



2012 Caravanistas in Bogota



Colombian Caravana UK Lawyers Group

promoting access to justice
and protecting human rights



COLOMBIA: PROTECTING ACCESS TO JUSTICE

Report of the Third International Caravana
of Jurists to Colombia 2012

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Foreword

By Lucy Scott-Moncrieff
President of the Law Society of England & Wales

Human rights are central to the work that we do. They lie at the heart of every lawyer's obligation to the public they serve, being the cornerstone of fairness and freedom, of justice and equality. In fact, the first line in the Solicitors' Handbook for England and Wales reads: "You must uphold the rule of law and the proper administration of justice".

Upholding the rule of law and the proper administration of justice are crucial means by which fundamental human rights are protected – rights which provide the framework for democratic societies, enshrining the fundamental entitlements which citizens can expect from each other and from the State. Respect for and confidence in such rights are essential, if a society is to be founded on equal opportunity and provide effective protection for its citizens against coercion, exploitation and persecution.

But what happens when the State, from whom lawyers sometimes have to protect citizens, fails to protect the lawyers? Or is complicit in their persecution?

Colombia remains one of the most dangerous places in the world to be a lawyer. The report of the third delegation to Colombia makes sombre reading for any of us involved or interested in rights, justice and law.

In recent years we have seen more business, including law firms from the UK, enter the Colombian market, encouraged by the opportunities available in this vibrant country. This shows that Colombia is emerging from decades of political turmoil and violence. This entry into the market is an encouraging sign of the direction Colombia is heading in because international firms and their clients want to know that the rule of law applies in any country in which they do business.

But this third report of the international lawyers' delegation to Colombia makes it explicitly clear there is still much to be done.

Harassment, threats, attacks and even assassinations of lawyers still happen. The report interviews a range of people involved in the justice and legal systems and the conclusions are depressingly clear: there is an existing culture of impunity in Colombia and the perpetrators of crimes against lawyers are not routinely or carefully investigated, or prosecuted.

History and experience tells us that the best partnerships are created by bringing people together, to help foster understanding and build trust between people from different parts of the world to achieve a common ambition. I want to congratulate the international Caravana on their third visit to Colombia for doing that, with their international colleagues and with the Colombian lawyers, officials and politicians they met. I would also like to thank the law firms who provided the financial support and other assistance to ensure this visit went ahead.

It is essential that our Colombian colleagues, partners and friends know they are not alone during their times of trouble and that the government of Colombia knows that the world is watching it.

The body of independent and impartial evidence gathered by the Caravana will form part of international efforts to shine light into dark corners and expose activities that their perpetrators would rather remain hidden.

As long as is necessary, lawyers from England and Wales will continue to stand with their colleagues across the world to make clear the corrosive effect that undermining the rule of law and access to justice has on a country's prosperity and success.

Lucy Scott-Moncrieff

Glossary of Terms

Aguilas Negras: (Black Eagles) One of the new rebranded paramilitary groups that have emerged since demobilisation

Bandas Criminales Emergentes: The term used by the Colombian government to refer to new paramilitary groups

Cacique Pipinta: A paramilitary group which has survived the demobilisation process intact

Campesino: Rural farmers

Colegio de Abogados de Buga: Buga Bar Association

Consejo Superior de la Judicatura: Supreme Judicial Council

Consejo de Tribunal Superior de Cali: Council of the Upper Court in Cali

Defensoría del Pueblo: Ombudsman's Office

Dirección Nacional de Las Fiscalías: National office for local prosecutor services

Falsos positivos: The phenomenon whereby civilians, generally rural farmers, are presented as guerrillas killed in combat

Fiscalía (General de la Nación): Prosecutor General's Office

Mesa Nacional de Garantías: Part of the Ministry of the Interior - a process established in 2009 to generate confidence in the state authorities and develop strategies for the effective protection of human rights defenders

Palacio de Justicia: Courthouse

Prevaricato por acción agravado: A cause of action, broadly equivalent to an "abuse of power"

Rastrojos: One of the new rebranded paramilitary groups based in Nariño that has emerged since demobilisation

Sala Civil – Familia de la Corte Suprema de Justicia: The civil/family division of the Supreme Court of Justice

Tribunal Superior de Distrito Judicial de Bucaramanga: The upper court in the region around Bucaramanga

Tutela: Legal action for the protection of constitutional rights

Unidad de Restitución de Tierras: Land Restitution Unit

Urabeños: One of the new rebranded paramilitary groups based in Medellín that has emerged since demobilisation

Acronyms & Abbreviations

ACADEHUM	Asociación Colombiana de Abogados de Derechos Humanos
AFUSODO	Asociación de Familiares por un Solo Dolor
ANDAS	Asociación Nacional de Ayuda Solidaria
ANDESCOL	Asociación de Desplazados Colombianos
ASFADDE	Asociación de Familiares de Detenidos Desaparecidos
ASONAL	Asociación Nacional de Funcionarios y Empleados de la Rama Judicial
AUC	Autodefensas Unidas de Colombia
BACRIM	Bandas Criminales Emergentes
CADEC	Colectivo de Abogados Defensores del Eje Cafetero
CANAAL	Caja Nacional de Provision Social
CCAJAR	Corporación Colectivo de Abogados José Alvear Restrepo
CCALP	Corporación Colectivo de Abogados Luis Carlos Perez
CERREM	Comité de Evaluación de Riesgo y Recomendación de Medidas
CJL	Corporación Jurídica Libertad
CNAL	Colectivo Nacional de Abogados Litigantes
CODHES	Consultoría para los Derechos Humanos y el Desplazamiento
COLEMAD	Colectivo Mujeres Al Derecho
CPDH	Permanent Committee for the Defence of Human Rights
CRI	Regional Indigenous Council of Cauca
DAS	Departamento Administrativo de Seguridad
ELN	Ejército de Liberación Nacional
FARC	Fuerzas Armadas Revolucionarias de Colombia
FCSP	Foundation of the Committee in Solidarity with Political Prisoners
FIDH	International Federation of Human Rights
FPIC	Free, Prior and Informed Consent
HRD	Human Rights Defender
IACHR	Inter American Court of Human Rights
INPEC	Instituto Nacional Penitenciario y Carcelario
MOVICE	Movimientos de Víctimas de Crímenes de Estado
PBI	Peace Brigades International
RIME	Regionales de Inteligencia Militar
SINTRAEMSDES	Sindicato de Trabajadores y Empleados de Servicios Públicos Autónomos e Institutos Descentralizados de Colombia
UNIPA	Unidad Indígena Pueblo Awa
UNP	Unidad Nacional de Protección
WOLA	Washington Office on Latin America

Executive Summary

The Caravana delegation of August 2012 was the third in a series of large international delegations of lawyers in response to invitations from the Colombian national association ACADEHUM (Asociación Colombiana de Abogados de Derechos Humanos), formerly known as ACADEUM.

The first delegation in August 2008 consisted of 70 lawyers from Europe and North and South America. This was extended in 2010 to include lawyers from 15 different countries in the Americas, Europe and Asia. By September 2012 over 160 delegates had visited Colombia as part of the Caravana.

The aim of the Caravana is to provide a spotlight on the situation of human rights lawyers in Colombia, and to advocate on their behalf for their protection so that they may go about their professional work without threats, attacks and assassinations. During all three visits delegates heard evidence of the high rate of impunity, which is still estimated to be 97% for some crimes. A list of 4,400 incidents against lawyers between 2002 and 2012 was presented to the Head of the Human Rights Division in the Deputy Attorney General's Office. The Caravana supports the UN Special Rapporteurs on the Independence of Judges and Lawyers and on the Situation of Human Rights Defenders in calling for improvements in the investigation, prosecution and conviction of the perpetrators of human rights abuses. The Caravana is still profoundly disappointed with the continuing victimisation and stigmatisation of defence lawyers and the government's tendency to issue statements critical of their work.

The Caravana was happy to welcome Judges among the Caravana delegates and a fuller report of their investigation is published separately. Evidence from their meetings is included in this report, including disturbing accounts of the persecution of judges.

