claim is related to the defence of human rights, for the Observatory this person is a human rights defender; on the contrary, if the claim is not related to the defence of human rights, the case does not fall within the Observatory’s framework of action. For the purposes of this report, the term *human rights defender* will be used regardless of whether the person is a social or community leader, as long as they defend human rights.

In general terms human rights work can be classified on the basis of the tasks that each organisation or individual has chosen to carry out: either for civil and political rights (life, integrity, participation), for economic, social and cultural rights (health, work, culture) or for collective rights (environment, public services, consumers). Equally, some organisations dedicate their actions to minorities or marginalised groups (children, women, people with disabilities, ethnic groups)<sup>13</sup>.

It is for this reason that, **although the Public Prosecutor’s Office refers to multi-causality in order to explain aggressions against human rights defenders, we can identify a common pattern in all of the cases: defenders are attacked for working individually and/or for community organising to demand respect for human rights**, because this work defending human rights represents a challenge to a particular stakeholder and the interests it represents. That is why the human rights defender is inconvenient and becomes the target of attacks.

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13 “Organizaciones No Gubernamentales y Derechos Humanos, retos para construir una sociedad civil en Colombia”, Beatriz Londoño Toro, in Revista Credencial Historia edición 156, December 2002.

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Depending on the context, the level of risk may vary between sectors and categories of defenders over time. Thus, at a certain moment in time due to the specific context, the greatest risk may be for defenders working to defend a certain right and over time the risk may shift towards another category of defender. What is more, previously the defenders who faced the greatest risks were those with the greatest national visibility while at present, according to information gathered by the mission, the most vulnerable group within the current scenario of constant threats are defenders who exercise leadership at the local level, particularly those who defend rights related to land and the environment in rural areas. This situation is not static and therefore requires constant monitoring by the authorities.

According to figures from the *Programa Somos Defensores* the total number of aggressions against human rights defenders increased significantly between 2013 and 2014, coinciding with the first years of the peace process, rising from 366 (1 per day) to 626 (1.7 per day). In 2016 these figures decreased slightly, but remained higher than the figures from 2012 and 2013.

In 2017, the *Programa Somos Defensores* registered 560 cases of aggression against defenders including 106 killings, 370 threats, 50 attempted killings, 23 arbitrary arrests, 9 unfounded criminal prosecutions and 2 cases of theft of sensitive information.

## **2. Increase in killings of human rights defenders**

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In 2017 Colombia recorded the highest figures for killings of human rights defenders in the world, according to figures from Front Line Defenders<sup>14</sup>.

According to the Human Rights Ombudsman, with regards to killings of human rights defenders, "these violations of human rights are characterised by having a significant number of victims, who belong to groups with similar characteristics, and occur in the same period and geographical area"<sup>15</sup>.

In March 2017 the Human Rights Ombudsman also noted that "social and community leaders who (...) have experienced threats, harassment and aggression belong to social organisations, especially small-scale farming organisations, which carry out the following activities:

- a) Defence of ethnic territories (indigenous *resguardos* and collective territories) or civil actions for the recognition of small-scale farming territories (Small-Scale Farming Reserve Zones - ZRC or Agro-Food Small-Scale Farming Territories -TCAA);
- b) Opposition to the extractivist development model and to environmental damages caused to ecosystems as a result of the expansion of mining and agro-industry;
- c) Reporting land grabbing, privatisation, occupation or usurpation of so-called Common Property or ethnic territories;
- d) Criminalisation of grassroots protest and social mobilisation, which has resulted in the arrest and prosecution of social leaders or excessive use of force by state officials;
- e) Civil actions for the recognition of small-scale farming communities and ethnic groups who are victims of the armed conflict as Subjects of Collective Reparation (*Sujetos de Reparación Colectiva* - SCR);

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14 See Front Line Defenders annual report on human rights defenders at risk in 2017, here: <https://www.frontlinedefenders.org/en/resource-publication/annual-report-human-rights-defenders-risk-2017>

15 "Al menos 120 líderes y defensores de derechos humanos han sido asesinados en los últimos 14 meses, reportó la Defensoría del Pueblo", Human Rights Ombudsman's Office (*Defensoría del Pueblo*), March 3, 2017.



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- f) Participation and visibility of social leaders in forums for agreement and direct negotiation between social organisations and the national Government”.

This data coincides with other sources such as figures on killings of defenders registered by the *Programa Somos Defensores* which state that for the year 2016, 81% of these killings were committed against local neighbourhood committee leaders, indigenous leaders, small-scale farming leaders, community leaders, and Afro-descendant leaders. This tendency was confirmed in 2017 with more than 78% of these killings perpetrated against defenders of rights to land and territory.

**In the context of the peace process in Colombia, the country is reporting the lowest murder rate in 40 years. However, threats against human rights defenders continue and there has been a significant increase in murders against them.** The number of killings of human rights defenders in 2016 stands somewhere between 59 as reported by the Office in Colombia of the United Nations High Commissioner for Human Rights, 80 as reported by the *Programa Somos Defensores*, and 134 by the Human Rights Ombudsman’s Office.

One of the findings that surprised the Observatory mission delegates was that despite the existence of the Ombudsman’s Office, an official body with a territorial presence and a specific human rights function, the Public Prosecutor’s Office, another public institution, has chosen to use different figures, in this case OHCHR figures. It is interesting to take into account that the Ombudsman’s figures report a higher number of killings and those of OHCHR report lower figures.

For 2017 the figures regarding killing of human rights defenders are as follows:

- The Human Rights Ombudsman’s Office reported the killing of 126 defenders in 2017 and stated that the geographic analysis of the killings allow to describe it as a widespread situation. At a regional level the departments with a highest number of killings are Uraba and Antioquia with 15 each, Norte de Santander with 9 cases and, finally, Risaralda, Nariño and Valle del Cauca with 8 killing each.
- The *Programa Somos Defensores* registered 106 killings in 2017, which represents a significant increase compared to 2016 when the same organisation registered 80 killings of human rights defenders. In terms of regional distribution, it is important to highlight the 18 killings Cauca, 14 in Antioquia, 8 in Valle del Cauca, 7 in Chocó, and 6 in Córdoba, Nariño, Norte de Santander and Putumayo respectively.
- The Office in Colombia of the United Nations High Commissioner for Human Rights (OHCHR), had verified 121 killings of human rights defenders and leaders throughout the year. These defenders were killed because of their work, the majority in areas where there is a lack of state presence<sup>16</sup>.

The mission met with each of the institutions mentioned above and identified a number of reasons which explain the difference in figures:

- The concept used to define human rights defenders; in general the differences could be related to level of leadership and length of time as leaders. The Observatory considers that the level of leadership is not relevant in deciding whether a person qualifies as a human rights defender.

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<sup>16</sup> “ONU Derechos Humanos expresa preocupación por homicidios, estigmatización y hostigamientos a defensores y defensoras de derechos humanos en Colombia”, Office in Colombia of the United Nations High Commissioner for Human Rights, December 20, 2017. See: <http://www.hchr.org.co/index.php/informacion-publica/comunicados-de-prensa/año-2017/8855-onu-derechos-humanos-expresa-preocupacion-por-homicidios-estigmatizacion-y-hostigamientos-a-defensores-y-defensoras-de-derechos-humanos-en-colombia>.

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- The ability to verify in the field / presence on the ground. Each institution places particular importance on the seriousness of its figures and only counts the cases it has been able to directly verify, and each of these institutions has a different presence on the ground.

In any case, the Observatory considers that beyond the difference in figures, which are scandalous at both ends of the scale, it is important to highlight that the different national state institutions, international bodies and Colombian civil society organisations that collect these statistics coincide in reporting a significant increase in the number of murders of human rights defenders compared to previous years, precisely in the context of the negotiation, signing and implementation of the Peace Agreement and also coinciding with the lowest homicide rate in Colombia in 40 years.

**This gives a clear indication that killings of human rights defenders cannot be simplified as being caused by “lovers’ quarrels” or other private disputes as recently suggested by the Defence Ministry<sup>17</sup> but are instead a clear attack against human rights defenders requiring urgent measures from the Government.** These measures will be described throughout this Report.

**a. Murder of José Yimer Cartagena Usuga in January 2017**

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**José Yimer Cartagena**, was stopped on January 10, 2017 by the Gaitanist Self-Defence Forces (*Autodefensas Gaitanistas*) on the road leading from Carepa (Antioquia) to Saiza (Tierralta, Córdoba), forced to get down from the vehicle in which he was travelling (a country bus or *chiva*), tortured and subsequently killed. According to his relatives, José Yimer was coming from a meeting which he had been called to by the paramilitary group in the village of El Llano, because it had been alleged that he and the organisation he was leading were guerrilla members. José Yimer had been Vice-President of the Asociación Campesina del Alto Sinú (Asodecas) since January 2014, and was working with local community boards (*juntas de acción comunal*) and for the rights of small-scale farming communities. He was noted for his level of leadership and for his community work. He was also a possible candidate for the Special Peace Constituencies. The place where he was stopped is known as *la petrolera* and is situated 20 minutes from the XVII Brigade’s military base. The investigation into his murder is ongoing but there have been no results to date.

Jose Yimer lived on his father’s farm, with his partner and 6 year-old son, who were forced to leave the farm and are currently in a situation of displacement.

One of the most worrying figures is the increase in killings of women human rights defenders. As shown in the following table, which gathers data from the *Programa Somos Defensores*, 16 women defenders were killed in 2017, the highest figure since 2012 and practically doubling figures of killings of women defenders in the last few years.

Killings of women human rights defenders					
2012	2013	2014	2015	2016	2017
6	11	6	8	9	16

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<sup>17</sup> The Observatory, Press Release of December 20, 2017: Dear Mr. Defence Minister: these are not “lovers’ quarrels”; they are attacks against the right to defend human rights!: <http://www.omct.org/human-rights-defenders/urgent-interventions/colombia/2017/12/d24646/>.

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## **b. Murder of Ruth Alicia López Guisao in March 2017 and threats against Martha López Guisao**

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On March 2, 2017 **Ruth Alicia López Guisao** was killed in Medellín by three individuals known to be paramilitaries, two of whom entered her home and shot her repeatedly. Ruth was a woman human rights defender, member of the *Asociación Agroecológica Interétnica e Intercultural* (ASOKINCHAS), a member organisation of the *Coordinación Nacional Agraria* and the *Congreso de los Pueblos*, in the Medio San Juan area in the Chocó department. Ruth Alicia was the youngest of 6 children and her mother was the head of their single-parent family. At the time of her death, she was 34 years old and was a single parent to two children; a 16 year-old boy and a 3 year-old girl.

In ASOKINCHAS Ruth Alicia worked together with her sister **Martha López Guisao**, within a women's group focused on women's economic autonomy, which included activities such as rights capacity building, the law to end violence against women, autonomous economy, first aid, etc.

On the day she was killed, Ruth Alicia was visiting her brother at his home in the Olaya neighbourhood in Medellín. Ruth Alicia and her sister Martha were returning to the neighbourhood 15 years after they had been displaced from the area due to paramilitary threats, without realising that the threat against their lives was still active. The alleged perpetrators who planned the crime, Carlos Pesebre and Juan Vargas, have been arrested awaiting murder charges. Juan Vargas is a known paramilitary commander and it was men under his command who carried out the murder. Apparently an order was also given to kill Martha, who happened to have left for the department of Chocó one day earlier.

The López Guisao family has been displaced three times, the first in 1996 due to threats and violence in the Urabá area of Antioquia at the hands of paramilitaries.

The family sought refuge in the marginalised neighbourhood of Olaya in Medellín, where, together with her sisters, Ruth Alicia began an organisational process in the neighbourhood to defend the basic rights of the community and enable them to access public services. Through Education Committees ran by Martha and Healthcare Committees ran by Ruth Alicia and through advocacy work and training on rights, they were able to provide the community with these basic services, without the need for state intervention, but with the support of civil society, the church, universities and NGOs. Because of their effectiveness, these processes were replicated in other neighbourhoods. According to Martha López, this troubled the authorities and the organisational processes were stigmatised and labelled as subversive. The authorities carried out a military operation known as *Operación Mariscal*, followed by *Operación Orión*, ostensibly to remove urban guerrilla groups from these neighbourhoods, but also removing countless social leaders who were arrested, killed and disappeared. These operations were carried out with paramilitary groups who installed themselves in the Los 12 Apóstoles neighbourhood. This situation led to the further displacement of the family to Bogotá in 2002 and then to Arauca. Martha was forced to leave the country and in 2015 she returned to work with ASOKINCHAS in the department of Chocó, and once there she called her sister to come and work with her.

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## **3. Threats and other acts of aggression against human rights defenders**

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While murders of human rights defenders are the most visible forms of aggression and have the greatest impact, in the Colombian context strategies to silence defenders are extremely varied and, on occasion, highly elaborate.

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**It is important not to underestimate the impacts of other kinds of aggressions on human rights defenders, including threats**, which can take many forms in Colombia: threats against defenders; threats to their families, including their sons and daughters; threats using highly visible surveillance methods; threats by telephone, email or text message; and also direct face-to-face threats which demonstrate the perpetrators' ability to get physically close to defenders.

Given that in Colombia's history, killings of human rights defenders have been a constant issue and that the level of impunity for crimes against defenders stands at around 90%, a single threat can have a devastating impact on human rights defenders and lead them to abandon their work, to leave their region or even the country. **In addition, in many cases threats can be considered to serve as an early warning about an individual defender's risk situation and, for this reason, Colombian institutions should treat threats more seriously**, both in terms of guarantees for security, and for investigation by the Public Prosecutor's Office.

Threats are the most common kind of aggression against human rights defenders and also appear to be closely linked to the peace process in the country. This is demonstrated by the data on threats issued by the *Programa Somos Defensores*, which shows **an increase in the number of threats coinciding with the signing of the Peace Agreement with the FARC-EP**.

	2012	2013	2014	2015	2016	2017
Threats	202	209	488	538	317	370

**a. Recurring threats against Yomaira Mendoza**

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Ms. **Yomaira Mendoza** is an Afro-descendant small-scale farmer from the Curvaradó river basin, in the north of the department of Chocó and was one of the leaders in the land restitution process in this community. In 1996, as a result of *Operación Septiembre Negro*, a joint military and paramilitary operation, the communities were forcibly displaced. Yomaira, her husband and their two small children were forced to go and live in Medellín.

In January 2000, Yomaira, her husband and her brother decided to go back to their land. Her brother, Alberto Flores Calderín, went to work in Necocli and in 2002 he was tortured, disappeared for five days and killed by paramilitary groups. While in Llano Rico in 2007, Yomaira's husband, José Eustoquio Cifuentes Rojas, was murdered by unknown individuals. However, when Yomaira went to report the murder to the National Police, she noticed straight away that the same people who had killed her brother were following her. For that reason she became forcibly displaced again to Medellín.

In 2011 she returned to her lands, in search of a dignified way of life for herself and her children, as she saw the recovery of her lands as the only way forward. However, just a few days later as she was working on her land, businessman Antonio Lopera prevented her from staying there, alleging that he was the owner of the lands and telling her that if she did not "go quietly they would have to face the consequences". Yomaira decided to exercise her rights and, relying on the members of the community councils that inhabit the Humanitarian Zones of Curvaradó, she decided to stay and join their resistance process. Once part of the process, Yomaira took on an important role, carrying out actions to reclaim her rights and those of the community, and that is when she started receiving threats again.