A sub delegation of the Caravana - consisting of four lawyers from the Alliance for Lawyers at Risk, a UK based network of senior lawyers - had a separate, complementary agenda. They met with lawyers, human rights defenders, and members of campesino, Afro-Colombian and indigenous communities affected by mining and palm oil industries to see in what ways the international legal community can assist in the implementation of the United Nations principles on Business and Human Rights. Their report is also published separately.

The Caravana welcomed the peace talks between the government and the guerrillas which commenced as the delegation arrived but was concerned at the lack of participation by civil society organisations in the process.

The context of the 2012 Caravana included observations on the working of the new Victims and Land Restitution Law; the impact of the mining and extractive industries; violation of the rights of indigenous peoples; continued activities of paramilitaries; the violation of prisoners' rights; the persecution of sectors other than lawyers and the judiciary including Trade Unionists, Afro-Colombian communities, and human rights defenders. The report also examines impunity; the rule of law and access to justice; as well as evidence of limited progress in prosecuting the perpetrators of extra judicial killings, forced disappearances and sexual violence. While encouraged by the enactment of the new Victims and Land Restitution Law (Law 1448 of 2011), which complements the existing Justice and Peace Law (Law 975 of 2005), the Caravana believes that these laws do not go far enough to right the wrongs visited on hundreds of thousands of Colombian citizens during the last 25 years. For those attempting to use Law 1448 to retrieve their land, the process is also one that engenders a substantial amount of risk; 30 community leaders who were demanding the return of their land have been assassinated since Law 1448 was passed.

The delegates heard evidence of a lack of resources in the justice system which has a serious impact on the ability of prosecutors and the judiciary to ensure the proper functioning of the judicial system. The report also discusses other factors which impact significantly on the functioning of the judicial system, namely: lack of respect for the judiciary; problems in tackling impunity from the prosecutors' perspective; failure to investigate and prosecute paramilitary attacks; improper reliance on military justice and deficiencies in the Justice and Peace Law.

The most serious concern for the Caravana is that threats, attacks, persecution and the killing of lawyers continue. Lawyers are hampered in their work by having to defend spurious proceedings against themselves and by burglaries of their offices, and cyber-attacks on websites and vandalism of their office equipment. The legacy of the surveillance by the state intelligence agency (DAS, Departamento Administrativo de Seguridad) has interfered with the protective measures which some lawyers should receive. In addition to the problems of state interference in their work are the risks that many lawyers face of physical violence and possible assassination. The lawyers most at risk work with clients such as political prisoners, those with problems related to the use of or rights to land, those accused of collaborating with the guerrillas, and representatives of minority or repressed communities.

After conducting the regional visits the delegates returned to Bogota and met with various national authorities, including the Coordinator of the Presidential Programme for Human Rights and International Humanitarian Law, the National Protection Unit and the Land Restitution Unit. Delegates also met with officials from their own Embassies, and the European Union delegation.

The Caravana is concerned that there is a lack of effective protection for human rights defenders from the new National Protection Unit. Delegates heard reports of inadequate resources and a lack of trust in the unit, which in part stems from concerns about the participation of DAS in the process prior to its abolition in 2011. There are also concerns about the efficacy of the land restitution process and the ability of the Land Restitution Unit and the National Protection Unit to collaborate effectively to protect those people who are using the new law to reclaim their land.

The work of the Caravana does not end when the visit to Colombia finishes. Reporting on the visit and accounting to the professional associations of the lawyers who participated in the Caravana is a vital way of supporting access to justice, the rule of law and human rights in Colombia. The Caravana's network of international lawyers will continue to support fellow lawyers and human rights defenders in Colombia and will monitor events in order to help protect and promote justice for its citizens.

I. Introduction

The Caravana is part of an on-going commitment by international lawyers to support human rights lawyers, uphold the rule of law and promote access to justice in Colombia. The Caravana has worked closely with the national association of human rights lawyers in Colombia, ACADEHUM (Asociación Colombiana de Abogados Defensores de los Derechos Humanos). Links have also been established with lawyers in the regions where they face additional risks of isolation and increased threats. The Caravana met with many individuals and organisations who often testified to things that put their own safety at risk and, in many instances, requested that they remain anonymous. However, a senior member of ACADEHUM explained that the international scrutiny provided by the Caravana enhances protection and saves lives.



Rafael Palencia Fernández
Chair of ACADEHUM



Sara Chandler
Chair of the Caravana UK Lawyers Group

I.1 Findings of the 2010 Caravana

In 2010 the delegation found that a large number of assassinations and threats against lawyers, human rights defenders and trade unionists continued to take place in Colombia. In all regions visited the delegates found that in cases of threats to lawyers and human rights defenders, the victims did not seem to receive the attention from the authorities that such threats demand. Regrettably, the 2010 Delegation could not identify a significant improvement in access to justice and the free exercise of the legal profession since it first visited Colombia in 2008. The climate of fear in which lawyers and legal professionals operate was very evident. For instance, many of the individuals interviewed asked to contribute anonymously due to their fear of becoming a target for retaliation. The delegation heard that this fear stems in many cases from the persistent, violent actions of former paramilitaries - activities which make the process of accessing justice all the more difficult.

The 2010 delegation found evidence of stigmatisation and the discrediting of lawyers, judges and human rights defenders throughout the regions visited. Numerous examples were given of state authorities publicly denouncing the work of lawyers and human rights defenders and openly criticising the rulings of judges. Indications of the obstacles to accessing justice were also presented to the delegation in all regions. This included a large number of cases relating to serious crimes (such as assassinations and forced disappearances) that had not been the subject of a thorough, impartial and timely investigation.

Communities who had been forcibly displaced stated that they faced major hurdles in accessing services that were supposed to be made available to them. Community leaders and human rights defenders discussed suffering persecution as a result of simply seeking to have their basic rights respected. Trade unionists also reported that they continued to face extreme difficulties affecting their ability to organise and ensure that labour rights are protected. The delegation also noted discordance between the testimonies given by lawyers, human rights defenders and victims on the one hand, and the testimonies offered by representatives of government authorities on the other hand. For example, in several regions, and in particular in Nariño, the authorities interviewed denied the existence of threats by armed groups in the area and seemed to dismiss complaints thereof without thorough investigation. This was in complete contradiction to the credible first-hand reports accumulated by delegation members as well as the findings of other international delegations.¹

¹ See for example the February 2010 Human Rights Watch report, *Paramilitaries' Heirs: The New Face of Violence in Colombia* available at <http://www.hrw.org/en/reports/2010/02/03/paramilitaries-heirs>. This report noted, for example, that Tumaco is one of the three cities in Nariño with the highest concentration of successor paramilitary group operations. It also states at page 35 that "Human Rights Watch received repeated, consistent statements from people in Nariño about the operation of the Black Eagles, who controlled territory in several areas, threatened civilians, and were apparently engaged in a bloody turf war against the Rastrojos over control of the port city of Tumaco."

The report of the 2010 Caravana delegation outlined recommendations for action by the participating international delegates. Such recommendations included the publication of the lack of human rights protection in Colombia, the impunity tolerated by the State for those who violate human rights and the appropriate measures to guarantee safety and security for legal practitioners, as provided in the United Nations Basic Principles on the Role of Lawyers.²

Finally, the 2010 Caravana report recommended that a third inquiry should take place in 2012 to assess the extent to which the 2010 findings had evolved, bringing attention to any persistent challenges faced by the legal profession and demonstrating the legal community's continued solidarity to the human rights defenders and lawyers of Colombia.

1.2. Methodology

The Third International Caravana of Jurists visited Colombia from 26 August to 1 September 2012. 42 lawyers and judges attended from Belgium, Canada, England & Wales, France, Ireland, Italy, The Netherlands and Spain. Participating delegates came from a variety of legal backgrounds and included: judges; prosecutors; corporate, criminal defence and human rights lawyers; and legal academics. Of the 42 delegates, many had already participated in either one or both of the 2008 and 2010 delegation visits to Colombia. All participants had been provided with training and preparatory reading materials on the Colombian justice system, transitional justice and also with the reports of the 2010 and 2008 delegations.

The delegates were divided into six groups and travelled to six of the highest risk regions of Colombia to meet a wide range of interlocutors such as human rights lawyers, members of the judiciary, victims and regional authorities. Many of these regions had also been visited by the Caravana in 2010.³ From 27 August to 30 August 2012 the Caravana visited the following regions: Nariño (Pasto), Norte de Santander (Bucaramanga), Centro (Bogotá, Yopal), Atlántico (Cartagena, Sincelejo, Barranquilla), Antioquía (Medellín, San José de Apartadó) and Sur Oeste (Cali, Santander de Quilichao).

The delegation was coordinated by Asociación Colombiana de Abogados de Derechos Humanos (ACADEHUM) and the Colombian Caravana UK Lawyers Group (supported by the Law Society of England and Wales). Regionally, the delegation was also supported by local Colombian human rights organisations.

The content of this report is based on interviews carried out during the delegation's visit to Colombia in 2012 which were prepared and conducted exclusively by the international participants of the 2012 delegation. Unless otherwise specified, the information included in this report is based on the testimonies of the Colombian human rights lawyers, human rights defenders, victims and their representatives, and members and officials from various branches of the judicial system. Delegates also engaged in discussions with the Colombian government including the Vice President's office, the Department of Defence, the National Protection Unit and the Land Restitution Unit who were interviewed after the delegates returned from visiting the regions. The information received by delegates during the course of the 2012 Caravana has not been independently investigated. This report only includes information for which permission to disclose has been granted and the editors were mindful while compiling the report of the safety of those who took risks to disclose information to the Caravana.

2 United Nations, *Basic Principles on the Role of Lawyers*, 7 September 1990, available at: <http://www.unhcr.org/refworld/docid/3ddb9f034.html> [accessed 24 March 2011]. Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

3 Nariño (Pasto); Norte de Santander (Cúcuta); Centro (Bogotá, Tunja); Eje Cafetero (Pereira, Armenia); Huila (Neiva, Reserva Indígena La Reforma); Costa Caribe (Barranquilla, Cartagena); Antioquía (Medellín, San José de Apartadó); and Sur Oeste (Cali, Popayán).

The report's findings, conclusions and recommendations are based on internationally recognised standards for human rights and access to justice, such as the Universal Declaration of Human Rights⁴, the International Covenant on Civil and Political Rights⁵, the United Nations Basic Principles on the Role of Lawyers⁶ and the Basic Principles on the Independence of the Judiciary.⁷



Departments of Colombia

4 <http://www.un.org/en/documents/udhr/index.shtml>.
5 <http://www.2.ohchr.org/english/law/ccpr.htm>.
6 See footnote 2, p.7.
7 <http://www.unrol.org/doc.aspx?d=2248>.

1.3 Aims and Objectives of the 2012 Caravana

The purpose of the delegation mission of the Third International Caravana of Lawyers in August 2012 was to:

- Ensure that Colombian legal professionals are able to carry out their work in a safe environment without fear of threats, intimidation or attack.
- Support the rule of law in Colombia, combat impunity and ensure access to justice for the many victims of the conflict.
- Improve the safety of the lawyers during the visits of international delegates to the Colombian regions.
- Increase awareness within Colombia of the international community's profound concerns about attacks against human rights lawyers and members of the judiciary.
- Increase the awareness of the Colombian police, state officials, judiciary and prosecutors of the international legal monitoring of cases by Caravana lawyers.
- Increase the awareness of international governments and the international community of the abuses suffered and dangers faced by Colombian lawyers and judges in the course of their work.
- Increase international awareness of key issues including: the persisting climate of impunity, the high level of attacks against the independence of the judiciary, and the stigmatisation and criminalisation of human rights defenders.

1.4 Activities

During the 2012 Delegation, delegates were seeking to:

- Follow up on specific attacks against Colombian lawyers and judges that are being monitored by the organisations participating in the Third International Caravana of Jurists and ACADEHUM.
- Gather further information about attacks and harassment of lawyers and judges in Colombia since 2010.
- Raise awareness, both within Colombia and internationally, of the persecution that lawyers currently face and through doing this raise awareness of the international commitment to supporting Colombian lawyers.
- Assess levels of access to justice and rates of impunity in cases of human rights violations.
- Monitor the Colombian state's implementation of the recommendations of UN Special Rapporteurs' recommendations, its respect of international law and its implementation of the rule of law.

2. Conclusions and Recommendations

2.1 Conclusions

Colombia still faces many challenges to the integrity of its legal system. The state has to confront significant and complex problems that stem from the continued operation of illegal armed groups and criminal gangs as well as corruption and great socio-economic inequality. This inequality has concentrated power amongst an elite group of wealthy landowners, business entrepreneurs and an entrenched political class. A recent acceleration in the promotion of foreign business investment has further increased this inequality and has resulted in renewed confrontations between ordinary Colombians and successor paramilitary groups. A lack of enforcement by the state means that there are few legal controls over the operations of these multi-national corporations and an increase of alleged human rights abuses connected to their use of the land. Measured against these issues are tentative steps towards progress in the form of new legislation designed to redress the wrongs of the past, including the 2011 Victims and Land Restitution Act which aims to return land to those who have been forcibly displaced.

Nonetheless, Caravana delegates were disappointed that they were unable to discern improvements to the problems faced by human rights lawyers and defenders. Lawyers, judges and other actors in the legal system continue to be subjected to threats, attacks and assassinations. A substantial number of these threats originate from paramilitary groups which still operate in many parts of Colombia, despite the well-publicised demobilisation process which took place between 2003 and 2006. Set against these horrific crimes is a justice system which still fails to adequately investigate or prosecute perpetrators, resulting in a rate of impunity which for the most serious crimes is still measured at 97%. The Caravana detected an underlying lack of political will to resolve this problem, despite many public statements and private assurances to the contrary. The prosecutor's office, which is responsible for the timely and thorough investigation of serious crimes, is still underfunded, with many regional offices complaining of a lack of resources which leaves individual prosecutors responsible for investigating hundreds of cases.

The political class exhibited positive intentions when President Santos was elected in 2010 and for a while the public denigration of human rights lawyers and judges was reduced. However, recently there have been worrying signs of a return to this practice, such as in the case of Judge Juan de Dios Solano, which threaten to further undermine the judicial system and undo any progress made between the second and third visits of the Caravana. Human rights lawyers still face false allegations designed to disrupt their ability to do their jobs, including the continued practice of associating lawyers with the alleged crimes of their clients. Lawyers across Colombia called for the political classes and public figures to speak out in support of their work and to recognise that the work they do is legitimate and necessary to the proper functioning of a democratic society.

The potential impact of the 2011 Victims and Land Restitution Law (Law 1448) cannot be understated, as it has the goal of returning land to anyone who was forcibly displaced during the internal conflict. Consequently the Caravana is cautiously optimistic about this positive step forward. Despite this however, there are concerns about the effectiveness of the law and the exclusion of some Afro-Colombian communities from the process. Additionally there are immediate and serious concerns about the safety of those attempting to reclaim their land, as evidenced by the assassinations of 30 community leaders who were advocating for the return of their land. This also points towards failings in the effectiveness of the National Protection Programme which is designed to protect individuals who face credible threats of violence.

The creation of a presidential programme aimed at indigenous peoples and Afro-Colombian communities is welcomed; however the presence of military establishments in indigenous peoples' reserves in violation of their constitutional rights is alarming.

The Peace Community of San José de Apartadó is an example of where a community has attempted to resist and protect itself from the continuing armed conflict, but the government has still failed to afford it the protection it badly needs and has also failed to recognise the positive message this would send to members of other oppressed groups and communities in Colombia.

It is hoped that the first hand testimony presented in this report of the 2012 delegation will serve as a message to the Colombian authorities that the plight of human rights lawyers and other vulnerable groups is being monitored by an international audience. The Caravana has identified issues which require immediate and decisive action in order to prevent further abuses and is hopeful that future delegations will be able to identify significant improvements.

2.2 Recommendations

The Caravana delegation 2012 makes the following recommendations to the Colombian government and/or other officials.