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The situation worsened in January 2014 when Yomaira Mendoza decided to give a statement to the Public Prosecutor's Office, reporting the businessman and calling for the investigation to be reopened into her husband's murder. Throughout 2014 Yomaira received numerous telephone threats and was repeatedly followed. Between July 13 and July 26, 2014, she and her family received at least 12 threats by text message. These messages show that all her movements were being rigorously monitored, as for example in the following threat: *"we know that they have already gone to pick you up in two vans one blue and the other white that's nothing we will soon find you and settle accounts"* or *"hello maira where have you gone didn't you think that by you disappearing it's your kids that will pay"* .

These events motivated the IACHR to demand that the Colombian government implement precautionary protection measures for Yomaira. She was also the victim of threats and a murder attempt while she took refuge in Bogotá, and so she was forced to leave Colombia. While in Europe she continued to receive threats and her children were stopped and threatened in the city of Medellín.

Yomaira returned to her lands in 2015 to continue her leadership role in the resistance actions. Despite the precautionary measures and protection measures granted by the Colombian State through the National Protection Unit (*Unidad Nacional de Protección* - UNP), Yomaira has continued to be subjected to threats and acts of aggression. It should be noted that at the beginning of 2017, the UNP unilaterally decided to withdraw her protection mechanisms without taking into account that she was protected by precautionary measures from the IACHR.

On Monday February 13, 2017, while Yomaira Mendoza was working on her property, she noticed some 8 armed men dressed in camouflage gear arriving at her farm which is located in Apartadorcito, in the collective territory of Curvaradó. In terror, Yomaira fled to Llano Rico with her bodyguard. Yomaira received threatening text messages and photographs of paintings and graffiti left on her home by paramilitaries belonging to the Gaitanist Self-Defence Forces of Colombia (*Autodefensas Gaitanistas de Colombia* - AGC).

On Tuesday February 21, 2017, after taking part in a meeting with land claimants, Yomaira received various text messages in which the perpetrators clearly expressed that they knew of her whereabouts, and in which they boasted about the UNP having taken away her car. In one of the messages they mentioned the places that Yomaira passes through to get to her property and the means of transport she uses in Mutatá where she lives as a displaced person. They added in another message that they will not stop and not go anywhere, *"until we kill you"* .

Other kinds of attacks against human rights defenders may be more subtle but are no less serious; including processes that criminalise their work, unfounded prosecutions, theft and destruction of information, smear campaigns, legal obstacles to accessing funding, etc. It is equally important to mention specific forms of intimidation against women human rights defenders, such as threats of sexual violence or making specific references to their children to affect their emotional lives and destabilise the processes they take part in to demand respect for human rights.

**All these forms of aggression against human rights defenders should be investigated by the relevant Colombian State institutions. These investigations should include not only those who carried out the crimes but also those who planned them and the motives for the act of aggression, in order to comply with the state's obligation to provide guarantees of non-recurrence of these crimes.** The lack of prioritisation of investigations into those who plan attacks against defenders remains one of the great challenges in the fight against impunity in these attacks.

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Moreover, according to international standards, investigations must be undertaken into attacks against defenders on the basis that these attacks are related to their legitimate work to defend human rights. This was mentioned by the mission of the Observatory during its meetings with the authorities and that is why we consider as positive the adoption of a binding directive on December 1, 2017, obliging prosecutors to consider as a first hypothesis that crimes against defenders are the product of their activity. Only if this hypothesis has been ruled out should they move on to another theory as the motive for these incidents<sup>18</sup>. The Public Prosecutor's Office must ensure the effective compliance of this directive, to guarantee better results in cases of attacks against defenders, and to put an end to cases of stigmatisation against defenders in which it has been alleged that the main motive for these aggressions is related to matters of a private nature.

#### **b. Threats to local community leader in the city of Cúcuta – Norte de Santander<sup>19</sup>**

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According to information gathered during the mission, in one district of Cúcuta, Norte de Santander department, armed groups recognised by inhabitants as paramilitary groups are involving children in local drug dealing activities in places where drugs are sold and consumed (known as *Ollas*), and that they are also being encouraged to consume drugs. One of the strategies of this group is to involve children in drug dealing by hiding the drugs in *hayacas* (a savoury dish wrapped in banana leaves from Cúcuta).

In light of the apparent apathy of the police, a leader from one of the districts decided to try to confront the situation by reporting these crimes and by proposing different ways out for the young people through sport, thereby defending these children's rights.

Because of this, the leader has been threatened by the armed group on a number of occasions. In 2014 several armed men arrived at his house on a motorbike and threatened him and his family, telling them to stop their actions against the "*Ollas*". According to the defender's statement, he was able to identify from the way the people spoke, that they were not from the city of Cúcuta. The defender received protection measures from the Colombian State (a mobile phone and a transport allowance), but these measures were retracted in 2015. Nevertheless, the threats did not stop and in 2016 unknown assailants shot at his house. Despite this attempted killing in 2016, he still does not have protection from the Colombian State.

On various occasions the defender has reported these threats, however he considers that the authorities are not monitoring his situation at all, and on one occasion, workers from the Prosecutor's Office recommended that he forget the whole idea of sports for young people. This meant that the leader stopped reporting the threats, but he is continuing his commitment to defending children's rights.

#### **4. Aggression against women defenders**

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As shown in the table below, according to the report issued by the *Programa Somos Defensores*, in recent years, women have represented between 23 and 40% of victims of aggressions against human rights defenders. There was a significant increase in this percentage between 2014 and 2016, coinciding with key moments in the peace process with the FARC-EP such as progress in the Havana negotiations in 2014 and 2015, and the campaign for the plebiscite

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18 "Colombia adopta estándar internacional para crímenes contra defensores": <http://www.eltiempo.com/mundo/eeu-y-canada/colombia-adopta-estandar-de-la-cidh-contra-asesinato-de-defensores-de-derechos-humanos-157530>

19 Note: names and contextual details in this case have been removed for security reasons for the defender in question.

in 2016. The percentage of attacks against women defenders compared to the total number of attacks against defenders fell again in 2017 but in absolute terms, there was a significant increase in the number of murders as described previously.

Percentage of aggressions against women human rights defenders compared to the total number					
2012	2013	2014	2015	2016	2017
26%	23%	35%	40%	32%	26%

**Women human rights defenders face greater risks because they are women**, including risks of sexual violence and harassment against them or people close to them. This is due to the high level of general discrimination against women in Colombian society and the perpetration of sexual violence against them on the basis of hetero-patriarchal beliefs.

### c. Sexual violence against a person close to defender Marylén Serna

On the morning of April 7, 2017 a woman was kidnapped in the city of Popayán (capital of the Cauca department) by three armed men. This woman had close links with the family of Ms. **Marylén Serna Salinas**, who has been a national spokesperson of the Congreso de los Pueblos since it was founded in 2010 and leader of the *Coordinación Nacional Agraria* (CNA). Ms. Serna Salinas was also a spokesperson for the *Minga de Resistencia Social y Comunitaria* between the years 2008 and 2011. Since 2015, she has been playing an important role in the *Mesa Social para la Paz*, a civil society peacebuilding initiative in the country.

The woman who was kidnapped was forced to get into a vehicle and once inside, her head was covered with a black bag, she was beaten on her arms and face and injected with an unknown substance in her right arm. The woman was tortured and interrogated in the vehicle about her relationship with Ms. Marylén Serna Salinas and asked to reveal her whereabouts. When the assailants did not receive this information, the men drove to a remote area in the city where they tied the woman up and sexually assaulted her. After this they left her, still tied up, in another remote area of the city.

Finally, the men called Ms. Serna Salinas' mobile phone to corroborate her relationship with the woman they had attacked. These events have been reported to the Public Prosecutor's Office.

Moreover, according to the same information source, Ms. Marylen Serna Salinas requested protection measures as this incident implied a threat against her physical and psychological integrity, however, the request was denied.

**During the campaign for the Plebiscite on the Peace Agreement, there was a debate in Colombia about the agreement's so-called "gender ideology".** This debate was led by former Procurator General (*Procurador*) Alejandro Órdoñez who, just 72 hours after being obliged to leave his role as a public official, took the position not to support the peace process under the plebiscite. The arguments he used to attack the agreements included his assertion that "peace is being used as an excuse to impose a gender ideology" that, in his opinion, attacked the traditional concept of family and would lead children to become homosexuals.



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According to organisations that work on women's rights and the rights of LGBTI+ groups, these public positions backed by the *Centro Democrático* political party, sectors of the Colombian Church, and former Procurator General Ordoñez, led to an **environment of stigmatisation against women and women's organisations and the LGBTI+ movement** and increased risk due to the climate of intolerance experienced by these sectors.

#### **d. Threatening pamphlets against women human rights defenders in Bogotá**

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On June 22, 2017, a group of paramilitaries calling themselves the Capital D.C. Bloc of the Black Eagles (*Águilas Negras*) sent a threatening pamphlet by email to different women and men leaders in the capital, which included words clearly directed at women defenders. Its title was: "Death to the bitches" (*Muerte a las perras*).

The pamphlet begins by saying that the paramilitaries know "*where you are you bloody bitch gonorrhea traitors to the government we are going to kill you for being big mouths and for going around where you shouldn't traitors sons of bitches fighting for the rights of women what a load of shit you are, the only thing you are is our servants let's see if you can do housework you bastards*".

These threats make reference to several human rights defenders including: Ms. **Piedad Córdoba**, former member of Congress and member of the *Marcha Patriótica*, Ms. **Mónica Duarte** from *Fundación Progresar*, Ms. **Dolores Mojica** and Mr. **Antonio Madariaga**, representatives from *Viva la Ciudadanía* and, in the case of Ms. Mojica, from the Autonomous National Roundtable of Victims' organisations in the Capital (*Mesa Autónoma Nacional de Organizaciones de Víctimas del Distrito Capital*), Ms. **Gloria Duarte** from the *Colectivo de Abogados "José Alvear Restrepo"* (CAJAR) and Ms. **Rose Hernández**, a local leader who works with victims in Córdoba on issues related to land restitution.



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## IV. CAUSES OF VULNERABILITY OF HUMAN RIGHTS DEFENDERS

There are multiple factors which have long placed human rights defenders in a vulnerable situation, including structural issues such as poverty, social and political exclusion, intolerance, impunity and the internal armed conflict with its different armed actors.

There are also other factors which are related to the current or past political context such as the peace process and the demobilisation of the FARC, the regrouping of armed actors and the state's lack of capacity to dismantle them.

For example, in addition to threats linked to defenders' work, another possible reason for some murders seems to be emerging. The Peace Agreement between the Colombian government and the FARC created areas of Special Transitional Peace Constituencies (*Circunscripciones Transitorias Especiales de Paz*) in order to promote the political representation of populations in areas especially affected by the conflict and by the state abandonment. Candidates in these constituencies are required to be residents of the area and be registered by citizen organisations and movements. Political parties can not present candidates. Because of their leadership role, human rights defenders could stand as candidates with real possibilities of being elected at the local level, which would add to their existing risks and place them under the gaze of those who might be interested in these seats. For Ariel Ávila, director of the *Fundación Paz y Reconciliación*, "most of these murders have been committed in the special peace constituencies. That is to say, they are being killed to prevent them from participating in politics" and he recommends special measures for the protection of leaders in these areas. The state should not promote legislative changes that increase risks for leaders without accompanying these changes with measures to offer them security guarantees.

**In order to make Colombia a place where there are guarantees for human rights defenders, it is necessary to overcome the current structural problems that increase defenders' vulnerabilities. That is why the following chapters aim to analyse the impact of these factors on defenders, including the persistence of the paramilitary phenomenon, stigmatisation and criminalisation, impunity and the insufficient and uncoordinated state response.**

### 1. Who is attacking human rights defenders?

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According to figures from the *Programa Somos Defensores* for 2016 and 2017, those alleged to be responsible for aggressions against human rights defenders are as follows:

Alleged perpetrators of aggressions against defenders		
	2016	2017
Paramilitary structures	318	295
State security forces / state official	41	51
Guerrilla	4	4

Paramilitary structures are identified as being allegedly responsible for 52% of the total number of aggressions against human rights defenders, while in 2016 they were responsible for 66% of aggressions and, in particular, for 84% of threats and 56% of killings. **If we look exclusively at the number of aggressions with an alleged identified perpetrator (that is, not counting those where the perpetrator is unknown), paramilitary structures are alleged to be responsible for 84% of all the aggressions in 2017, as well as 88% of the aggressions registered in 2016 and, specifically, 97% of threats and 87% of the murders in that year.**

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As mentioned earlier, the demobilisation of the FARC-EP has also been accompanied by the appearance and expansion of armed groups that aim to fill “the power gap left by the end of the armed conflict in vast areas of the country”<sup>20</sup>. The main objectives of these groups are to take control of the land and the population, to continue or establish illegal activities such as drug trafficking and illegal mining, or to obtain ownership of the land.

### 1.1 Persistence of paramilitary structures:

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There is a debate in Colombia about the classification of these groups who have been the main perpetrators of attacks against defenders. Some sources, including governmental institutions, refer to them as Organised Armed Groups (*Grupos Armados Organizados - GAO*), Organised Criminal Groups (*Grupos Delictivos Organizados - GDO*) or illegal armed groups, while the OHCHR uses the terminology “post-demobilisation groups”. For their part, human rights defence organisations and other research centres tend to call them neo-paramilitaries, paramilitaries or narco-paramilitaries<sup>21</sup>.

**The Observatory has decided to use the concept of “paramilitary structures” to refer to the complexity of this phenomenon. It has evolved but it has also been subject to continuities over time, which make it essential not to classify it in broader terms as “criminal groups”, but rather to highlight the paramilitary nature of these structures** as will be discussed in this section. The information gathered by the Observatory including the different testimonies we received during the mission, clearly illustrate the persistence of a certain level of relationship between these structures and members of the state security forces and with political and economic actors at the local and regional level. The manner in which a given phenomenon is named determines the way in which that phenomenon is approached; that is to say, if the political connotations of the counterinsurgent role that the paramilitary groups have historically played is not taken into account and the complicity and relationships with state institutions are covered up, thus defining the phenomenon only in terms of its criminal aspect, the way the phenomenon will be treated and approached will be different.

**Because of this, the Colombian authorities’ denial of the existence of paramilitary structures is problematic**, as explained by a defender from Antioquia: “if something is not named then it does not exist, and it cannot be confronted using the necessary measures”.

It is clear that the paramilitary structures have changed and that they have evolved to adapt to the context but they have not disappeared. Indeed, the organisation Indepaz uses the concept of ‘the Paramilitary Complex’<sup>22</sup> defining this as a multiple alliance between organised armed groups and illegal businesses, para-politicians and businessmen in the para-economy, which includes levels of complicity with state agents, including members of the state security forces who are intertwined with the above modalities for purposes of profit, assuming orders from criminal structures, such as operations related to so-called social cleansing, the imposition of local dictatorships and control of territories. Although Indepaz considers that in recent years the institutional relationship with paramilitarism has been decreasing, they report that this has not been completely eradicated, which is why the *paramilitary complex* continues to persist.

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20 Héctor Abad Faciolince. “¿Vuelven los paramilitares”? March 11, 2017. Accessed on June 13, 2017, *El Espectador* <http://www.elespectador.com/opinion/vuelven-los-paramilitares-columna-684044>

21 <http://www.hchr.org.co/documentoseinformes/informes/altocomisionado/informes.php3?cod=20&cat=11T>

22 «El complejo paramilitar se transforma», Camilo González Posso – Indepaz, Bogotá, March 4, 2017.

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Different reports<sup>23</sup> detail the existence of these groups, with the following common characteristics: they exercise territorial control; they have a command structure; they use counterinsurgent language; they continue defending a particular development model that includes support for megaprojects and multinationals and they declare those who oppose this model to be military objectives; and, finally, they carry out threats, assassinations, disappearances and attacks against the lives of specific and clearly identifiable population groups, including human rights defenders.

These groups continue to make large-scale capital from drug trafficking, the legal and illegal extractive economies, and the extortion of individuals and national and multinational companies. **It is therefore important to highlight in the framework of the peace process the permanence, the reconfiguration and expansion of paramilitary structures in the country. These structures have sought to fill the gap left by the FARC-EP, with the objective of taking control of the land and of the population to continue or establish illegal activities such as drug trafficking, illegal mining and to obtain ownership of the land.** This phenomenon has accentuated the inability of the Colombian State to guarantee the safety of human rights defenders and the population in general in those territories.

The largest group appears to be the self-named Gaitanist Self-Defence Forces of Colombia (*Autodefensa Gaitanista de Colombia*), otherwise known to the state security forces as the *Clan del Golfo*. This group is present in the departments of Antioquia, Chocó, Casanare, Valle del Cauca, Nariño, Córdoba, Sucre, Bolívar, Magdalena, Atlántico, La Guajira, urban areas in Cesar and some areas of Magdalena Medio<sup>24</sup>. They are recognisable by their use of uniforms similar to those of the army. During our visit to the Urabá region, the people interviewed confirmed that this group has settled in places previously controlled by the FARC (see for example a video made by the *Clan del Golfo in Urabá*<sup>25</sup>), and that they have also been seen on the edges of the village of Carrizales where the FARC are located during their reincorporation phase.

It is also important to mention the post-demobilisation groups Black Eagles New Generation (*Águilas Negras Nueva Generación*) the Black Eagles (*Águilas Negras*) Los Rastrojos Central Command (*Comando Central Los Rastrojos*), *Los Rastrojos* and *Los Urabeños*.

Todd Howland, former Representative of the Office in Colombia of the United Nations High Commissioner for Human Rights (OHCHR), did not hesitate to say in June 2016 that *“it is true that post-demobilisation groups commit more murders today in Colombia than any other armed group. They kill human rights defenders and community leaders, threaten, coerce, control or expel local leaders and undermine the social fabric”*<sup>26</sup>. Back in 2014, the OHCHR had denounced the fact that post-demobilisation groups were responsible for the majority of human rights violations, particularly against human rights defenders, community leaders and land claimants. It is regrettable that despite the warnings, the Colombian authorities have not implemented the necessary measures to remedy this problem.

In the regions where we were able to hold interviews with organisations and individuals who defend human rights, there is a consensus in identifying paramilitary structures as perpetrators of all kinds of aggression from extortion to killings and threats, storming into houses, attacks against family members, etc. Equally, in all the regions the people interviewed detailed different incidents, which showed the lack of adequate reactions by state institutions.

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23 Instituto de estudios para el desarrollo y la paz – Indepaz, Instituto de Estudios Políticos y Relaciones Internacionales (IEPRI) – Universidad Nacional de Colombia, Centro de Investigación y Educación Popular/Programa por la Paz (Cinep/PPP), Colombian Commission of Jurists, *Panorama de violaciones al derecho a la vida, libertad e integridad de líderes sociales y defensores de derechos humanos en 2016 y primer semestre de 2017*.

24 Human Rights Ombudsman’s Office (*Defensoría del Pueblo*). Informe Especial de Riesgos: violencia y amenazas contra líderes sociales y defensores de derechos humanos, March 30, 2017, Bogota, Colombia.

25 <https://www.youtube.com/watch?v=JpyTzKy2oYk&feature=youtu.be> / <http://pacifista.co/tenemos-el-video-completo-del-supuesto-campamento-paramilitar-en-apartado/>

26 «El éxito de una estrategia no debe medirse en número de muertos», Revista Semana, June 17, 2016.

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The different people interviewed described to the mission the level of social control the paramilitary structures aim to achieve, for example, by imposing curfews, imposing an obligation to ask their permission before holding meetings, or opposing consultations regarding mining and other social mobilisation activities. The following case shows control by paramilitary structures in Buenaventura, one of the main port cities in Colombia.

**a. Threats against Eison Valencia Sinisterra after he met with the mission in Buenaventura**

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On July 17, 2017, the Observatory mission and other international organisations met with organisations and social movements from Buenaventura and people in a situation of displacement in the city. A number of these people were women leaders in the Humanitarian Spaces initiative, urban areas which seek to stop the violence in their territories and which are accompanied by national and international organisations. These initiatives have also been granted precautionary measures by the Inter-American Commission on Human Rights and as such they enjoy special border patrol protection from the state security forces. The meeting took place in the playroom at the Punta Icacó Humanitarian Space.

A few days after the meeting, on July 26, four armed individuals entered the Punta Icacó Humanitarian Space, and three of them forcibly entered the home of community leader **Eison Valencia Sinisterra**, who participated in the meeting mentioned above. At the time this happened, Eison was with his four year-old son. One of the armed men reportedly pointed his weapon at the leader's head and verbally threatened him, saying: "we do not want to see you going to meetings with *gringos* again, and if we see you there again we will kill you".

On July 17, the inhabitants of Punta Icacó identified the members of the so-called Gaitanist Self-Defence Forces of Colombia as members of the structure that exercises control over the Piedras Cantan sector, in the Viento Libre neighbourhood, district 4 and Alfonso López in district 3. In the meeting the community reported the control exercised by the group and the lack of reaction by the state security forces.

The territorial, social, political and economic control exercised using terror, anxiety, threats and murders must be urgently repressed as each day that passes without adequate measures allows these structures to strengthen their power, co-opt local and regional institutions and hinder the possibilities of them being dismantled in future. One example of this is an official complaint made by the *Comisión Intereclesial de Justicia y Paz* in August 2017, which detailed the control exercised by the Gaitanist Self-Defence Forces of Colombia in 16 of a total of 23 communities, almost 80% of the collective territory of Cacarica (in the Urabá region of the Chocó department, on the border with Panama). The complaint insists on "the inefficiency and omission of the Military Forces since November 2016, as they have been unable to dismantle the territorial control"<sup>27</sup> exercised by the group.

**Examples of connivance and links between paramilitary structures and members of the state security forces were common in all the regions visited by the mission.** Many testimonies affirmed that "the local authorities did not go after the paramilitary structures", that there is "fear about reporting because of the relationship between the state officials that receive the reports and the paramilitaries" and that, on numerous occasions, "there are paramilitary roadblocks just a few metres away from army and police roadblocks".

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<sup>27</sup> "AGC hostigan a defensores de DDHH", Comisión Intereclesial de Justicia y Paz, August 10, 2017

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**b. Cases demonstrating links between paramilitary structures and members of the state security forces in Antioquia.**

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*Threats and surveillance against members of the Movimiento Ríos Vivos by paramilitary structures and lack of action by the state security forces*

As part of the mobilisation organised by the *Cumbre Agraria Étnica y Popular*, on May 31, 2016, a meeting was held with the Mayor of Valdivia, Jonás Henao and, given that more than 500 people were present from the Antioquia chapter of the *Movimiento Ríos Vivos Antioquia*, this meeting was held in the village square. During the mobilisation, members of the movement marched through the village streets calling for progress on the agrarian summit's list of requests and demanding attention for the problems caused by the *Hidroituango* hydroelectric project.

At the end of the afternoon, members of *Ríos Vivos* received a communication from known members of the *Gaitanistas* paramilitary structure in the region, which stated that they had to ask their permission before organising a mobilisation, that they could not hold marches against the Medellín Public Services Company (*Empresas Públicas de Medellín - EPM*) and that if the mobilisation did not stop "they would not be held responsible for what might happen to them and that they had people in Valdivia who could take action at any moment".

During the 19 days that the mobilisation lasted (May 30 to June 17, 2017) members of the police took photographs, videos and carried out other surveillance against the protesters. On those days, armed men were also observed following the demonstrators, in some cases even close to the police, and the police did not do anything about it even when the demonstrators requested their intervention. Particularly noteworthy is the fact that on two occasions known paramilitaries from the area were observed near the demonstrators and the police did nothing.

Moreover, *Ríos Vivos* reported that the authorities had behaved irresponsibly, including high ranking police officers, by making defamatory and stigmatising statements not only against the Movement but also direct smears against leader **Isabel Cristina Zuleta** at the same time as she was receiving threats from a paramilitary group.

*Paramilitary structures passing through military checkpoints without reaction and extremely slow reaction of the state security forces during paramilitary incursions*

According to information received by the mission in an area of the Bajo Cauca sub-region (Antioquia department), the exact location of which cannot be revealed for security reasons, the paramilitary group the Gaitanist Self-Defence Forces of Colombia (*Autodefensas Gaitanistas de Colombia*) have been seen in areas where roads are closed off by military checkpoints from 6pm at night, which seems to point to the fact that the military checkpoints are allowing the paramilitaries to pass by.

In addition, human rights defenders have confirmed that after paramilitary incursions in their communities, the state security forces have been so slow to mobilise that they have allowed the paramilitaries to act and leave before the army arrives on the scene.

These events have caused fear in communities in the area and, particularly, among the human rights defenders who play a community leadership role.

Another emblematic and similar example regarding the lack of diligence on the part of the Colombian authorities to take measures against paramilitarism is the case of San José de Apartadó (Antioquia). In February 2017, the Bishop of the Diocese of Apartadó, Msgr. Hugo Alberto Torres Marín, reported an "accelerated regrouping of paramilitarism" and strongly questioned the national government, stating the following: "Is the state consenting to this

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or is it simply an oversight of the authorities responsible for complying with what has been agreed? Is there any state sympathy with these illicit ways of dominating and manipulating the ancestral owners of these territories who the state does not admit as the legitimate owners? What is left of the “pacta servanda”? We do not understand why this situation occurs, these lamentable gaps of authority. The national government must make a clear statement on these matters that cause so much damage and are a fundamental cause of the lack of trust that is increasing rapidly. At the very least, suspicion is immediately aroused”<sup>28</sup>.

### c. Territorial presence of paramilitary structures in San José de Apartadó

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The FIDH mission met with the San José de Apartadó Peace Community Council in May 2017 in the Urabá region of Antioquia. The community's representatives, inhabitants and international accompaniment organisations expressed their alarm and fears regarding the ever more frequent and close presence of paramilitary structures, and of their change in strategy since the withdrawal of the FARC from the area. They noted that the area is becoming full of paramilitaries and that even though they are present in areas close to the national army 17th Brigade, the soldiers deny their presence. They are also changing their strategy, starting campaigns to co-opt local people by using threats to force leaders of community groups to attend meetings where they are told that the paramilitaries will make the situation better: “They say they are here to stay, they are not enemies of the government”, “they are going to take care of investment, of a census”. “If there are problems between families they will fix them”. “They have even forbidden the small-scale farmers to support the Peace Community, mentioning particular names and surnames. They say that the Peace Community must be brought to an end”.

The community also stated that paramilitaries circulate with doctors, offer people money and have doubled coca production. They have co-opted former FARC-controlled territories and exercise social control, related to the coca trade. We were also told about forced recruitment activities, and about serious concerns regarding the role of the XVII Brigade of the Colombian Army, which denies the presence of paramilitary structures despite strong evidence of their presence.

Reports issued by the Peace Community<sup>29</sup> as well as by the Association of *Asociación de Campesinos de San José de Apartadó* (Acasa) state that the paramilitary structures are present all of the time, but that the Colombian authorities are not taking any effective actions against them.

Acasa and the Peace Community publicly reported to the Colombian press that, in spite of having delivered a map to the Colombian Government in March 2017 with all the places where the lookouts or *puntos* from the Gaitanist Self-Defence Forces were located, no action had been taken.

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28 <http://www.contagioradio.com/35780-articulo-35780/>

29 The Peace Communities arose in 1997 as an expression of the ability of communities themselves to find peaceful alternatives by separating themselves from the conflict, organising themselves to peacefully defend their independence in the face of threats from armed actors in the conflict: namely the guerrilla, the paramilitaries and the Army. They have also declared themselves as neutral in the armed conflict in Colombia, and they defend the right to peace and the provisions of international humanitarian law (IHL), to keep the civilian population outside of the conflict. Since its creation on March 23, 1997, the San José de Apartadó Peace Community has been the victim of hundreds of human rights violations against its members in retaliation against their posture towards the armed conflict.

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On both July 6 and July 11, graffiti appeared on the walls of inhabitants' houses signed by the AGC, which indicated: "AGC present; and here to stay". On July 11, graffiti was painted on 25 homes in the urban area of San José de Apartado, where there is a police presence and a police base less than 100 metres away.

It is surprising that, after visiting the area on July 6, police officers and the 17th Brigade announced to the media that everything was calm in the area. These statements contradict what the Ombudsman himself reported after his visit to the community after the events of July 11. "I found a community living in fear", says an official statement. For the Ombudsman's Office "there are at least 6,000 inhabitants who are at risk due to the presence of men from the illegal armed group in that region, because of restricted mobility, checkpoints and roadblocks, and antipersonnel mines". The Ombudsman adds that in the areas where there is a greater presence of the AGC, there has been an increase in cases of sexual and gender-based violence.

Moreover, according to information received by the Observatory, on the morning of December 29, 2017, five armed men, alleged to be members of the AGC, entered the Peace Community of San José de Apartadó. They went into the community shop, where Mr. **Germán Graciano Posso**, Legal Representative of the Peace Community was located, brandishing their weapons with the clear intention of shooting him. Several members of the community intervened to stop them and in the scuffle, Mr. Germán Graciano Posso and Mr. **Luis Arley Jiménez**, another community member, were injured, albeit not critically. Three of the attackers managed to escape, while two were captured by the community and handed over to the Technical Investigations Body (*Cuerpo Técnico de Investigación - CTI*) on December 30. Nevertheless, according to the Peace Community, the assailants were seen walking free in the streets of the city of Apartadó and they threatened community members.

In line with its commitments, the Colombian government launched a legislative process to prohibit paramilitarism and on September 20, 2017, a new article in the Colombian Constitution was adopted by the Congress of the Republic to ensure the legitimate monopoly of force and use of weapons by the state<sup>30</sup>. It also prohibits "*the creation, promotion, instigation, organisation, instruction, support, tolerance, concealment or promotion, financing or official and/or private employment of armed civil groups organised for illegal purposes of any kind, including the so-called self-defence groups, paramilitaries, as well as their support networks, structures and practices, security groups for illegal purposes or other equivalent denominations*".