In relation to lawyers and human rights defenders the Delegation strongly recommends:

That the Colombian government and local authorities improve the measures provided to protect human rights lawyers and ensure that authorities respect the accompaniment and representation work of human rights lawyers;

That the Colombian government and local authorities take appropriate measures to guarantee the necessary safety and security of all lawyers to enable them to exercise their functions, as provided in the United Nations Basic Principles on the Role of Lawyers;

That the Colombian government publicly endorse the principles outlined in the United Nations Basic Principles on the Role of Lawyers;

That the Colombian government and local authorities publicly acknowledge the valuable work of judges, lawyers and human rights defenders, and cease negative statements about lawyers and the judiciary;

That the Colombian government create the mechanisms for a permanent dialogue between state authorities and human rights lawyers' organisations and more generally with lawyers' legitimate representatives in Colegios de Abogados, lawyers associations and the Comité ejecutivo de la abogacía;

That all murders, attacks and threats against lawyers and human rights defenders are investigated in a timely and independent manner with appropriate resources and that those responsible are prosecuted promptly;

That the Colombian government publish reports on the state of investigations into all such murders, attacks and threats suffered by lawyers and human rights defenders;

That the Colombian government establish a special team within the fiscalía to investigate the threats, attacks and killings of lawyers;

That the military justice system for the investigation and prosecution of human rights abuses by the military towards civilians is fully compliant with international standards and the jurisprudence of the Inter-American Court of Human Rights; and

That the Colombian government implement the recommendations of the UN Special Rapporteur on the Independence of Judges and Lawyers and the UN Special Rapporteur on the Situation of Human Rights Defenders.

In relation to the administration of justice the delegation also strongly recommends:

That the current administration reiterate its respect for the independence of the judiciary and, in that regard, publicly withdraw its pronouncement against the decision of Judge Juan de Dios Solano;

That the Colombian government provide adequate financial resources to the judicial authorities to allow them to carry out their duties;

That the Colombian government provide prosecutors responsible for human rights cases with increased resources so that they have a realistic caseload;

That the Colombian Government upon request, provide information to lawyers in Colombia and other organisations about the measures it has taken to diminish or eradicate the high levels of impunity;

That the Colombian Government demonstrate the effectiveness of measures it has taken to end impunity in the cases of extra judicial killings and forced disappearances;

That the Colombian government provide sufficient funding for the Ombudsman's Office, at a national and regional level, in order to increase their capacity to carry out their duties; and

That the Colombian government take up the additional recommendations of the separately published Judges' report.

In relation to specific issues raised during the visit the delegation makes the following recommendations:

In relation to **women and sexual violence** it invites the Colombian government to ensure the implementation of new legal initiatives for the protection of the high number of women affected by the armed conflict and to fully investigate the cases of victims of sexual violence.

In relation to **indigenous peoples** it condemns the presence of military establishments in the indigenous reserves in violation of the constitutional rights of indigenous peoples and calls on the Colombian government to remove them.

In relation to the **Afro-Colombian communities** it invites the Colombian government to ensure that Afro-Colombian victims, communities and organisations are able to participate in and benefit from the implementation of Law 1448 (Victims and Land Restitution) and to recognise Afro-Colombians' right to prior consultation and to free, prior, and informed consent (FPIC);

In relation to the **Peace Community of San Jose de Apartado** it encourages the Colombian authorities to enter into talks with the Peace Community to recognise the community as a humanitarian zone that is neutral to the conflict. The community should be allowed to go about their daily lives, inside and outside the peace community, free from threats and violence. The Caravana calls upon the Colombian state to establish a commission to investigate the massacres of 2005, as well as the high levels of impunity for those who continue to harass and attack members of the community.

In relation to the **UN Principles on Business and Human Rights** it calls on the Colombian state to uphold these principles particularly in its dealing with multi-national companies and insist that the latter do the same.

3. Context of the 2012 Caravana Visit

The Caravana returned to Colombia after two years of President Santos' government to hear testimony on the impact of new legislation such as the Victims and Land Restitution Law (Law 1448), the continued threats by paramilitaries, emerging peace talks with the guerrillas and the introduction of a National Development Plan designed to attract multi-national companies to invest in extractive industries in Colombia.

3.1 Displacement, restitution and the Victims law

“Displacement is often a tool for acquiring land for the benefit of large landowners... (and) private enterprises planning large-scale projects for the exploitation of natural resources.”⁸

The persistence of internal displacement in Colombia continues to cause extreme concern for defenders of human rights. According to the non-governmental organisation Consultoría Para los Derechos Humanos y el Desplazamiento (CODHES), in 2009, 286,389 people were forcibly displaced from 69% of Colombian municipalities.⁹ At the time when this survey was taken, the highest rates of forced displacement were recorded in the departments of Antioquia, Bogotá, Nariño, Valle del Cauca, Santander, Meta, Bolívar, Huila and Córdoba. Almost two years later, the CODHES reported that approximately 89,000 people were displaced during the first half of 2011. Although this figure might be seen as an improvement on the 2009 statistic, delegates on the Caravana's 2012 mission were informed that levels of displacement during the first year of the Santos government did not appear to indicate any substantial change compared with displacement levels of the preceding year. At present approximately 34% of Colombia's internally displaced peoples are not officially registered, and 25% of applications for 'internally displaced person' status have been rejected. Some of the critical issues associated with the problem of internal displacement are attributed to a severe lack of coordination between the regional and national levels of the authorities responsible for internally displaced person registration, as well as the lack of transparency in land restitution, housing and socioeconomic support.

Given the inextricable link between land and internal displacement, the restitution of land to victims is a crucial and recurrent concern within the context of human rights violations in Colombia. The Victims and Land Restitution Law (Law 1448, June 2011) represents a positive step in the State's acknowledgement of the existence of the huge issue of displacement related to the armed conflict in Colombia. The introduction of this law and the establishment of the Unidad de Restitución de Tierras¹⁰ (Land Restitution Unit), have created a legal framework for the reparation of victims and the restitution of land from which victims had been forcibly dispossessed. Law 1448 created the Civil Court for Land Restitution specifically for the purpose of dealing with land restitution cases. Estimates of the number of displaced persons in Colombia vary but could be as high as 4.3 million people.¹¹ The Colombian state's own estimate is much lower at 360,000 families.¹² Nonetheless, at the time of the Caravana's visit only 20,000 claims were being considered. Given the sheer number of potential claims (involving anywhere between 2.6 million and 6.8 million hectares of land)¹³, the likelihood of them all being processed, even within the next ten years, is questionable. Additionally, Colombia's current state of conflict is likely to propagate a further number of land restitution cases in need of resolution. Victims of forced displacement have also encountered a number of impediments under Law 1448, with perhaps the most controversial problem being that the law will not return land to victims of forced displacement between the years of 1985 and 1991, a period when forced displacement was arguably at its highest. Furthermore, where victims have been forcibly dispossessed of their land and that land is now

8 Report of the Representative of the Secretary General on internally displaced persons submitted in accordance Commission resolution 1999/47, 'Addendum. Profiles in displacement: follow-up mission to Colombia'; E/CN.4/2000/83/Add.1, 11 January 2000, para 23."

9 CONSULTORIA PARA LOS DERECHOS HUMANOS Y EL DESPLAZAMIENTO (January 27, 2010) "Salto Estratégico o Salto al Vacío." [http://www.internaldisplacement.org/idmc/website/countries.nsf/\(httpEnvelopes\)/A7E1B7BD7528B329C12575E500525165?OpenDocument#expand](http://www.internaldisplacement.org/idmc/website/countries.nsf/(httpEnvelopes)/A7E1B7BD7528B329C12575E500525165?OpenDocument#expand)

10 Land Restitution Unit, a branch of the government responsible for dealing with cases of land restitution, operating since February 2012. This Unit is currently focused on working in the regions of Putumayo, Nariño, Cauca, Valle del Cauca, Tolima, Meta, Córdoba, Antioquia, Magdalena, Cesar and some areas of Bolívar, Norte de Santander and Santander. The Colombian Caravana 2012 Delegation visited the Land Restitution Unit to discuss their current work and objectives for the future.

11 See <http://www.unhcr.org/pages/49e492ad6.html> (accessed 25 April 2013).

12 Still a Dream – Land Restitution on Colombia's Caribbean Coast (LAWGEF and LWR) http://www.lawg.org/storage/documents/Still_a_Dream.pdf (accessed 13 May 2013).