While on paper the measures proposed in the peace agreement signed between the Colombian government and the FARC-EP seem to be going in the right direction, there are many concerns regarding the political will of the authorities. Indeed, they continue to deny the existence of the paramilitary phenomenon and the scarce implementation so far has allowed their territorial expansion to some of the territories abandoned by the FARC-EP, thus reinforcing the power of the paramilitary structures. **Until all the necessary measures are taken to ensure the dismantling of paramilitary structures, there will be no guarantees for the defence of human rights in Colombia** and, therefore, it will not be possible to build a true and lasting peace for which the work of human rights defenders is essential.

## 1.2 Guerrillas and dissident groups of the FARC-EP and the ELN:

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The *Programa Somos Defensores* registered a total of 8 aggressions allegedly committed by the guerrillas against human rights defenders in the years 2016 and 2017.

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30 <https://www.colectivodeabogados.org/?La-prohibicion-constitucional-del-paramilitarismo-es-garantia-de-no-repeticion>.

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The groups which were created when some sectors of the FARC-EP split from the organisation, not ready to be reintegrated into civilian life, and keen to continue to be involved in the lucrative business of drug-trafficking and other illegal activities<sup>31</sup>, have also committed crimes against members of the FARC who are in the process of reincorporation and probably against social leaders, however, there is no available information on this. Finally, in spite of the development of peace conversations in Quito with the ELN, which have now been suspended, this group is also extending its control to areas where it did not previously have any influence because these were traditionally under the control of the FARC, leading to risks for human rights defenders in these areas<sup>32</sup>.

### 1.3 State agents

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Although a lower percentage of attacks against human rights defenders are alleged to have been perpetrated by members of the Colombian State, the 41 cases documented in 2016 and the 51 documented in 2017 are of concern. Particularly worrisome are murders alleged to have been committed by the police Mobile Anti-riot Squad (ESMAD) against three indigenous leaders and an Afro-descendant leader, as well as reports of threats by the state security forces (6) and the Public Prosecutor's Office (1) during 2016. We are Defenders also documented 17 cases of arbitrary detention in 2016 and 23 in 2017, as well as 9 cases of misuse of criminal law against human rights defenders in 2016 and the same figure for 2017.

#### d. State persecution and subsequent murder of the defender Daniel Abril by a member of the state security forces

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**Daniel Abril** was a small-scale farming leader and environmentalist, who was opposed to oil companies and reported their negative environmental impacts in Casanare, as well as cases of corruption implicating the departmental and state authorities. In 2014 he filed several complaints, together with human rights organisations, against the Corporación Autónoma Regional de Orinoquia (Corporinoquia) for its failure to prevent serious environmental damages caused by multinationals and companies associated with extractive economies. He was recognised for his staunch position against the oil industry and the presence of these companies in Casanare.

Daniel Abril suffered constant persecution including an attempt by the police to forcibly disappear him, in which the *Comité Cívico por los Derechos Humanos del Meta* intervened to save him. He was also the victim of unfounded criminal proceedings and was subjected to irregular arrests.

On November 13, 2015, Daniel Abril was shot and killed in a public place in the municipality of Trinidad, Casanare. Two months earlier, Daniel Abril had had an incident with the XVI Brigade of the national army in Yopal.

In June 2017 Mr. Eliecer Asueta Cero and Mr. John Ever Tumai were arrested and placed in preventive detention accused of being the alleged murderers. Mr. Eliecer Asueta Cero is a professional soldier with the XVI Brigade of the national army in Yopal.

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31 Revista Semana. *Los disidentes de las Farc*. December 17, 2016. Accessed June 13, 2017 <http://www.semana.com/nacion/articulo/desercion-de-cinco-mandos-medios-de-las-farc-en-el-guaviare/509760>

32 Revista Semana. *Ilegales: el acecho a las zonas de las FARC*. January 2, 2017. <http://www.semana.com/nacion/articulo/proceso-de-paz-bandas-criminales-ocupan-zonas-de-las-farc/514019>



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## 2. Stigmatisation and criminalisation of the defence of human rights and social protest

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### 2.1 The military doctrine of the internal enemy and institutional culture – the weight of history

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Throughout the last 50 or 60 years, the state security forces have been focused on winning a war, and for this reason they developed and applied the National Security military doctrine based on the existence of an internal enemy. This model corresponds to the strategy used by the United States during the so-called war against “the communist threat”, and thousands of Colombian soldiers were trained at the School of the Americas<sup>33</sup>.

**One of the bases of the National Security Doctrine is the definition of the ‘internal enemy’ which can refer to armed groups or revolutionary groups and also to all social or political actors who oppose the established order.** Indeed, one of the characteristic features of the National Security Doctrine is that it legitimises repressive actions by the state security forces against parts of the country's population to ensure national security and, therefore, individuals and organisations that defend human rights can be considered enemies of the state because they represent an obstacle to these national security objectives.

In Colombia, this national security doctrine based on the existence of an internal enemy had specific consequences. For example, it led to the creation of paramilitary groups, or the possibility until 1987 of holding military tribunals to prosecute civilians which enabled decades of criminalisation against Colombia's social and political opposition.

**Excerpt from *Terrorismo de Estado en Colombia (State Terrorism in Colombia)*, an investigation published in 1992 by OMCT, FEDEFAM, SERPAJ, The American Association of Jurists, the Church Commission on international affairs, Pax Christi International, Belgian Justice and Peace Commissions, Broederlijk Delen, CNCND and NCOS, Editions NCOS, Brussels 1992.**

*“The guerrilla is merely a subversive appendix and has a lower importance than is generally attributed to it; the danger, in a subversive process, is what the insurgents have called political or psychological war. This type of war is aimed at taking control of human nuclei; to give people fantasies of extremist ideologies; to form organisations that are in charge of manipulating the masses ...” Colonel Orlando Zafra Galvis wrote in 1987.*

*The revolutionary forces begin with an undetectable process to infiltrate the state and the social sphere. They implant cells and expand them within key sectors: trade unions, workers' associations, teachers, universities, media, the judicial body... concluded retired general Álvaro Valencia Tovar in 1988. Any political or social actor that opposes the status quo automatically enters the category of “internal enemy”.*

*Trade unions, popular movements, indigenous organisations, opposition political parties, small-scale farming movements, intellectual sectors, religious currents, youth and student groups, neighbourhood associations... then become the targets for destruction. All of these sectors are, as General Luis Carlos Camacho Leyva, Minister of Defence in the Turbay administration (1978/1982), affirmed, “the unarmed wing of subversion”. Human Rights organisations also enter the category of “internal enemy”, and even judges trying to investigate crimes committed by the military are publicly accused of being the “legal wing of subversion”.*

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33 Colombia was the first country to send military personnel to the Latin American Ground School established in 1946 in Panama which was renamed the School of the Americas in 1963 and moved in 1984 to Fort Benning.

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**The armed conflict in Colombia meant that this type of consideration was maintained over time and was not limited to the state security forces but instead affected the institutional culture throughout the country. For this reason, there have been frequent cases of stigmatisation by Colombian institutions against the human rights movement.**

For example, former President Álvaro Uribe Vélez publicly stigmatised individuals and organisations defending human rights on several occasions, accusing them of being “human rights traffickers”. Similarly, human rights organisations were repeatedly accused in Colombia of “carrying out a legal war against the state” or of being “the guerrillas’ legal department” to cite just a few examples. These acts of stigmatisation were not restricted to statements made by the executive power, there were also numerous cases of criminalisation against human rights defenders, and one of the most emblematic of these is the case of David Ravelo Crespo.

#### **a. Case of criminalisation against David Ravelo Crespo**

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**David Ravelo Crespo**, economist and founding member of the *Corporación Regional para la Defensa de los Derechos Humanos* (Credhos) was arrested and imprisoned on September 14, 2010, accused of being the mastermind behind the murder in 1991 of David Núñez Cala, a public official from Barrancabermeja, committed by the FARC-EP. The courts of first and second instance and, subsequently, the Supreme Court, sentenced him to 220 months in prison (more than 18 years).

Throughout the process numerous irregularities were reported including the illegitimacy of the prosecutor who directed the investigation, Mr. William Gildardo Pacheco Granados, who before being a prosecutor was a lieutenant in the National Police in Armenia (Quindío department) and was investigated by the Public Prosecutor’s Office who later dismissed him from his position, due to his involvement in the forced disappearance of Guillermo Hurtado Parra, in Armenia, in events that occurred in 1991. Subsequently, in November 1993, Mr. Pacheco was sentenced to one year in prison by a Superior Military Court. According to Colombian legislation, these facts should have disqualified him from exercising any position in the Prosecutor’s Office.

Mr. Ravelo’s defence also complained that the case against him was largely based on the statements of two demobilised paramilitaries (Mario Jaimes Mejía aka “El Panadero” and Fremio Sánchez), who were convicted of serious crimes committed in the city of Barrancabermeja (including massacres on May 16, 1998 and February 28, 1999) as a result of reports made by Ravelo Crespo himself. Because of this and other work, the two paramilitaries declared David Ravelo Crespo to be a “military target”.

Meanwhile, the other defendant in the case, Orlando Noguera, reported during the preparatory hearing that Mario Jaimes Mejía aka “El Panadero” and Fremio Sánchez “attempted to bribe him to accept the charges for the murder of Núñez Cala and incriminate Ravelo in exchange for benefits under the Justice and Peace Law”. It is also important to note that the Public Prosecutor’s Office charged Mario Jaimes Mejía alias “El Panadero” for false testimony, for smearing former congressman Aristides Andrade as also having planned the murder for which David Ravelo Crespo is convicted. In the record of the imputation of charges against Jaimes Mejía, the Prosecutor’s Office cites several statements that, in its opinion, call into question the statements that the former paramilitary leader has given to the courts and affirms that “they were sufficient to prosecute him for false testimony”.

David Ravelo has been on parole since June 16, 2016 after his lawyer appealed his sentence under law 1820, established under the peace agreement with the FARC-EP, which provides for the possibility of conditional release for people linked to crimes

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related to the armed conflict. In the appeal, Mr. Ravelo Crespo and his defence did not recognise that Mr. Ravelo has or has had any relationship with the FARC, however the fact that he was sentenced to 18 years in prison after being accused of aggravated homicide based on the testimonies of demobilised paramilitaries and the fact that the ruling links him to the FARC's political leadership in Barrancabermeja has made possible his conditional release and his case will be reviewed by a Court of the Special Jurisdiction for Peace (*Justicia Especial para la Paz* - JEP).

**The largest intelligence apparatus of the Colombian State, the Administrative Security Department (*Departamento Administrativo de Seguridad - DAS*), was the protagonist of one of the largest and most recent scandals, when it was discovered that it had conducted counterintelligence and illegal espionage operations until at least 2008 against human rights defence organisations at the national and international level, as well as against magistrates of the Supreme Court of Justice, journalists and opposition politicians.**

In March 2011, Antoine Bernard, former FIDH Director General, declared that "the DAS became a true political police, no longer a state intelligence actor, but a body at the service of personal and governmental interests, an instrument used to harass, discredit and persecute any opponent of government policy, regardless of whether they were a judge in the highest courts, or a journalist, politician or human rights defender"<sup>34</sup>.

## **2.2 Current stigmatisation against individuals and organisations who defend human rights**

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As described in the previous section, public figures have widely used defamation against human rights defenders. Examples of this are the case of former Interior Minister Fernando Londoño Hoyos and Congressman José Obdulio Gaviria who were recently forced to retract statements against the *Colectivo de Abogados José Alvear Restrepo* (CAJAR)<sup>35</sup>.

**Unfortunately, stigmatisation against human rights defenders is still a reality today in the Colombian context. In 2017 alone there were highly serious examples of stigmatisation of human rights defenders from all levels of the state: from the executive branch, the legislative branch and the judiciary, as well as from the police forces and the army as we will illustrate below using some of the most serious cases.**

### **b. Stigmatisation by the executive power: declarations of the Minister of Defence**

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On December 16, 2017, Colombian Defence Minister, Mr. Luis Carlos Villegas, declared in an interview<sup>36</sup> with *Noticias Uno* that murders of social leaders "have been overwhelmingly the result of issues related to boundaries, lovers' quarrels, revenge, and arguments over illicit earnings". In addition, Mr. Villegas stated that there was no organisation behind the killings of social leaders.

The Observatory lamented these declarations by Mr. Villegas which not only trivialise an extremely serious problem in Colombia but also contravene the country's obligations related to the protection of human rights defenders and their organisations and increase their vulnerability. It is important to highlight that the Procurator General's Office called upon the Public Prosecutor's Office to initiate investigations against Mr.

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34 "Ante la CIDH denuncian impunidad en el escándalo de las 'chuzadas'", Revista Semana, March 29, 2011.

35 "Senador José Obdulio Gaviria rectifica y se retracta de sus injurias y calumnias contra el Cajar", April 21, 2017: <https://www.colectivodeabogados.org/?Senador-Jose-Obdulio-Gaviria-rectifica-y-se-retracta-de-sus-injurias-y>.

36 Available at: <https://www.youtube.com/watch?v=D7yix8oGoQQ>

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Villegas in relation to these declarations, and at the same time, there was a request to initiate a disciplinary investigation under Directive 02 of 2017 on guidelines for the protection of the rights of human rights defenders.

The Observatory stated that "the declarations of Mr. Villegas call into question the government's commitment to implementing point 3.4 of the Peace Agreement to dismantle paramilitary structures, which are alleged to be responsible for the majority of attacks against human rights defenders".

The Observatory also noted that "all the figures point to the fact that defenders are facing extremely high levels of risk related to their involvement in the peace process which is being promoted by the government to which Mr. Villegas belongs, which means that the Colombian government has the moral responsibility, aside from its legal obligations, to protect human rights defenders".

### **c. Stigmatisation by the legislative power: approval by the Colombian Senate of a norm which discriminates against and stigmatises human rights defenders**

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As part of the discussion on the Statutory Law on the Special Jurisdiction for Peace (JEP), on November 15, 2017 the Colombian Senate approved a provision according to which certain people cannot take office as judges in the JEP if they "*have led or represented actions against the state including claims related to human rights, international humanitarian law or international criminal law including people belonging to or who have belonged to organisations or bodies that have exercised such representation [and] who have prosecuted the Colombian State before International Human Rights Systems or Courts or litigated before said instances or people belonging or who have belonged to organisations or bodies that have carried out such activity*" (Articles 100 and 104).

In a statement, the Observatory expressed its extreme concern about the approval of a discriminatory and stigmatising provision towards the work of human rights defenders, particularly considering that defending human rights continues to be a high-risk activity in Colombia.

In comparison with other transitional justice mechanisms in the world, this measure is surprisingly discriminatory. In most transitional justice mechanisms, human rights defenders and lawyers specialising in international humanitarian law have held key positions.

On Monday, November 25, 2017, the House of Representatives approved the removal of this clause that stigmatised human rights defenders, however, as it had already been approved by the Senate, the conciliation phase began and the clause was kept in the final text.