13 "Colombia and the Current Panorama: Victims and Land Restitution Law 1448", ABColombia (May 2012) http://www.abcolombia.org.uk/downloads/Colombia_the_Current_Panorama.pdf

under agro-industrial development, often via foreign financed corporate initiatives, it will not be returned to them unless they agree to become 'associates' of the company that occupies it. Evidently, Colombia's attempts to address the problems of land displacement and restitution have begun to take shape through the introduction of Law 1448 and the newly developed Land Restitution Unit. However, the question of prioritisation between the rights in land or other interests of multinational corporations and those of Colombian citizens, constitutes a major conflict of interests for the nation which still requires resolution.

Peace Community San Jose De Apartado

The Peace Community of San José de Apartadó is composed of a group of farmers who were displaced from their lands and who have taken a neutral position in the armed conflict. Members of the community ask that they be kept safe from armed groups, and are recognised by the Constitutional Court as a community in need of protection. It is accompanied by Corporación Colectiva de Abogados José Alvear Restrepo (CCAJAR) and other defenders. The community's resistance to the armed conflict and to all attempts to destroy it (many of which are violent) represents one of the most important examples for human rights defenders in Colombia.

Delegates of the Colombian Caravana visited the peace community with the aim of investigating the problems faced by farmers who were displaced from their land. Members have reported that the persecution of the community continues with near daily harassment, campaigns of defamation through the media at the local and national levels, and an economic embargo that prevents goods from entering the community. Information relating to increases in paramilitary presence, displacement and the pressurisation of local people to give up their land has also been disclosed to delegates.

The community has said that it will only recommence dialogue with the government on condition that: the State rescinds its statement that the community is linked to guerrilla groups; the police station is moved from its location nearby and the State respects the community as a humanitarian zone and peaceable settlement. The community has also expressed plans to establish a medical centre and a school and would like the farmers' meeting point to be respected. Finally, the group would like a commission to investigate why justice has not been fulfilled following the massacre on 26th December, 2005.¹⁴

3.2 Mining and extractive industries

"Consequences of business operations affect the interests of society ... through impacts on the natural environment, impacts on the livelihood of people and impacts on traditions, culture and social constructions."¹⁵

The Colombian National Development Plan 2010-2014 is a policy implemented by the State Government and the National Planning Department in the security and defence, economy, environmental management and citizen participation sectors of Colombia. This initiative has established mining and the extraction of natural resources as a major driver of the country's economic growth, under the state's asserted premise of bringing prosperity, more jobs, less poverty and increased security. Delegates found that the number of licenses which were approved for gold and coal extraction rose from 105 in 2000 to 1,144 in 2010 and that by 2010, according to an estimate by the Colombian Comptroller General, almost 60% of Colombian territory was either under concession or had applications pending. Reportedly, there are plans to double coal exports, triple the mining areas of the country, and quadruple gold exports.

Caravana delegates who investigated the issues surrounding the mining and extractive industries received many reports of significant conflicts arising on the one hand from Colombia's policy direction to expand natural resource extraction through foreign direct investment, and on the other hand from existing Colombian laws

¹⁴ See <http://www.amnesty.org/en/news/campaigners-jam-faxes-support-colombia-peace-community-2012-02-21>.

¹⁵ "Corporate Social Responsibility in the Mining Industry", Natalia Yakovleva, Ashgate Publishing Company (USA 2005).

which protect the rights of indigenous and Afro-Caribbean peoples on whose lands mineral resources are found.¹⁶ A widening gap continues to separate the progressive Colombian domestic legislation, which was enacted to protect environmental and indigenous rights, from the lack of effective implementation by those state institutions responsible for enforcement of the legislation. Caravana delegates were told that this protection deficit is exacerbated by economic policies which give priority to extractive industries in areas which are the home of indigenous populations.¹⁷ The current regulatory frameworks for the exploration and the extraction stages of a mining project now involve environmental assessment and authorisation for the extraction phase alone, even though initial exploration operations can cause serious environmental damage.

Delegates who spoke to representatives of indigenous communities and their lawyers were advised that mining operations take place on the lands of affected indigenous peoples without the free, prior and informed consent of affected populations, or even prior consultation. Chemicals, especially mercury, used during the mining process often pollute rivers and land, affecting the health of the local people and their agricultural products. As a result of the adverse effects on their ancestral lands, mining has a negative impact on the cultural rights and survival of indigenous populations as distinctive peoples. Moreover, in their endeavours to uphold these rights, indigenous peoples and their leaders frequently face threats and attacks on their most fundamental rights. Given the significant and projected upsurge in the growth of the mining and extractive industry, the foregoing trends raise serious concerns about the failure of the Colombian state to protect the human rights and constitutional rights of its indigenous peoples.



Caravanistas meet with people affected by mining in Nariño

¹⁶ Under Colombian law, communities affected by proposed mining activities are entitled to be consulted about the proposals. On top of this, the free, prior and informed consent of communities is required before any permission to explore or extract from the land is granted.

See <http://www.ilo.org/indigenous/Conventions/no169/lang-en/index.htm> (accessed 25 April 2013) and

<http://intercontinentalcry.org/colombian-court-confirms-indigenous-peoples-right-to-free-prior-and-informed-consent/> (accessed 25 April 2013).

¹⁷ See below within this Context section for more on indigenous peoples.

3.3 Indigenous peoples

“...Territory is recognised and understood as a fundamental part of their culture, spiritual life, integrity and autonomous development.”¹⁸

Indigenous peoples in Colombia comprise one of the social sectors most affected by human rights violations. Under Colombian law, indigenous peoples have a number of constitutional rights including prior consultation; and the rights to free, prior and informed consent to be obtained before decisions are taken that affect their lands. These rights have been upheld by the Colombian Constitutional Court in a number of cases. However, according to the UN Special Rapporteur on the Rights of Indigenous Peoples, indigenous peoples are suffering “alarming patterns of forced displacement”. Homicide and lack of food are also among a series of pressing problems, primarily due to the country’s continuing armed conflict.¹⁹

The Caravana delegation received information about activities which are often carried out contrary to the constitutionally protected land rights of indigenous peoples. They were told that members of the mining and extractive industries had previously arrived on indigenous territories, armed with concessions granted by the government but without any prior consultation having taken place with the communities. Moreover, some communities were not even aware that they had the right to be consulted. Additional problems arise where indigenous communities have no documentation that recognises their legal title to their ancestral lands, which can be extremely difficult to obtain.

Members of the delegation spent a large amount of time focusing on issues related to the indigenous populations, especially in the department of Nariño, where 33% of the region is composed of indigenous peoples. Violations against the indigenous communities in the region include: various forms of violence by illegal armed groups; selective murders; massacres; forced disappearances; massive displacement and individual displacements; sexual assaults against women; threats to leaders; fumigations (of coca fields, which affect other crops in the vicinity); casualties from land mines; and communities becoming penned-in between fighting armed groups. It is concerning that many members of these communities undergo forced recruitment to both guerrilla and paramilitary groups, the latter of whose presence is particularly prominent. Members of the 2012 delegation found that a large military base exists in the area of land inhabited by the Pasto indigenous peoples. This point was raised at a meeting with the Ministry of Defence upon the group’s return to Bogotá. The Ministry of Defence official present at the meeting claimed they did not know anything about it. There is a scarcity of legal representation (because of threats and attacks on lawyers and the lack of awareness among the indigenous groups of their rights), which results in claims not being pursued within procedural time limits. Hence, many cases within the remit of indigenous rights violations are not even granted the opportunity to enter the judicial system.

¹⁸ Art. 40, Decree 4635, Victims Law 1448.

¹⁹ United Nations General Assembly (January 8, 2010) “La situación de los pueblos indígenas en Colombia: seguimiento a las recomendaciones hechas por el Relator Especial anterior.”

3.4 The Paramilitaries

The Caravana reported on the continued existence of paramilitary groups in 2008 and again in 2010. The demobilisation process which took place between 2003 and 2006 was designed to dismantle the umbrella paramilitary organisation, the AUC (Autodefensas Unidas de Colombia). However, this process was flawed in two significant ways. Firstly, it failed to verify the identity of individuals participating in demobilisation ceremonies. This resulted in widespread fraud, whereby people were paid to stand in the place of actual members of the AUC. Consequently many members of the AUC remained mobilized. Secondly, the process failed to investigate, identify and shut down the criminal activities which helped to fund the AUC and its subsidiaries. The demobilisation process therefore ultimately resulted in the restructuring of the paramilitary organisation into successor groups, or neo-paramilitaries. In 2012 the Caravana again heard evidence of these successor groups, such as Los Rastrojos in Nariño and Los Urabeños in Medellín.

Since 2008 the Colombian state has consistently referred to the new generation of paramilitaries as BACRIM (Bandas Criminales Emergentes). This has been a conscious effort to draw attention away from the paramilitaries' political links to focus on their criminal activities and has allowed the Colombian state to continually deny that organised paramilitary groups are still in existence. It is beyond question that many of the successor groups, like the AUC before them, engage in drug trafficking. It is even suggested that in places such as the far south west of Nariño paramilitary groups are cooperating with the FARC (Fuerzas Armadas Revolucionarias de Colombia)²⁰ and the ELN (Ejército de Liberación Nacional)²¹ for the purposes of the production and distribution of cocaine. However, the historic political and ideological conflict between the paramilitaries and the guerrillas remains a problem. The Caravana received reports of periodic armed conflict between paramilitary forces and the guerrillas as well as reports of lawyers, campaigners, trade unionists and many others, threatened by paramilitary groups for being members of, or colluding with, the guerrillas. For example, the Caravana was given evidence that in March 2012 Los Rastrojos issued an invitation to assassinate Jose Humberto Torres (a human rights lawyer in Barranquilla), by offering a bounty of \$120,000.

For communities caught in the crossfire, and for the human rights defenders and lawyers who advocate for them, the presence and continued threatening conduct of the paramilitaries is all too evident. Lawyers and human rights defenders frequently receive death threats signed off by successor groups such as Aguilas Negras and Los Rastrojos by telephone, text message, email, leaflets and written letters. In July 2012 threats from a group styling itself as the "Anti-Restitution Army" were sent en masse to lawyers who assist victims seeking the restitution of their lands. Personal threats delivered face-to-face to lawyers in Barranquilla raised the fear and violence of these threats to a new level. The Colombian state's failure to investigate and prosecute a large number of these cases, along with the low level of convictions obtained in the cases which have been prosecuted, means that there is very little restraint on these paramilitary activities.



Caravanistas at the Governor's Office in Nariño

²⁰ A Colombian Marxist-Leninist revolutionary guerrilla organisation involved in the continuing Colombian armed conflict since 1964.

²¹ The National Liberation Army existing in Colombia since 1964.

3.5 Violation of prisoners' rights

*"The detainees are exposed to violations of their personal safety in the first hours of their detention, as a mechanism to get information or a confession, as a means of punishment or to maintain control of the establishment"*²²

Torture is a human rights violation that is practised increasingly in prisons and detention centres throughout Colombia. The perpetrators of these acts of torture are reportedly guards and officials from the prisons, although there are also cases in which the army and police have allegedly committed the violations. The practice of psychological torture, which is also used, takes the form of solitary confinement, threats, pressure on family members, and simulated executions. These practices are aggravated by specific prison policies. Of particular concern are policies that place restrictions on the communications of the prisoners with their lawyers and implement the elimination of prisoners' human rights committees.

Organisations that provide legal services to prison inmates are stigmatised and harassed for their human rights work. When these organisations refer to official documents that provide evidence of acts of torture and human rights violations they are often accused by the State of falsifying these documents in an attempt to undermine the credibility of both the evidence and the organisation. Additionally, evidence is repeatedly stolen or destroyed and in some cases criminal proceedings are brought against the human rights lawyers themselves.

In 2010, Colombia was reported to have a total of 139 prisons and detention centres, with capacity for approximately 55,042 inmates.²³ However, delegates found that at present approximately 111,000 people are incarcerated in its prisons. From a visit to the National Prison Institute (INPEC) it was observed that overcrowding in prisons is one of the major underlying problems within the incarceration system in Colombia. A health crisis is prevalent within the majority of the prisons throughout the country and diseases such as tuberculosis are rife. Although INPEC acknowledged the lack of medical resources and treatment available to inmates, the Institute claims to only maintain control over the sectors of custody and rehabilitation since 2010, and that therefore the institution could do nothing to alleviate the poor health and safety conditions.

Further complaints lodged with the Caravana in August 2012 included the lack of support given to inmates in respect of their transfer requests to be nearer to friends and family. INPEC explained that although the Institute had, of its own accord, made several transfers, they were not required either by law or policy to act on these requests. The classification of inmates within prisons has been widely criticised as being problematic, for example where political prisoners are placed in the same wing as paramilitary prisoners. Delegates were informed that 'political prisoners' are not a classification and that prisoners can only be categorised according to the law.

Delegates received reports that the basic penal regime in detention centres has been changed. No consultation exists between inmates and authorities and there is no adequate provision or infrastructure in respect of healthcare, transfer requests and differentiation in prisoner classification. Much of the lack of development of these prisons is attributable to the low budget on which the system operates and, until more funds are injected into the system, the conditions of incarceration centres in Colombia will almost certainly continue to deteriorate.

22 COMISIÓN COLOMBIANA DE JURISTAS (April 22, 2010) "Situación de derechos humanos y derecho humanitario en Colombia."

23 FUNDACION LAZOS DE DIGNIDAD (April 15, 2010) "Situación de las y los presos políticos en Colombia."

3.6 Persecution of other groups

3.6.1 Trade unionists

“Colombia has become the country where defending workers’ fundamental rights means, with greater probability than in any other country, a death sentence.”²⁴

Colombia has a lamentable history of attacks on trade unions, with around 3000 trade unionists killed in the last 25 years. In the first eight months of 2012, 48 trade unionists were killed.²⁵ One of the largest public enterprises unions in Colombia is SINTRAEMSDES (Sindicato de Trabajadores y Empleados de Servicios Públicos Autónomos e Institutos Descentralizados de Colombia). Members of the 2012 delegation met with several chapters of the union in Medellín to discuss the violations endured by many of its members and the severe pressure under which trade unions operate.

A particular current problem expressed to the 2012 Caravana by SINTRAEMSDES is the inadequate or non-existent protection provided to threatened unionists. Additionally, where personal or sensitive information is disclosed by trade unionists during an application for protection measures, there are concerns that it is appropriated and used to persecute the applicant. Trade union members also expressed concerns about the delivery of protection measures through private companies with potential links to armed groups.

The conditions of workers were described as being in a primitive state and as exploitative in nature. Contracts for work are often only offered for a very short period of time. A feature of these contracts is that employees cannot affiliate with unions, thereby further weakening the union movement and breaching the constitutional right to trade union association in Colombia.

In October 2011, the Inter-American Commission on Human Rights held a hearing regarding the continued, deliberate and systematic violation of labour and human rights in Colombia as a violation inter alia of Article 16 (Freedom of Association) of the American Convention on Human Rights, as well as demonstrating that the State's protection programme for trade union members is insufficient.²⁶ As part of the submissions in this hearing the petitioners argued that the State had failed to increase its investigations into acts of violence against trade union members, and that the acts of violence are followed by impunity.

3.6.2 Afro-Colombian communities

The situation of many Afro-Colombian communities in both rural regions - such as Chocó - and urban areas to which they have often been displaced - such as Quibdó, Suarez, Buenaventura, Cartagena and Cali - can only be described as critical. Under the Santos administration this panorama has not changed. In the first six months of 2011, the number of cases of abuses against ethnic groups increased by 38% compared with the same period in 2010.²⁷

A range of problems are faced by the members of this sector of Colombian society, which largely results from being in the middle of the armed conflict, caught between the violent activities of both the guerrillas and the paramilitaries. People in this community are displaced, their children are recruited by armed groups and women are subjected to sexual violence. In a meeting with representatives of the Afro-Colombian community in Nariño, particular emphasis was given to the difficulties in the system for formal registration of displacement. Some members of this community expressed their frequent inability to report crimes to the police, due to the fear of being confronted with further threats and violence. In the vast majority of cases, Afro-Colombians in need of legal assistance or representation do not have access to such support with a guarantee of it being free from political pressure and threats.

²⁴ INSTITUTO LABORAL ANDINO (June 10, 2010) “Colombia fue el país con más líderes sindicales asesinados en 2009.”

²⁵ Statistics taken from information received from SINTRAEMSDES (Sindicato de Trabajadores y Empleados de Servicios Públicos Autónomos e Institutos Descentralizados de Colombia).