### **d. Stigmatisation by the judicial power: criminalisation of defender Milena Quiroz in the Sur de Bolívar department**

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On March 22, 2017, five social leaders and human rights defenders were arrested in the Sur de Bolívar department. They are accused of being part of the ELN support network and are charged with crimes such as conspiracy to commit a crime and / or rebellion. One of the detainees is leader **Milena Quiroz**, spokeswoman for the dialogue commission for the Sur de Bolívar, centre and south of Cesar; member of the Congreso de los Pueblos; and also representative of the Agrarian Summit.

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The defence lawyer reported the use of the criminal justice system to persecute social leaders. He argued that he had found that “witnesses had been primed” during the process to “make the judiciary believe that there was proof” against the social leaders for acts of rebellion.

He also reported that statements by the prosecutor who justified the request for preventive detention, arguing that “the Public Prosecutor’s Office considers that this measure is necessary and proportional because Ms. Milena mobilises the masses which is proven because she is a community and social leader. There are testimonies that say that she organises marches with the true purpose of fulfilling the needs of the ELN illegal organisation (...) but what is the purpose of these marches that she organises as part of her daily activity? the real purpose is that for the needs of the ELN guerrilla organisation, Mr. Milena plays or acts as a political leader, and here we are not talking about whether Ms. Milena supplies weapons, or whether Ms. Milena uses extortion, but that Ms. Milena organises marches”.

The prosecutor who ordered the arrests - María Bernarda Puente López - was arrested at the end of July for conspiracy to commit a crime, for allegedly belonging to a corruption network within the Prosecutor’s Office that benefited drug traffickers and paramilitaries. Despite this, human rights defender Milena Quiroz was imprisoned until November 2017 when the Second Court of Guarantees in Cartagena revoked the order for preventative detention stating that the investigation carried out by the Prosecutor’s Office focused more on precipitating media results and not in structuring “more reasonable” charges<sup>37</sup>. However, she continues to be linked to the investigation.

#### e. Stigmatisation by the Armed Forces: declarations against Soraya Gutiérrez from CAJAR

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On July 6, 2017, a Public Hearing was held at the request of the Constitutional Court on Legislative Act 01 of 2017, via which the Comprehensive System for Truth, Justice, Reparation and Guarantees of Non-Repetition was created, and other provisions for the special treatment of members of the state security forces. During the debate, Ms. **Soraya Gutiérrez**, a member of CAJAR, intervened as spokesperson for the *Movimiento de Víctimas de Crímenes de Estado* (MOVICE), with the aim of making recommendations to strengthen the efficiency of the system.

During the same hearing, retired General Jaime Ruiz Barrera, as representative of the Colombian Association of Officers in Retirement from the Armed Forces (*Asociación Colombiana de Oficiales en Retiro de las Fuerzas Militares* - ACORE), referred disparagingly to human rights and victims’ organisations, suggesting the existence of relationships between these organisations and guerrilla groups, and accusing them of carrying out a “legal war” against the Military Forces.

Such statements stigmatise the work of human rights defenders and endanger their lives and integrity, while contradicting the spirit of the Peace Agreement.

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37 <https://www.elespectador.com/noticias/judicial/ordenan-libertad-cinco-lideres-sociales-senalados-de-pertenecer-al-eln-articulo-722043>

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f. **Stigmatisation by the police: the case of Camilo Aguiar, member of Movimiento Ríos Vivos Antioquia**

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On February 10, 2017, men carrying long-range weapons and handguns broke into the village of Altos de Chirí, in the municipality of Briceño (Antioquia). After asking **Dierman Mazo Holguín** for the whereabouts of **Nelson Holguín** and **Camilo Aguiar**, all of whom are members of the Movimiento Ríos Vivos Antioquia, they opened fire on him. 30 shots were heard as the men attempted to murder Dierman Mazo Holguín, and as he fled, trying to protect his life. He was seriously injured but he survived.

The murderers searched for him for much of the night and the people who were part of the community leadership were forced to hide in the forest, fearing that threats issued by the *Gaitanista* paramilitary structure would be carried out. In 2016, before withdrawing from the community due to local pressure, these paramilitaries had shown in a community assembly a long list of people they planned to assassinate on their return to the community.

The attack occurred in one of eleven villages in the municipality of Briceño where a pilot project is taking place for the voluntary substitution of illicit crops, adjacent to the village where a demining pilot project was carried out as part of the agreements of the Havana dialogues between the Government and the FARC guerrilla.

In light of these events, the statements made to the media by the Commander of the Antioquia Police are of concern. This Commander referred to Camilo Aguiar as "Alias Camilo", stigmatising him as a suspected guerrilla member in violation of his right to a good name and increasing his risk of being subjected to attacks. Also of concern are statements from the Antioquia governor's office, which sought to downplay the seriousness of the situation, by referring to the events as a small-scale farmers' rebellion between those defending the substitution process and those rejecting it. This version of the facts is also contrary to the Ombudsman's Office report that highlighted the serious risk for the community of Chiri and neighbouring communities in the face of threatening messages and actions carried out against them, which have led to several cases of intra-rural displacement in the villages after the attack on February 10.

According to the Ombudsman's Office, one of the vulnerability factors for human rights defenders is "the lack of recognition for their work by society and by state bodies, which leads them to be stigmatised and accused of having links with insurgent groups. This situation represents an important risk insofar as political positions and rights claims should be an engine for reconciliation and not for the reproduction of violence in the territories. In some cases, defenders' work ends in judicial proceedings". **In a post-conflict scenario, it is necessary to change the political culture that sees human rights defenders as obstacles instead of guarantees.**

**According to the findings of the Observatory mission, there has been important progress in that the authorities tend to show greater recognition for the legitimacy of human rights defenders' work.** The Procurator General's Office Directive for the protection of human rights defenders, for example, is perceived as an important step in the right direction. Among other provisions, the Directive encourages public servants to respect and guarantee the activities of human rights defenders and refrain from "engaging in conduct that delegitimises, disqualifies, harasses or incites harassment or stigmatises their work". If applied with decision, unlike previous Directives from this institution such as Directive 012 of 2010 that also referred to human rights defenders, this directive could bring important progress for those who defend human rights in Colombia.

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However, there are still signs and examples of stigmatisation against defenders, as explained in this chapter, and it is necessary that all the institutions develop mechanisms to respond to this type of situation.

## 2.3 Social protest as a legitimate tool for citizen dissent and political participation

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History has shown that social protests across the world have been engines of changes in the attainment of civil and political, economic, social and cultural rights and, in many cases, have served to channel social conflicts and prevent the escalation of social and political conflicts. Moreover, in a democracy, social protest is one of the most relevant forms of social expression.

The right to social protest can be seen as bringing together the right to freedom of expression and the right to assembly. In a 2014 resolution<sup>38</sup> the UN Human Rights Council recognised that “participation in peaceful protests can be an important form of exercising the rights to freedom of peaceful assembly, of expression, of association and of participation in the conduct of public affairs”, “make a positive contribution to the development, strengthening and effectiveness of democratic systems and to democratic processes” and “can contribute to the full enjoyment of civil, political, economic, social and cultural rights”.

For the Human Rights Council, it is important that everyone is able to “express their grievances or aspirations in a peaceful manner, including through public protests without fear of reprisals or of being intimidated, harassed, injured, sexually assaulted, beaten, arbitrarily arrested and detained, tortured, killed or subjected to enforced disappearance”. The Council insists that “peaceful protests should not be viewed as a threat”. Therefore, it encourages “states to engage in an open, inclusive and meaningful dialogue when dealing with peaceful protests and their causes” and reminds them that it is their responsibility “facilitate peaceful protests by providing protestors with access to public space and protecting them, without discrimination, where necessary, against any form of threat and harassment, and underlines the role of local authorities in this regard”.

The members of the Human Rights Council have also expressed their concern about “the number of attacks targeting human rights defenders and journalists in the context of peaceful protests” and about the “increasing criminalization, in all parts of the world, of individuals and groups organizing or taking part in peaceful protests”. The Council considers it important to remind individual states to ensure that “acts of sporadic violence committed by others in the course of a protest do not deprive peaceful individuals of their rights to freedom of peaceful assembly, of expression and of association”.

## 2.4 The right to social protest in Colombia

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**Colombia’s record of respecting the right to protest is not very positive.** In a report submitted to the UN Committee against Torture in 2014<sup>39</sup>, the Colombian Coalition Against Torture (*Coalición Colombiana Contra la Tortura* - CCCT) described “the serious violation of human rights in the context of social protests caused by the actions of the security forces, added to an environment that stigmatises and criminalises the exercise of the right to protest and the existence of norms that facilitate the commission of these violations”. As an example of this, the report mentions the number of people arrested during demonstrations: 542 in 2012, close to 3,000 in 2013 and from January to June 2014 at least 350.

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38 “The promotion and protection of human rights in the context of peaceful protests”, Human Rights Council, Resolution A/HRC/25/L.20, March 24, 2014.

39 “Tortura y tratos o penas crueles, inhumanos o degradantes en Colombia 2009-2014”, Colombian Coalition against Torture (*Coalición Colombiana Contra la Tortura*), March 2015.



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**g. Unfounded criminal proceedings against defender Milena Quiroz – Sur de Bolívar department**

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One of the most emblematic examples in recent times of criminalisation of the right to protest is the case of human rights defender Milena Quiroz in the Sur de Bolívar department. For a detailed description of this case, see “d) Stigmatisation by the judicial power: the criminalisation of defender Milena Quiroz in Sur de Bolívar” in “Section 2.2 Current stigmatisation against individuals and organisations who defend human rights”.

**The CCCT report also describes aggressions by the ESMAD against demonstrators, which have resulted in fatalities and serious injuries, which is why the ESMAD is a highly delegitimised security force for broad spectrums of Colombian civil society.**

Between 2002 and 2014, the Mobile Police Anti-Riot Squad (ESMAD) was reported to be responsible for 448 attacks, including 91 arbitrary detentions, 107 threats, 13 cases of extrajudicial executions and 2 cases of sexual violence<sup>40</sup>. In 2016, the ESMAD was identified as responsible for the deaths of several people, including Luis Orlando Saiz, who was killed when a grenade launched by the ESMAD exploded during the truckers’ strike in Duitama, Boyacá, on July 12, 2016. According to figures from the CINEP Data Bank, by 2014, 137 injuries and 13 deaths had been attributed to the ESMAD.

Meanwhile, in June 2017, the Colombian State Council issued a ruling demonstrating the ESMAD’s responsibility in the death in 2005 of Jhonny Silva Aranguren, a 21-year-old student who was studying chemistry at Universidad del Valle: “The Chamber considers that the deployment of force carried out by the ESMAD of the National Police was excessive, unjust and, therefore, unlawful, since, the manner in which it took place, produced the violent death of one student and injured another person, for which, we insist, it was not proven that they had presented any danger to the uniformed personnel, nor was it established in the process that they had confronted the uniformed personnel in such a way as to make the use of force necessary at the levels at which it occurred”<sup>41</sup>.

In meetings in July 2017 in the municipalities of Caloto and Corinto with members of indigenous Nasa communities belonging to the *Asociación de Cabildos Indígenas del Norte del Cauca* (ACIN), a CCCT delegation collected multiple testimonies and reports of murders and injuries during ESMAD operations in which Army personnel also participated<sup>42</sup>. They also reported that the ESMAD had burned their crops on multiple occasions and people with links to land owners had planted antipersonnel mines.

The indigenous people reported the systematic use of firearms and the use of “low-lethality” weapons such as tear gas canisters fired at point-blank range or *recalzadas* (used shells filled with shrapnel, pellets, glass or screws), as a way to repress their protests and actions to liberate their lands and territories.

The CCCT delegation stated that it had found “a pattern of extrajudicial executions and police brutality employed to suppress the exercise of the right to freedom of assembly and social protest, in a context of threats, intimidation and aggression against leaders and entire communities, elements that could constitute psychological torture”.

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<sup>40</sup> “ESMAD, a debate de control político en la Cámara de representantes”, *El Espectador*, August 3, 2016.

<sup>41</sup> “El despliegue de fuerza realizado por el ESMAD fue excesivo e injusto”, State Council (*Consejo de Estado*), *Diario el Espectador*, June 18, 2017.

<sup>42</sup> Colombian Coalition against Torture (*Coalición Colombiana Contra la Tortura*): “Colombia: La falta de reparación integral a las víctimas: serio obstáculo para la erradicación de la tortura en Colombia”. Available here: <http://www.omct.org/es/monitoring-protection-mechanisms/statements/colombia/2017/07/d24444/>.



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These actions against protesters are also frightening for those who have greater public visibility, including human rights defenders who, in many cases, play a leading role in these protests.

#### h. Examples of aggression against defenders during peaceful protests<sup>43</sup>

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On July 11, 2016, during a grassroots protest for the closure of the only regional hospital in Chiriguana, Cesar, leader **Naimen Agustín Lara**, leader of the *Consejo de Comunidades Negras de La Sierrita, El Cruce y La Estación*, was assassinated. The ESMAD violently attacked and killed one person, wounded several others, arrested five people and caused one person to be taken to intensive care. Months later ESMAD agent Carlos Eduardo Afanador Ibarra was captured in Aguachica as the material author of the murder of Naimen Agustín Lara but the victim's relatives were not allowed to intervene in the process, and the case was referred to the military justice system. On July 21, **Yeraldín Lara**, niece of the black community leader Naimen Agustín Lara, was sexually abused and wounded, in the same place where her uncle had been murdered. A hooded man attempted to hang her and warned her that if she appeared as a witness in the proceedings she and her family would pay for it.

On August 13, 2016, in Puerto Asís, Putumayo, several leaders of peaceful demonstrations calling for a response to the demands made at the *Mesa Regional de Organizaciones Sociales* (MEROS) involving Putumayo, Baja Bota Cauca and Cofanía Jardines de Sucumbíos, were summoned by the army to appear before a Prosecutor's Office located in the army premises of the *Batallón de Ingenieros 27*. These leaders called to an alleged Military Prosecutor's Office and criminalised due to their participation in protests were Messrs. **Edwin Fabián Ramírez**, **Pastor Julio of the Pentecostal Church**, and Ms. **Luz Dary Rodríguez**.

On December 24, 2016, in the urban area of Pelaya, Cesar several small-scale farmers were arrested after organising days of protest against the oil exploitation using the Fracking method and against the *Ruta del Sol* double highway due to its serious environmental effects. The victims were **José Ángel Lindarte**, 49, and **Reinel Payares**, 40, from the *Movimiento de Trabajadores Campesinos y Comunidades del Cesar*. They have been accused of "rebellion, terrorism and conspiracy to commit a crime" and judicial officers have announced that they have more than 40 arrests to make, of all social leaders who have taken part in protests.

According to the Foundation for Freedom of the Press (*Fundación para la Libertad de Prensa* - FLIP), between 2004 and 2016, the ESMAD committed 52 assaults against social communicators while they were carrying out their work, generally covering protests<sup>44</sup>. FLIP reported that on July 1, 2017, María Montiel, a correspondent from *Colombia Informa* in Santander was assaulted, beaten and later arrested by ESMAD agents, while she was covering protests by the La Mata community who were demanding agreements with the company *Ecopetrol*. According to information received by FLIP, María Montiel had recorded ESMAD aggressions against people who were demonstrating there.

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43 Figures from the CINEP Data bank on Human Rights and Political Violence (*Banco de Datos de Derechos Humanos y Violencia Política del CINEP*) Noche y Niebla N°54, April 2017.

44 «Tropel sangriento: ¿Qué hacer con el ESMAD?», *Revista Semana*, July 23, 2016.

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## 2.5 Peaceful protest in a post-conflict scenario

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**In a post-conflict Colombia it is foreseen, and the figures seem to confirm it already, that social protest will increase, with people expressing disagreements** about public policies, economic projects that citizens consider go against their way of life, demands for compliance with their rights and for many more reasons.

President Juan Manuel Santos himself stated in June 2016 that in Colombia there will be “more social mobilisations and protests because solving the differences within our society will not be done in the jungle at the end of a bullet, but by democratic means”<sup>45</sup>.

The peace agreements signed in Havana between the Colombian government and the FARC-EP guerrilla affirm that: “mobilisation and peaceful protest, as forms of political action, are legitimate exercises of the right to assembly, to free movement, to free expression, to freedom of conscience and opposition in a democracy. Their practice enriches political inclusion and forges a critical citizenship, willing to engage in social dialogue and the collective construction of the Nation. Furthermore, in an end-of-conflict scenario, different spaces must be guaranteed to channel citizens’ demands, including full guarantees for mobilisation, protest and peaceful coexistence. Together with mobilisation and peaceful protest, the rights of the demonstrators and other citizens must be guaranteed”.

In point 2.2.1, the national government committed to drafting a law on guarantees and the promotion of citizen participation. Unfortunately, the Colombian government has still not presented a bill on participation to the Colombian Congress that includes clear guarantees for the exercise of the right to social protest and demonstration.

The mission also positively values the decision to include in section 5.1.2 of the peace agreements relating to justice, the review of legal cases against human rights defenders: “peaceful protest, the defence of human rights, and the leadership of civil society groups, may not in themselves be typified as crimes, nor punished, and if they have been sanctioned, mechanisms for special treatment will be granted that could even lead to the termination of liability. The Chamber for Amnesty and Pardon, the Chamber for the Definition of Legal Situations and the Revision Department in the Peace Tribunal shall be competent to decide whether to terminate, review or annul sanctions, investigations and sentences imposed in prior cases”.

**The peace agreements represent a historic opportunity to change the attitude of the authorities to human rights defence work and social protest. However, the state’s response to the expected increase in peaceful mobilisations has so far been limited to increasing the number of members of the Police Anti-Riot Squad (ESMAD) and adopting a new police code that includes provisions contrary to human rights standards.**

The new police code, which came into force in February 2017, establishes an exponential increase in the powers granted to the National Police. As reported by the *Programa Somos Defensores*, for example, many fears have been raised within the social movement about the excesses in the application of this new code because, due to the change in legislation, “public protests will be subjected to a much more severe treatment from the ESMAD, which could result in excessive aggression against demonstrations expressing social nonconformity”.

In addition, there is no guarantee of greater control over the security forces and appropriate mechanisms to allow the exercise of the right to peaceful protest. Specifically, according to international human rights standards, regulations on the use of force by the state security

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<sup>45</sup> «Santos anuncia aumento de integrantes del ESMAD de la Policía», Noticias RCN, June 30, 2016.

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forces must be precise and must be accessible to society. However, this is not the case with respect to the new police code, which does not therefore imply any progress in matters of transparency or accountability.

Members of the Colombian Congress and human rights organisations brought a civil complaint against the new police code before the Constitutional Court<sup>46</sup>. The legal complaint refers specifically to articles 53, 55, 56, and to numeral 9 of article 103, on the exercise of the right to public demonstration. The signatory organisations and individuals questioned the powers that the Code gives to the state security forces to dissolve demonstrations, as this “legal authorisation” leaves the door open to continued abuse from the Mobile Anti-riot Squad (ESMAD). They also point out that the norm is unconstitutional as it allows the Military Forces to intervene in social protests, and that it creates excessive requirements for the right to protest, including the obligation to announce that protests will take place 48 hours in advance.

**i. Several cases of aggressions against defenders during the Civic Strike in Buenaventura**

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The city of Buenaventura (Valle del Cauca department), one of the main ports of Colombia located on the Pacific Coast, has a long history of state abandonment and social conflict. The civic strike in 2017 was the result of the state’s failure to comply with numerous commitments acquired after a series of previous strikes and marches. In 1964, 1998 and 2014, civic strikes were organised to protest about this abandonment.

Three years later, women and men in Buenaventura decided to organise a new civic strike because the serious human rights situation was still a reality and because of the permanent breach by the Colombian State of the commitments previously acquired. The indefinite civic strike in Buenaventura began on Tuesday, May 16, 2017 and it took more than 20 days to reach an agreement with the national government. In fact, the first reaction to the civic strike by the administration of President Juan Manuel Santos was silence and the militarisation of the port with police helicopters, and with army tanks and helicopters.

During the civic strike, which lasted more than 20 days, militarised and repressive treatment by the Colombian authorities was documented and publicly reported. At that time, the ‘civic strike human rights monitoring commission for life with dignity and peace in the territory’ wrote 6 bulletins reporting human rights violations committed by members of the state security forces. According to the information received by the mission, Buenaventura’s local human rights office (*personería*) received 329 written complaints, 243 of which were from women. These complaints describe more than 200 affected children, 10 pregnant women who suffered some type of aggression, 16 people affected by firearms and another 21 people affected by beatings, rubber bullets, etc.

The violence against the demonstrators was indiscriminate, including against leaders of the Civic Strike Operational Committee, as well as several documented cases in which people who were not even participating in the civic strike were attacked by the ESMAD.

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<sup>46</sup> The legal complaint was presented by Members of Congress **Alirio Uribe Muñoz**, Ángela María Robledo, Víctor Correa Vélez, Oscar Ospina Quintero; Senators: **Iván Cepeda Castro** and Alexander López; human rights defenders: **Gustavo Gallón**, director of the Colombian Commission of Jurists; **Alberto Yepes**, Coordinator of the Human Rights Observatory in the Colombia Europe United States Coordination Group; and Jomary Ortégón Osorio, President of the José Alvear Restrepo Lawyers’ Collective, Cajar.

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On May 19, 2017, in the afternoon, a member of the Civic Strike Operational Committee was violently attacked by members of the ESMAD, while he was at the meeting point in the sector of Piñal. After the attack, the leader tried to go to the Santa Cruz neighbourhood to inform the community, including women and children, of the attacks that were taking place so that the community could take shelter. During the journey between the two points he was again attacked by the ESMAD, and was hit by a shotgun pellet on the left part of his forehead which caused trauma to his head. While he was being transferred to the hospital, the vehicle he was travelling in became stuck because the ESMAD continued to fire tear gas and pellets excessively.

On May 19, in another area of the city, agents from the state security forces fired on the community from a van belonging to the SIJIN (Judicial Intelligence Service) and a 19 year old young man was killed. The members of the police then shouted to the community: "if you report this you die, you face the consequences". This is a direct threat to the work of the members of the Human Rights Commission. The leaders that the mission met reported receiving threats by telephone, having their motorcycles or transport vehicles manipulated and information stolen, from among a long list of attacks related to their work defending human rights.

The Colombian government sought to justify the actions of the state security forces as being a response to the looting that took place on the night of May 19 in several supermarkets in the city. However, the members of the human rights commission reported this justification, taking into account that the inhabitants of the area and the organisers of the civic strike repeatedly alerted the police to these events and that, despite the significant police deployment throughout the city, the state security forces were only present in the places where the events took place about 5 hours after the looting and then subsequently blamed the civic strike.

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## V. WEAK STATE RESPONSE TO AGGRESSIONS AGAINST HUMAN RIGHTS DEFENDERS

### 1. Impunity for crimes against defenders

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#### 1.1 Statistics on investigations into killings of human rights defenders

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**Historically, high levels of impunity in Colombia in relation to aggressions against human rights defenders have been one of the structural causes of the repetition of these serious crimes. Indeed, if there are no sanctions against these aggressions, the perpetrators can continue to act without fear of consequences.**

Human rights organisations report impunity rates close to 90% in cases of attacks against defenders. For example, the *Programa Somos Defensores* determined in its September 2017 report an 87% impunity rate in the 458 crimes perpetrated against human rights defenders between 2009 and 2016, according to their figures<sup>47</sup>.

On July 19, 2017, the Public Prosecutor's Office made a public statement on this issue<sup>48</sup> assuring that the Office had clarified "51.72% of the (87) cases of killings of human rights defenders confirmed by the UN". Such activity would represent historic progress, unfortunately however, if we review the information in detail, this leads us to conclude that, **although there has been progress from the starting point of almost absolute impunity, it is important to unpack this triumphalism from the Prosecutor's Office.**

Article 83 of the Colombian penal code establishes that "the terms of limitation (for criminal action) for the punishable crimes of forced disappearance, torture, murder of members of trade union organisations, murder of human rights defenders, murders of journalists and forced displacement will be thirty (30) years"<sup>49</sup>. The text adds that "criminal action for the crimes of genocide, crimes against humanity and war crimes shall be imprescriptible". In 2012, the Supreme Court of Justice affirmed that attacks against human rights defenders should be considered as crimes against humanity due to their widespread and systematic nature<sup>50</sup>. Between January 2012 and June 2017 alone, the *Programa Somos Defensores* registered 396 murders of human rights defenders. The investigations into these crimes have, for the most part not progressed, or the cases have been filed.

On the other hand, as we have already mentioned, there are divergences in the figures regarding murders of human rights defenders. Although the UN reported 87 murders, in a similar period (January 2016 to June 2017), the *Programa Somos Defensores* registered 131 murders and the Ombudsman's Office 186 cases<sup>51</sup>.

While it is important to underline the important role played by the OHCHR in clarifying these cases, supporting the Prosecutor's Office and providing key information for criminal proceedings, it is necessary to ask why the Prosecutor's Office does not use as a basis the

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<sup>47</sup> *Programa Somos Defensores, Stop Wars – Paren la Guerra Contra los Defensores, Septiembre 2017*, available here: <https://www.somosdefensores.org/index.php/en/sala-de-prensa/noticias/148-stop-wars-paren-la-guerra-contra-defensores-as>.

<sup>48</sup> Resultados históricos en investigaciones por homicidios de defensores de Derechos Humanos, Public Prosecutor's Office, July 11, 2017.

<sup>49</sup> Penal Code, Article 83: *Termino de prescripción de la acción penal*.

<sup>50</sup> "Corte considera que crímenes contra defensores de derechos humanos son de lesa humanidad", *El Espectador*, September 24, 2012.

<sup>51</sup> "Van 186 líderes sociales asesinados en Colombia", *Caracol Radio*, July 13, 2017.

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official figure from a state institution such as the Ombudsman's Office. If they did, the total number of cases would be greater and the statistics would show much more nuanced progress.

## 1.2 Clarifying killings of defenders

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One of the strategic missions of the Public Prosecutor's Office is to lower impunity rates. For this reason, accusations in murder cases in general in Colombia increased from 10 to 22 percent between 2002 and 2016. However, only ten out of every 100 cases reach a conviction<sup>52</sup>.

**We must bear in mind that the accusation rate indicates the percentage of cases in which the alleged guilty parties have been identified. However, it does not necessarily show that a case is being solved, as everyone is innocent until proven otherwise and, logically, a judicial process can end in acquittal or even in an absence of charges against the accused person due to lack of evidence.**

The Prosecutor's own statement specified that there have been 5 sentences, that 13 cases are at the trial stage and that there are significant advances in a total of 45 cases (including the previous 18). **In other words, according to the Prosecutor's Office figures, only 5.75% of the 87 murder cases referred to in its statement have actually been clarified, far below the 51.72% which it announced and, therefore, below the general rate for murder cases in the country that stood at approximately 10%.**

Indeed, information made public by the Prosecutor's Office as a result a right to petition presented by the *Programa Somos Defensores*, refers to a total of 253 cases known to the Prosecutor's Office for the period between January 2016 and February 9, 2018<sup>53</sup>. According to the Prosecutor's Office, 99 of the 253 cases have been "clarified", corresponding to 39.13% of the total. However, there have been only convictions in 14 of these 99 cases (10 under ordinary jurisdiction and 4 under special indigenous jurisdiction), which, using the precise meaning of the term "clarify", represents only 5.5% of murder cases of defenders, below the general clarification rate for cases at the national level in Colombia. **In addition, according to the Observatory's information, none of the investigations in which significant progress has been made have been solved beyond the identification of the material authors, and none have solved the identity of the intellectual authors of the crimes and the motive behind the murders.** As with the denial of the paramilitary phenomenon and many other examples presented in this report, the authorities seem to be responding to the symptoms, that is to say the commission of murders, but not confronting the disease, that is, the structural causes for the occurrence of so many murders of human rights defenders.

In Antioquia, for example, according to organisations from the *Coordinación Colombia-Europa-Estados Unidos*, at least 86.8% of murders against human rights defenders between 2010 and the first trimester of 2017 continue in total impunity (17 sentences in 129 cases)<sup>54</sup>. For every 100 murders only 13 are brought before the justice system and, of these 13 cases, only the material authors of the crime are prosecuted and the intellectual authors are not identified.

In light of the above, although the Observatory recognises the improvement in the struggle against impunity in cases of murders of human rights defenders, the figures continue to show general levels of impunity which require more effective actions from the Prosecutor's Office.

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52 <http://www.eltiempo.com/justicia/delitos/homicidios-en-colombia-la-mitad-ha-ocurrido-en-solo-27-municipios-143728>

53 This list was compiled by expanding the Public Prosecutor's sources, which increased from considering only the cases reported by the OHCHR to taking into account and comparing information with figures reported by the Ombudsman's Office, the Marcha Patriótica social movement, the *Programa Somos Defensores* and the Cumbre Agraria, Étnica y Popular, which has allowed for the analysis of a more complete spectrum of cases requiring accountability.

54 Coordinación Colombia Europa Estados Unidos – Antioquia branch, Informe Semestral Sobre la Situación de las y los Defensores de Derechos Humanos en Antioquia 2017-1.

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### 1.3 Impunity in cases of other aggressions against human rights defenders

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To ensure that people can continue to carry out fundamental work for democracy and peace building, the justice system must clarify all aggressions against human rights defenders.

However, there are no public statements making reference to investigations regarding other types of aggressions such as threats. **In addition to the fact that threats are sufficiently serious by themselves, it should be noted that, in many cases, threats can be considered to be an early warning about the risk situation of a human rights defender and, therefore, Colombian institutions should deal with threats more diligently, offering security guarantees and ensuring investigation by the Prosecutor's Office.**

According to the *Programa Somos Defensores*, between 2010 and 2017 there were 3,485 attacks on defenders, the most recurrent being threats, assassinations, attacks and arbitrary arrests, as shown below.

Threats	2374
Killings	532
Attempted killings	305
Arbitrary arrests	171
Disappearances	18
Theft of sensitive information	36
Sexual Violence	2

The first known conviction for threats against defenders was made in May 2017. The person convicted was Diego Alexander Céspedes Moreno “for threatening, by electronic means, 18 social leaders and human rights defenders in 2014”. Mr. Céspedes Moreno had worked in the Administrative Department of Security (DAS) and later worked as a bodyguard for a defender who received email threats. However, the investigation did not determine the intellectual author of the threats and was limited to demonstrating the bodyguard’s individual criminal responsibility.