²⁶ A description of this hearing can be found at: <http://hrbrief.org/2011/10/labor-union-rights-in-colombia/>.

²⁷ Los Derechos Humanos en el Primer Año de la Administración de Santos, US Office on Colombia. WOLA (Washington Office on Latin America), p.11.

3.6.3 Human rights defenders

“A prime reason for the insecurity faced by human rights defenders in Colombia lies in the systematic stigmatisation and branding of defenders.”²⁸

Human rights defenders, including lawyers, are victimised in Colombia. They are victims of death threats made through telephone calls, emails, pamphlets and graffiti - in which they are accused of being guerrillas and opponents of state policies. In addition, they have been reportedly subjected to illegal wiretappings, raids on the organisations that they belong to, information theft and judicial harassment. The charges against them are based on intelligence reports compiled by the (now defunct) DAS²⁹, the military, and the police. Despite repeated recommendations in reports by the Office of the UN High Commissioner for Human Rights, the Colombian State refused to declassify these intelligence reports. Hence, human rights defenders continue to be persecuted for their work despite the sector's legitimate and essential role in protecting basic rights and strengthening the democratic institutions of Colombia.



Caravanistas meet Peace Community leaders

²⁸ UNITED NATIONS (Sept 2009), “Declaración de Margaret Sekaggya, Relatora Especial sobre la situación de defensores de derechos humanos de la ONU.”

²⁹ Within the framework of the case known as the DAS “Chuzadas” (wiretapping), it had been revealed that this institution had intelligence reports on various legal, judicial and other organisations.

4. Impunity, the Rule of Law and Access to Justice

In 2010 the Caravana reported that there are “serious concerns about levels of impunity and challenges to accessing justice in Colombia.”³⁰ In 2012, the situation remains critical and there has been little discernible improvement in the intervening two years.

4.1. Limited progress on extra-judicial killings

Extra-judicial killings have been a recurring feature of Colombia's recent past. The most well-known of these are characterised as falsos positivos (false positive killings). The modus of these cases was that rewards or other incentives were offered for the killing of guerrillas, and as a consequence, innocent civilians were killed by members of the armed forces and then dressed as or denounced as guerrillas in order to claim the reward. Extra-judicial killings have also occurred when civilians have been killed illegally by members of the police force. Testimonies given to the Caravana indicate that the problem was at its worst under former President Uribe's administration but that they still occur today. Progress in investigating cases of falsos positivos continues to be slow, although the delegation to Bucaramanga heard evidence of on-going trials against alleged perpetrators.³¹

Disturbingly, the 2012 Caravana heard evidence of the killing of two brothers which was alleged to have been sanctioned by a local politician. The trial is on-going against un-named persons who are accused of carrying out the killings but delegates were informed that the local politician is being protected by the prosecutor and no charges have been brought. The family of these victims has received threats that originate from the father-in-law of the politician.

Where cases are being tried by military courts, as in Antioquia, there are reports of deliberate sabotage of cases in an attempt to cover up damaging evidence. In Yopal, the delegation reported some progress: there were multiple convictions in two cases and an on-going investigation of senior officers in a third case. However, these successes are dwarfed by the number of un-investigated cases.

In Cali the delegation met with Martha Giraldo, who had previously spoken to the Caravana during its first visit in 2008. Her father Jose Giraldo was killed by the army in 2005 and falsely labelled as a guerrilla leader; only one perpetrator has been successfully prosecuted. She is now a leading member of MOVICE and subject to frequent threats.

Reports of progress were received in Bogota in a meeting with the Vicefiscal General de la Nación (Head of the Human Rights Division) who claimed that by 31 July 2012, 1,800 military personnel had been detained as part of the criminal investigation into falsos positivos cases. This statistic is supported by the 2012 report of the Special Rapporteur on extrajudicial, summary or arbitrary executions.³² This report suggests that the sustained pressure by international organisations has had an impact on Colombia's response to extra-judicial killings. However, Colectivo de Abogados José Alvear Restrepo (CAJAR) told the Caravana that although there are approximately 1,600 military personnel serving sentences for falsos positivos, there are 12,000 further personnel involved who have not been charged with offences. This suggests that although progress is being made there is a long way to go before justice is achieved in this area.

³⁰ 2010 Caravana report – available on the Colombian Caravana website www.colombiancaravana.org.uk

³¹ For more in-depth information see the Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns. A/HRC/20/22/Add.2 of 15 May 2012 available at http://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_4036.pdf (accessed 25 April 2013).

³² *Ibid*, p.6.

4.2. Forced disappearances

The delegates who visited Bucaramanga met with representatives from La Asociación de Familiares de Detenidos Desaparecidos (ASFADDES). Since 1977, 200,000 people have been “disappeared”; the Caravana had hoped that access to justice in forced disappearance cases would be aided with the passage of Law 1408 in August 2010.³³ However, delegates heard testimony from ASFADDES that, whilst the law establishes mechanisms for the location and identification of the disappeared, nothing has been done to implement it. Delegates were told that 99% of the cases of forced disappearance have not been fully investigated and that the DNA bank which should facilitate the recognition of bodies has not been set up. According to ASFADDES, and other organisations the delegates spoke to, the law is ineffective as there are no regulations or penalties to enforce it.

The delegates heard testimony that, when Albania Arias’ husband’s body – missing since 2002 – was discovered on 14 August 2011 in a mass grave of 300 corpses, the prosecutors’ office refused to conduct an investigation as they did not have the resources to undertake the forensic analysis of that number of bodies. It appears from evidence the delegates were shown, that the law can give relatives certainty as to whether a person is dead and where they are buried. However, it does not always enable them to identify the exact body, nor to pursue any kind of further investigation.

Delegates were told by ASFADDES that there is no will from the government to start investigating these cases. The Caravana heard that the laws are “very beautiful but these are laws that cover up the real situation and hide the disappearances”.³⁴

4.3 Sexual violence

The delegates heard about significant challenges that women face when attempting to obtain justice under Judgment T-025 of 2004.³⁵ These challenges are primarily due to a lack of investigation of their complaints.³⁶ In 2008 the Constitutional Court stated that “Sexual violence against women is a common practice, widespread, systematic and invisible in the context of the Colombian armed conflict, as is the sexual exploitation and abuse, by all illegal armed groups, and in some isolated cases, by individual agents of the police and armed forces”.³⁷ In this decision, the Constitutional Court held that sexual violence in times of war is unconstitutional. However, in Bolívar, the delegates learnt that out of the 187 cases of sexual violence occurring in the department during the armed conflict, there has only been one prosecution.

In Nariño, the delegates learned of the case of Bajo Comaliche, a small village which was attacked by paramilitaries on the evening of 16 March 2012. The paramilitaries locked the men of the village in a building while the women were taken from their houses and raped. When victim ‘A’ reported being raped by three men the prosecutor made no inquiries and was unwilling to investigate the case until ‘A’ mentioned someone who belonged to the humanitarian rights organisation Guasimí.³⁸ Then, when victim ‘A’ returned unaccompanied to the prosecutor’s office the following day, she was denied entry.

It is clear from the testimony presented to the 2012 Caravana in Nariño and Cartagena that, despite Judgment T-025 of 2004 and Auto 092 of 2008, the use of sexual violence as an instrument of oppression is still widespread in Colombia.

33 Which aims to “pay tribute to the victims of the crime of forced disappearance and establish mechanisms for their location and identification.”

34 Anonymous member of ASFADDES.

35 Colombian Constitutional Court – Decision T-025 of 2004, available in English at http://www.brookings.edu/~lmedia/Projects/ldp/Colombia_T%20025_2004.PDF.

36 See the work of Sisma Mujer, an NGO working for women’s rights in Colombia, for example, <http://www.sismamujer.org/%E2%80%99Clos-hechos-de-violencia-sexual-deben-investigarse-seriamente-para-que-no-vuelvan-repetirse%E2%80%99D>.

37 Auto 092/2008 Constitutional Court of Colombia –Section III.1.1.1 available at <http://www.corteconstitucional.gov.co/relatoria/autos/2008/a092-08.htm>.