While in Céspedes’ case it took three years to reveal what happened, in May 2017, when the Public Prosecutor received telephone threats, it took only a couple of weeks to arrest the person directly responsible for them. The success of this investigation suggests that officials in the Prosecutor’s Office have the necessary resources to be able to conclude successful investigations in the face of threats. Why are there not more results in cases of threats against human rights defenders?

In addition to all this, it is relevant for this report to mention that many of the people interviewed both in Norte de Santander and in Antioquia stated that they were afraid of going to report incidents because in several cases, complainants have been threatened right after making a complaint. We have also received testimonies indicating that there are officials who, upon receiving the complaints, appear to seek to delegitimise them.

Although it cannot be said that this is a generalised or widespread attitude, it shows the need to invest in training on the directive no. 2 issued by the Prosecutor’s Office so as to ensure its effective implementation. This way, investigations into attacks against defenders would be carried out based on the hypothesis that these attacks are related to their legitimate work defending human rights as established by the directive.

Also of concern are the recent scandals involving members of the Public Prosecutor’s Office, related to issues of corruption and alleged relationships with illegal groups and / or paramilitary structures. The aforementioned case of María Bernarda Puente López, a regional Prosecutor in Cartagena stands out, as she was arrested for being part of a corruption network that benefited paramilitary structures. She is the same Prosecutor that ordered the

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arrests of human rights defenders in the Sur de Bolívar department. Gustavo Moreno, the head of anti-corruption in the Prosecutor's Office, was also in the national news this year after he was arrested and investigated for corruption.

These cases and others, serve as a warning about the need to ensure the independence of the new Special Investigations Unit in the Prosecutor's Office responsible for dismantling paramilitary structures and guaranteeing respect for the highest standards of human rights.

**The Observatory values positively the adoption on December 1, 2017 of a legally-binding directive under which prosecutors will have to consider as their first hypothesis that a crime against a defender was the product of their work and only if this hypothesis has been ruled out may they move on to another theory as a motive for the incident<sup>55</sup>**, in line with international standards. The Prosecutor's Office must ensure effective compliance with this directive to ensure better results in cases of attacks against defenders, as well as putting an end to cases of stigmatisation against defenders in which these aggressions have been downplayed, by suggesting that the main motive is related to matters of a private nature.

## **2. The State's incapacity to protect human rights defenders**

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### **2.1 The protection system – the UNP**

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The National Protection Unit (*Unidad Nacional de Protección* - UNP) is a national security agency attached to the Ministry of the Interior, in charge of "bringing together, coordinating and implementing protection measures and support for prevention, promoting the rights to life, integrity, freedom and the security of persons, collectives, groups and communities that, due to their position or the exercise of their functions, may face extraordinary or extreme risks".

For the Colombian government this is the most important program for the protection of human rights defenders. In 2016 its budget was approximately 140 million Euros<sup>56</sup>, most of it was used to pay for bodyguards (65 million) and vehicles (45 million). It is important to remember that this budget is allocated for use by the UNP to protect public servants and former public servants, members of political parties, trade unionists and human rights defenders, among others.

The UNP has effectively protected many human rights defenders and has thwarted some assassination attempts. However, there are still numerous problems identified by human rights organisations and people in the regions.

**One of the problems identified, mainly in the regions visited, was the inadequacy of the measures offered by the UNP in numerous cases.** As an example, a defender in the department of Antioquia was classified as having an extraordinary risk and, therefore, as a beneficiary of protection measures. One of the measures proposed by the UNP was to put an armoured door on their house, a house that is located in the countryside and is built with a mixture of mud and straw. Therefore this measure was highly inadequate. Other cases of inadequate measures were mentioned in the mission meetings, such as 'panic buttons' in areas where the authorities can not arrive quickly.

**The mission also gathered testimonies on cases in which the measures could even increase risks depending on the contexts where human rights defenders work:** in certain neighbourhoods of Cúcuta, for example, being seen in a UNP vehicle can give the impression

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55 "Colombia adopta estándar internacional para crímenes contra defensores": <http://www.eltiempo.com/mundo/eeuu-y-canada/colombia-adopta-estandar-de-la-cidh-contra-asesinato-de-defensores-de-derechos-humanos-157530>

56 Rendición de cuentas UNP – 2016, Bogotá 2017.



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that a human rights defender has access to money, and put them at risk of possible robbery or extortion, a situation that can also occur with bulletproof vests. The measures most appreciated by the human rights defenders interviewed by the mission were means of communication (mobile or satellite telephone) and support for transport in case of risk.

**Other problems were identified such as the long response time in risk situations and the fact that months can pass between a threat being reported, the decision to deliver measures and the actual handover of these measures to the defender.** Moreover, it seems that measures are sometimes revoked even though the threats or attacks that may have given rise to the decision to grant measures have not been legally resolved.

#### **e. Killing of Bernardo Cuero Blanco after his protection mechanism was revoked**

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On June 7, 2017 human rights defender **Bernardo Cuero Blanco** was killed in the municipality of Malambo (Atlántico department). Bernardo was a recognised leader of land restitution processes and a leader in the *Asociación Nacional de Afrocolombianos Desplazados* (Afrodes). Bernardo Cuero had been receiving threats and reporting them for over 4 years and he suffered an attempted murder in 2016. In spite of this, in August 2016 the UNP decided to withdraw his protection mechanism which he had since 2013 under the argument that his risk was now at an ordinary level. Less than one year later he was killed.

**On a recurring basis, defenders have insisted on the serious need for differentiated measures based on gender and collective protection for communities.** Another problem highlighted is the urgent need to review the resumés of people who have been transferred from the former DAS to the UNP. In fact, the DAS was closed after a scandal broke out due to its involvement in threats and surveillance against human rights defenders, and yet many of its members have subsequently been hired by the UNP as bodyguards. The aforementioned case of threats against a social leader by one of their own bodyguards shows the need to review the history of each person working in the UNP.

According to data from the *Programa Somos Defensores*, during the first semester of 2017, three of the 51 people killed had protection measures and seven had reported threats. According to the same source, in 2016 none of the 80 people killed had protection measures but 10 had previously reported threats.

These figures lead us to a twofold reflection. On the one hand there have been failures in the way the risk situation of human rights defenders is assessed, since the vast majority of the people killed had no protection measures. On the other hand, it is true to say that having protection measures does not offer a defender total protection.

#### **f. Murder of Gerson Acosta, in spite of protection measures.**

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On April 19, 2017, the Nasa indigenous leader and authority **Gerson Acosta** was killed. Just moments after he left a community meeting in the Kitek Kiwe indigenous territory, in the municipality of Timbío, Cauca department, an individual shot at him repeatedly. In addition to being a traditional authority of the Nasa People, Mr. Acosta was also a human rights defender and representative of the victims of the Naya massacre, which was committed by paramilitary groups in 2001 in the Naya region in the west of the Cauca department.

Gerson Acosta had been granted protection measures; however, the people assigned to protect him were not with him when the incident occurred.

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Protection for human rights defenders can not only be understood in terms of physical or police-type measures. In the context of the demobilisation of the FARC-EP guerrilla, there is an increasing general need for physical protection from the UNP. Due to the high level of finances required by the UNP system, the amount of resources necessary to ensure physical protection measures for all the people in Colombia who need it is very high.

That is why it is essential to strengthen the investigation and punishment of those responsible for attacks against defenders as well as dismantling paramilitary structures. It is fundamental to grant relevant and effective physical protection measures and complement them with other measures, such as public programs recognising the importance of human rights work and sanctions against authorities and public officials that stigmatise defenders, in line with the new Directive from the Procurator General's Office.

**It will only be possible to move towards a dynamic change which goes beyond the protection of human rights defenders to establishing guarantees for the defence of human rights, when there is a comprehensive public policy (and determined political will to implement it) that addresses not only physical protection but also all the factors that reinforce the vulnerability of human rights defenders.**

## **2.2 Existing and new guarantees and protection for human rights defenders: complementary or confusing?**

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The sections of the Colombian Peace Agreement that mention protection and guarantees for human rights defenders are somewhat confusing. Measures are included in Chapter 2 on "*Political Participation: democratic opening to build peace*", Chapter 3 on the "*End of the Conflict*" and Chapter 5 entitled "*Agreement on the Victims of the Conflict*".

These measures contemplate:

- The creation of new institutional spaces with mandates directly or indirectly related to the protection of human rights defenders such as, for example, the National Commission for Security Guarantees (3.4.3) or the Special Investigations Unit in the Public Prosecutor's Office (3.4.4) )
- The creation of special programs such as the "*comprehensive security and protection program for communities and organisations in the territories, at the request of the Ministry of the Interior, whose purpose will be the definition and adoption of comprehensive protection measures for organisations, groups and communities in the territories, in a way that helps to guarantee, using an effective model, the implementation of prevention and protection measures for communities and their territories*" (3.4.8)
- The creation of specific laws such as for example a law on guarantees and to promote citizen participation (2.2.1) based on guidelines that must be discussed in a national forum, which should include the participation of spokespersons from the most representative organisations and social movements
- Statements of intent such as "*making visible the work carried out by leaders of organisations and social movements and human rights defenders*" (2.1.2.2)
- Other measures which increase the punishment of perpetrators, such as the "*revision of the normative framework to increase the cost of crimes against leaders of organisations and social movements and human rights defenders*" referred to in point 2.1.2.2
- In section 5.2.2 "*strengthening protection mechanisms for the work carried out by human rights defenders and their organisations*", the National Government "*recognising the work of human rights defenders, promises to contribute to the strengthening of organisations that*

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*defend human rights, particularly those working in rural contexts, within the framework of what has already been agreed in Point 2 in relation to guarantees for organisations and social movements, security guarantees, recognition and non-stigmatisation, and to maintain a permanent dialogue with them to attend to their reports, diagnoses and recommendations, and in accordance with what was agreed in Point 2 on "Political Participation", a protocol for their comprehensive protection will be developed in a concerted manner with human rights defenders' organisations, including those who carry out their work in rural contexts. The National Government will strengthen coordination with the Public Prosecutor's Office for the promotion and follow-up, on a case-by-case basis, of complaints and investigations into violations of the rights of human rights defenders. Public progress reports will be issued every three months."*

The mission did not have a mandate to carry out a detailed analysis of the peace agreement and its implementation. However, after holding meetings with people and organisations defending human rights, we came to the conclusion that although we recognise the effort to include the issue of protection and guarantees for human rights defenders in the peace agreement, we would like to highlight the following points for reflection:

- The risk of supplanting or duplicating the work of existing mechanisms
- Some confusion regarding mechanisms and responsibilities
- The risk of a failure to implement many of the points which could therefore become mere announcements rather than concrete measures.

Regarding the **risk of supplanting or duplicating existing mechanisms**, it is important to mention the National Commission for Security Guarantees and the already-existing National Guarantees Process. On April 30, 2009, the National Guarantees Process for the work of Human Rights Defenders, Social and Community Leaders began. In this process, political dialogue was resumed between: civil society coordination groups for Human Rights, Peace and Democracy who work together as the Techo Común, namely the *Asamblea Permanente de la Sociedad Civil por la Paz*, the *Plataforma Colombiana de Derechos Humanos, Democracia y Desarrollo*, the *Alianza de Organizaciones Sociales y Afines* and the *Coordinación Colombia – Europa – Estados Unidos*; the Presidential Human Rights Program, the Ministry of the Interior and Justice; and representatives from the international community such as the United Nations Development Program (UNDP), the OHCHR and the embassies of Sweden and Spain.

The objective of this process is to follow up on the issue of guarantees and the difficult situation in the country for the defence of human rights. Although this process has not been perfect and has had ups and downs, in January 2017, during the reactivation of the Territorial Roundtable on Guarantees for human rights defenders in Antioquia, Verónica López Estrada, spokesperson for defenders' organisations, stated that the reinstatement of the Roundtable "*constitutes at least the first step in building trust between defenders' organisations and institutions*". Likewise, in March 2017, the Territorial Roundtable on Guarantees for human rights defenders and leaders in the department of Córdoba was held. At the same time, Decree 1066 of 2015 established a Protection Program with specific functions to deal with emergency cases.

According to what is written in the agreements, the mandate of the National Commission for Security Guarantees (CNGS) is different and complementary since it should prepare the public policy for the dismantling of illegal groups as well as for the protection of individuals and organisations. However, the mission was told that it seems as though the CNGS is treating emergency cases, thereby duplicating spaces for dialogue in the existing National Guarantee Process and the functions of the Protection Program.

This has two important negative effects: on the one hand it could take away legitimacy from spaces created previously such as the Roundtable for Guarantees, spaces valued mainly by regional organisations since they consider them to be important spaces for dialogue with

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state institutions. On the other hand, there is a high risk of drowning the CNGS in a high caseload and of not enabling the necessary reflection on how to solve the structural problem of guarantees for human rights defenders.

The National Guarantees Process has now existed for eight years and Decree 1066 for three years, and in a different context there could be an opportunity for deep analysis of these mechanisms, to understand their progress and failures and to substantially improve them. It does not seem appropriate to develop new spaces without having learned from experience.

There also clearly seems to be **confusion between the different mechanisms that are being created and their different responsibilities. Multiplying programs does not allow a clear route to be traced for the protection of organisations and defenders.** This represents a clear weakness in the capacity for emergency response and prevention, and could lead to a loss of response time when speedy reaction could be decisive in preventing an assault on a defender; it could also allow an official with little political will to direct defenders towards other programs. Confusion does not create efficiency or trust, nor does it allow for proper accountability.

**This lack of clarity carries with it the risk of non-implementation or partial implementation of the agreements. Moreover, there are certain points that on the one hand seem more like non-binding declarations of intention, without clear measures, and on the other hand resemble historically unfulfilled promises which have had no real effect on the protection of defenders,** as is the case of ensuring that “the program for individual and collective protection will have a differential and gender-based approach”. For years, organisations have asked the UNP for a differential and gender-based approach and the implementation of collective measures without significant progress.

In addition there are already cases of breaches of the promises reached in the agreement; Point 5.2.2 of the agreement establishes that “the National Government will strengthen coordination with the Public Prosecutor's Office to promote and monitor, on a case-by-case basis, complaints and investigations into violations of the rights of human rights defenders. Public progress reports will be made every three months”. We do not have knowledge of any such public progress report, and it is important to note that a press release without disaggregated data, such as the communication of July 11, 2017 from the Public Prosecutor's Office, cannot be considered to be a report. This is not the first time that the Colombian State has launched special investigation plans, like the creation in 2015 of a new policy within the Public Prosecutor's Office for investigations known as “Plan Esperanza” which has reported no significant progress to date.

On the other hand, the new Prevention and Alert System for Rapid Reaction within the Human Rights Ombudsman's Office was not promoted until December 2017 when the President signed Decree 2124 of 2017. In this new system, early warnings will be issued autonomously by the Ombudsman's Office, which should facilitate the timely and rapid action of institutions who have the duty to protect human rights. It also precisely defines the scope and route that the national government must follow to react immediately to the risk situations that the Ombudsman's Office notes in its early warnings.

**The Ombudsman has repeatedly lamented the lack of reaction to the its Risk Reports, including the inadequate or delayed response to warnings about risks faced by human rights defenders** in its risk report of March 30, 2017<sup>57</sup>. In the same press release announcing the creation of the Prevention and Alert System for Rapid Reaction, the Ombudsman highlighted that it had issued four risk reports for Cauca and that for 23 municipalities in Cauca it has issued a report detailing the high risk of human rights violations, “which is why we once again call on the national government to take careful note of the early warnings

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57 Informe de Riesgo N° 010-17 A.I., Human Rights Ombudsman's Office (*Defensoría del Pueblo*), March 30, 2017.

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issued by the Ombudsman's Office in Cauca".<sup>58</sup> This clearly shows that the main challenge for the new system will be precisely that of implementation, that is, that the Colombian State institutions react decisively to the alerts issued by the Ombudsman.

Indeed, in Colombia there is a gap between what is written in laws and what occurs in practice. One example of this is the long process for the elaboration of guidelines for a public policy on human rights (2014-2034) during which more than 30 forums for reflection have been organised both regionally and nationally. This long process was supported and accompanied by the international community and defined strategies such as "joined up public policies and inter-institutional spaces, oriented towards guarantees for civil and political rights" and "the implementation of comprehensive prevention measures for violations of civil and political rights using a differential approach" and "developing guarantees for the exercise of freedom of assembly and demonstration". Four years after the development of these strategies, the high risk situation for human rights defenders continues and what was promised in these guidelines does not seem to have been implemented.

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58 <http://www.defensoria.gov.co/es/nube/noticias/6964/%E2%80%9CSistema-de-alertas-tempranas-permitir%C3%A1-evitar-violaciones-a-los-derechos-humanos%E2%80%9D-Defensor-del-Pueblo.htm>

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## VI. CONCLUSION

It is clear that much of what is at stake will depend on political will. There is no advantage in increasing penalties for crimes against human rights defenders if these crimes continue in impunity; it is not useful to announce the improvement of the Early Warning System if the authorities in charge of protection and security do not listen and do not react to the alerts issued by the Ombudsman's Office; there is no point talking about guarantees for citizen participation while protests are repressed with excessive use of force by the ESMAD and while the criminalisation of social protest continues; it does not help to write good ideas on paper if they are not implemented with the real intention of modifying the difficult reality that human rights defenders face in Colombia.

The State of Colombia must seek to offer guarantees to human rights defenders with the conviction that their work is fundamental for peacebuilding. Killings of human rights defenders will continue until the government occupies the areas left by the FARC and combats paramilitary structures.

Indeed, the whole system of guarantees and protection for human rights organisations and individuals must be simplified; there must be clarity about what preventive measures should be applied (such as the dismantling of paramilitary structures or the fight against impunity) and what the response measures will be. Moreover, responsibilities and monitoring mechanisms must be clearly defined.

What human rights organisations and defenders need today goes a step beyond writing things down on paper and Colombian institutions must place all their political will and all their strength to establishing guarantees for human rights defenders. The defenders interviewed by the mission repeated on multiple occasions that they do not want more promises; instead they want actions: "on paper it all seems very nice, but the reality is that they continue to kill us".

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## VII. RECOMMENDATIONS<sup>59</sup>

*In light of the real crisis regarding the situation of human rights defenders and in line with Colombia's international commitments, it is urgent that the state shows real political will to address the situation and develop a comprehensive public policy for protection that includes not only protective measures but also preventive measures:*

### **Regarding the protection of human rights defenders and the fight against impunity:**

- *To the Colombian State as a whole:*
  - Promote a state policy for the protection of human rights defenders which ensures the coordination of all Colombian institutions and establishes which institution is responsible for each function. This policy should also establish monitoring mechanisms both for prevention measures (such as the dismantling of paramilitary structures or the fight against impunity) and for reactive measures, including protection measures.
  - Hold public events and awareness-raising activities that contribute to making human rights defenders' work visible. These should particularly include the organisation of remembrance and recognition events for those who have been victims of violations of the right to life, freedom and integrity in the recent period.
  - Accept and follow up on the recommendations issued by the Inter-American Commission on Human Rights in its report "Comprehensive Policies for the Protection of Human Rights Defenders", published on December 29, 2017.
  
- *To the National Government and the National Commission for Security Guarantees:*
  - Ensure the effective implementation of the functions envisaged for the National Commission for Security Guarantees and streamline its internal operations so that it can have greater operational capacity.
  - Take effective prevention measures in response to the early warnings and risk reports issued by the Ombudsman's Office.
  - Define the route for participation in the National Commission for Security Guarantees for the design of the Prevention and Alert System for immediate reaction, as established in section 3.4.9 of the Agreement, and article 3.16 of Decree 145 of 2016 on the CNGS. This System must be defined by a law serving as a legal standard to ensure its stability over time and ensure sufficient resources so that it operates in an appropriate, timely and efficient manner.
  - Carry out a comprehensive review of the policies for security and human rights guarantees, public administration practices, and manuals and doctrines, in which sectors of the population are considered to be an "internal enemy".
  
- *To the National Government and the National Protection Unit (Unidad Nacional de Protección - UNP):*
  - Guarantee the provision of collective protection plans and measures for human rights organisations in rural areas facing security threats, with an adequate territorial, ethnic and gender approach. Such measures should be agreed with the traditional authorities of indigenous peoples and black communities at all levels, representatives of Local Community Action Boards and with leaders of organisations at risk.
  - Ensure greater speed in the processing of protection requests presented by human rights defenders.
  - Put an end to the retraction of measures in cases where the threats or other attacks that gave rise to the decision to grant such measures have not been legally resolved.

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<sup>59</sup> To see detailed recommendations to improve the situation of land rights defenders and defenders working on business and human rights, see Report of the *Colectivo de Abogados José Alvear Restrepo (CAJAR)* and the Observatory (OMCT-FIDH): "DEFENDING land and the environment in contexts of extractive company activities", published in October 2017.

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- *To the Public Prosecutors' Office:*
    - Using a participatory process within the framework of the National Round Table of Guarantees for Human Rights Defenders, approve a binding protocol for all units of the Prosecutor's Office throughout the country that establishes clear guidelines to prevent the continuation of the phenomenon of criminalisation of defenders in Colombia.
    - Develop a protocol to ensure that threats against defenders are investigated to avoid impunity for this type of aggression and as a possible early warning mechanism to prevent the commission of more serious attacks. In addition, the protocol must ensure coordination with other state institutions to ensure that security guarantees are established for defenders during the process to investigate threats.
    - Ensure that the Office of the Prosecutor has the technical capabilities and methodology to investigate macro-criminality, i.e. criminal networks including state capture and their collusion with state institutions, as well as to investigate murders of human rights defenders and other serious human rights violations, establishing not only the material and intellectual authors, but also responsibilities related to chain of command and perpetrator-by means.
  - *To the Procurator General's Office:*
    - Ensure sufficient resources at all levels to ensure the effective implementation of its Directive for the protection of human rights defenders and inflexibly apply the disciplinary measures provided for any public servant who "*displays conduct that delegitimises, disqualifies, harasses or incites harassment or stigmatises their work*".

#### **Regarding the criminalisation of protest:**

- Transfer citizen security functions from the Ministry of Defence to the Ministry of the Interior as a reflection of the post-conflict scenario.
- Adjust the regulations and practices related to the treatment of the right to peaceful protest to ensure that this right can be fully exercised, in particular through the following measures:
  - Approving a Participation Law that includes clear guarantees for the exercise of the right to social protest and demonstration in accordance with the provisions of point 2.2.1 of the Peace Agreements.
  - Repealing all provisions that criminalise the exercise of social protest or allow the excessive use of force, such as those contained in the Citizen Security Law, the new Police Code, or the National Police resolutions and ensure that effective investigations are carried out in all cases in which there are allegations of excessive use of force.
  - Prohibiting the military forces from participating in any way in the treatment of social protest, and exclusively limiting this activity to the national police.
  - Undertaking a comprehensive reform of the Mobile Anti-Riot Squad (ESMAD) with the participation of civil society actors to ensure that their actions comply with international human rights standards
  - Reviewing the regulations and training materials on the use of force to establish clear criteria of time, manner and place that indicate in which situations such actions are justified, necessary and proportionate, so that they are applied in a neutral manner and not according to prejudice against vulnerable populations such as human rights defenders or LGBTI persons.

#### **Regarding the fight against non-state actors involved in attacks against human rights defenders:**

- *Dismantling of paramilitary structures:*
  - Develop a comprehensive plan to fill the existing institutional gaps in the territories which the FARC-EP has left, both through the state security forces and by ensuring the presence of other state institutions that represent the social Rule of Law.



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- Promptly implement measures for the dismantling of paramilitary structures, and in particular those stipulated in section 3.4. of the Peace Agreement related to the “National Commission for Security Guarantees”.
  - Ensure that the National Commission for Security Guarantees takes into account the information and Risk Reports prepared by the Human Rights Ombudsman’s Office, as well as those prepared by civil society organisations, in order to prepare and implement strategies to characterise and dismantle paramilitary successor groups.
  - Implement internal intelligence processes to identify and prosecute members of the state security forces who have links with paramilitary structures. Likewise, define a protocol for the promotion of army and police officers that takes into account the number of human rights violations committed in the territories under their jurisdiction, and seeks to promote those officers with the lowest number of violations in the territories under their responsibility.
  - Reinforce the Special Investigations Unit as autonomous in relation to the Public Prosecutor’s Office, for the dismantling of criminal organisations including paramilitary successor groups. This autonomy should include the Unit’s functioning and its ability to make decisions about strategic areas of investigation and priorities, as well as budgetary independence.
  - Carry out an analysis of the role of private actors in the armed conflict in Colombia, including within the mandate of the Historical Clarification Commission created under the Peace Agreement, which will lead to the creation of accountability mechanisms for those companies that have participated in human rights violations and reparations for victims, as well as offering a reflection on the role of the state security forces in the post-conflict and their relationship with companies.
- *Illegal armed groups:*
    - Make progress in negotiations with the ELN in order to end the armed conflict and enter fully into a phase of complete peacebuilding in Colombia.
    - Increase efforts to prevent abuses committed by illegal armed groups arising from the demobilisation of the FARC-EP and paramilitary structures so that those responsible, including state agents who lend their support or acquiesce to them, are brought before justice and sanctioned. Also, ensure that victims receive adequate protection and comprehensive reparation.

**Recommendations for the international community:**

- Continue to support the Peace Process with the FARC-EP and the negotiations with the ELN to make progress in complete peacebuilding in Colombia.
- Promote the implementation of the recommendations made to Colombia by international human rights mechanisms, and in particular monitor the situation of human rights defenders, both in multilateral spaces and in bilateral relationships with the Colombian State.
- Countries who give financial support to Colombia should condition that support to the Colombian government on achieving real results for the protection of human rights defenders, and on investigating and sanctioning those responsible for crimes committed against them.
- The European Union should support the good functioning of the Special Investigations Unit to dismantle criminal organisations including paramilitary successor groups and demand concrete results, in line with what was agreed in the peace agreements.
- Support the special role of human rights defenders and human rights organisations, taking actions to make publicly visible the legitimacy of their work and offering them specific technical and financial support.

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Created in 1985, the World Organisation Against Torture (OMCT) works for, with and through an international coalition of over 200 non-governmental organisations - the SOS-Torture Network - fighting torture, summary executions, enforced disappearances, arbitrary detentions, and all other cruel, inhuman and degrading treatment or punishment in the world and fighting for the protection of human rights defenders.

**Assisting and supporting victims**

OMCT supports victims of torture to obtain justice and reparation, including rehabilitation. This support takes the form of legal, medical and social emergency assistance, submitting complaints to regional and international human rights mechanisms and urgent interventions. OMCT pays particular attention to certain categories of victims, such as women and children.

**Preventing torture and fighting against impunity**

Together with its local partners, OMCT advocates for the effective implementation, on the ground, of international standards against torture. OMCT is also working for the optimal use of international human rights mechanisms, in particular the United Nations Committee Against Torture, so that it can become more effective.

**Protecting human rights defenders**

Often those who defend human rights and fight against torture are threatened. That is why OMCT places their protection at the heart of its mission, through alerts, activities of prevention, advocacy and awareness-raising as well as direct support.

**Accompanying and strengthening organisations in the field**

OMCT provides its members with the tools and services that enable them to carry out their work and strengthen their capacity and effectiveness in the fight against torture. OMCT presence in Tunisia is part of its commitment to supporting civil society in the process of transition to the rule of law and respect for the absolute prohibition of torture.

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**Establishing the facts**

Investigative and trial observation missions

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis. FIDH has conducted more than 1,500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

**Supporting civil society**

Training and exchanges

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

**Mobilising the international community**

Permanent lobbying before intergovernmental bodies

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part in the development of international legal instruments.

**Informing and reporting**

Mobilising public opinion

FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.

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**The Observatory for the Protection of Human Rights Defenders, a partnership  
of OMCT and FIDH**

Created in 1997, the Observatory is an action programme based on the belief that strengthened co-operation and solidarity among human rights defenders and their organisations will contribute to break the isolation they are faced with. It is also based on the absolute necessity to establish a systematic response from NGOs and the international community to the repression of which defenders are victims.

The Observatory's activities are based on consultation and co-operation with national, regional, and international non-governmental organisations.

With this aim, the Observatory seeks to establish:

- a mechanism of systematic alert of the international community on cases of harassment and repression of defenders of human rights and fundamental freedoms, particularly when they require urgent intervention;
- the observation of judicial proceedings, and whenever necessary, direct legal assistance;
- international missions of investigation and solidarity;
- a personalised assistance as concrete as possible, including material support, with the aim of ensuring the security of the defenders victims of serious violations;
- the preparation, publication and world-wide dissemination of reports on violations of the rights and freedoms of individuals or organisations working for human rights around the world;
- sustained action with the United Nations and more particularly the Special Rapporteur on Human Rights Defenders, and when necessary with geographic and thematic Special Rapporteurs and Working Groups;
- sustained lobbying with various regional and international intergovernmental institutions, especially the Organisation of American States (OAS), the African Union (AU), the European Union (EU), the Organisation for Security and Co-operation in Europe (OSCE), the Council of Europe, the International Organisation of the Francophonie (OIF), the Commonwealth, the League of Arab States, the Association of Southeast Asian Nations (ASEAN) and the International Labour Organisation (ILO).

With efficiency as its primary objective, the Observatory has adopted flexible criteria to examine the admissibility of cases that are communicated to it, based on the "operational definition" of human rights defenders adopted by FIDH and OMCT: "Each person victim or at risk of being the victim of reprisals, harassment or violations, due to his or her commitment, exercised individually or in association with others, in conformity with international instruments of protection of human rights, to the promotion and realisation of the rights recognised by the Universal Declaration of Human Rights and guaranteed by the different international instruments".



**To ensure its activities of alert and mobilisation, the Observatory has established a system of communication devoted to defenders in danger. This system, called Emergency Line, can be reached through:**

E-mail: [Appeals@fidh-omct.org](mailto:Appeals@fidh-omct.org)

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