38 Corporación Guasimí Modelp – a non-profit organisation providing legal aid in Nariño.

4.4 Lack of infrastructure and resources in the justice system

The Second International Caravana reported on the difficulties that the Colombian justice system faced due to a lack of resources. The 2012 delegation found similar problems which, in some instances, were worse than in 2010.

In Nariño the Fiscalía General told 2012 delegates that prosecutors are struggling to deal with an exceptionally high level of cases. One prosecutor in the coastal town of Tumaco is reported to have 5,000 current cases, and in the town of Barbacoa the prosecutor has 900. There is also a suggestion that the distribution of prosecutors throughout the department might be imbalanced; the department capitol, Pasto, has 300 staff in the prosecutor's office yet the more remote areas appear to be very understaffed. The prosecutors in Nariño also reported that the new adversarial court system is causing problems; some lawyers are unfamiliar with the new rules, leading to further delays. Similar resource problems were reported in Bucaramanga and in Cartagena, where each prosecutor is reported to have approximately 500 cases.

In Cali, the courts and the prosecutors' office are scattered in 17 different buildings around the city, as a result of a bomb attack at the Palacio de Justicia in 2008. This has created further problems with the administration of justice in the region. In a meeting with the Council for the Administration of the Courts of the Department of Cali the delegation was also informed about lengthy delays to cases, a backlog of unheard cases, a lack of training for both lawyers and judges in the new adversarial system, and a shortage of prosecutors and public defenders.

4.5 Failure to respect the judiciary

In all regions visited by the 2012 Caravana delegation, serious concerns were raised about the lack of respect for the judiciary and the resulting impunity and challenges to accessing justice that follow from this. Judges with whom the delegates spoke explained that their decisions are treated with contempt, particularly by the government and local authorities. Many of the judges explained how they had been hopeful that under the Santos administration such persecution would end. However, their experiences have been that the persecution is worsening.

Across the country, judges described three key problems affecting their independence and ability to guarantee justice: firstly their authority and decisions are undermined by the negative statements of the government and local authorities; secondly their decisions are often not implemented or followed; and finally they are frequently threatened whilst carrying out their work.

According to those members of the judiciary with whom the delegation met, attempts to delegitimise judges extend beyond denigrating remarks made by state officials – for example, labelling a judge as a “guerrilla” or a “rotten apple”³⁹ – and judges face disqualification and even prosecution as a result of making unfavourable decisions.

The current context is one of intimidation. Judge Alberto Navalez of Medellín was suspended after granting house detention to a prisoner in precarious health who was likely otherwise to die in prison. Judge Navalez has since been re-instated. Another judge currently faces 40 disciplinary proceedings and a criminal charge for ‘prevaricato por acción agravado’ (abuse of power) for decisions which he justifies under international human rights law.⁴⁰ Furthermore, the delegation was informed that since 2010, 500 judges who granted economic, cultural or social rights under *tutela*⁴¹ have been investigated.

³⁹ As in the case of Judge Juan de Dios Solano Solano, see section 4.9

⁴⁰ Gustavo Arbeláez Rojas, ASONAL Sectional President.

⁴¹ The constitutional guarantee of the right of every person to judicial protection of their fundamental rights through an effective remedy.

Judge Juan De Dios Solano Solano

The Caravanistas who visited Bucaramanga met with Judge Juan de Dios Solano Solano. In several meetings in other parts of Colombia judges who met with delegates referred to the case of Judge Solano, which has become emblematic of the disrespect and intrusions suffered by the judiciary at the hands of the government. On 21 April 2011, Judge Solano heard a habeus corpus application on the request of the suspect who had been arrested in 2008 and was suspected of being a guerrilla. The suspect – Jose Marbel Zamara Perez, alias “Chuco” – was accused of committing an act of terrorism against the hotel club El Nogal in Bogota.

When Judge Solano, after due consideration of the facts and relevant legislation, ordered that Mr Perez be immediately released, President Santos denounced the decision and called Judge Solano “a rotten apple” within the judiciary.

In response to the comments made by President Santos, Judge Solano presented a request for a tutela with respect to President Santos' remarks, in order to protect his reputation as a member of the judiciary. In the first instance hearing of the tutela, the Tribunal Superior de Distrito Judicial de Bucaramanga, Sala Civil-Familia found in favour of the Judge. However, this finding was later reversed on appeal by the Sala Civil-Familia de la Corte Suprema de Justicia, on 13 July 2012.

Just two days after President Santos' statement, legal and disciplinary proceedings were brought against Judge Solano and he was charged with “prevaricato por acción agravado”, contrary to Penal Law 599 of 2000.

On 14 August 2012, Judge Solano was found guilty of the aforementioned offence and was due to be sentenced on 20 September 2012. The sentencing hearing was delayed by a strike until 27 February 2013 and the Caravana has since been informed that Judge Solano was sentenced to 48 months under house arrest, dismissed from his office, prohibited from occupying any public office for 80 months, and required to pay a fine equivalent to “66.66 minimum salaries.” The prosecutor, the Public Ministry, and Judge Solano have all appealed the decision. Judge Solano has announced his intention to bring a tutela for breach of his constitutional right to due process.

Judge Solano described receiving death threats but had only been granted the minimum level of security measures. (At the time of the Caravana's visit in 2012 the police would visit his house once a day and Judge Solano had been told to call them if he was in danger.)

The 2012 Caravana was further informed that the stigmatisation and unfounded prosecution suffered by Judge Solano threatens the independence of the judiciary in the whole of Bucaramanga. Judges from this part of Colombia are now unwilling to grant habeus corpus applications to those who are detained, in any case, regardless of merit, due to the risk that they themselves may face prosecution.



Caravanistas meet with Judge Solano

Delegates met with the President of the Supreme Court of Colombia who expressed concern that the Consejo Superior de la Judicatura (Superior Council of the Judiciary) is still responsible for initiating disciplinary proceedings against judges and lawyers, despite criticisms by the UN Special Rapporteur on the Independence of Judges and Lawyers that this body is open to political interference.

According to those judges with whom the delegation met, refusals by the government at all levels to comply with court orders (particularly in the labour division) have caused serious congestion in the courts. In most cases where judges decide against the government or local authority, advocates have to go through a lengthy process in order to enforce the judgements. The judges complain that this practice is hugely inefficient and causes a backlog of court work and a delay in rendering decisions.

In Cartagena the delegates heard about the case of Judge Arney Payarez, presiding over a tutela, whereby a group brought an action against La Caja Nacional de Provision Social (CANAAL), the state body that administers the pensions of civil servants. The judge entered a default judgment against CANAAL in December 2006. It took four years to enforce the judgment, which was eventually achieved by freezing CANAAL's bank accounts and issuing an arrest warrant for the head of department. When the story broke in the news, Judge Payarez was removed from his post by the Consejo Superior de la Judicatura and the State began disciplinary proceedings against him.

When the delegation visited the offices of ASONAL (Asociacion Nacional de Funcionarios y Empleados de la Rama Judicial) in Medellín they were informed that since the last delegation in 2010, two judges had been killed. The Caravana is greatly concerned that members of the judiciary face threats and attacks, particularly when dealing with land restitution cases or extra-judicial killings.



In Cali Judge Beatriz Eugenia Libreros, a Cali Criminal Court judge, informed the Caravana that she had faced death threats and attempts on her life since she ruled to convict a FARC member who was accused of attempting to assassinate a lawyer. In December 2011 Judge Libreros' car was shot at whilst she was driving and on 30 April 2012 plans to have her killed were confirmed by the police. Fortunately, Judge Libreros is receiving protective measures in the form of an armoured car, a bullet proof vest, a bodyguard and protection for her children. However, the Consejo de Tribunal Superior de Cali (Council of Superior Court of Cali) expressed serious concerns that this level of security was not available for judges at first instance who often have to contribute to the cost of their protection despite being paid low salaries.

4.6 Problems in tackling impunity from the prosecutors' perspective

The delegation was informed by a high-ranking official from the Prosecutor's office that there are problems at all levels within various prosecutors' offices. During the meeting with the national prosecutor in Bogota it was emphasised that there is very little capacity to investigate allegations related to human rights defenders. The 2012 Caravana heard about particularly wide-reaching failures to carry out thorough investigations into crimes committed by members of the state and public officials. These crimes include murder, *falsos positivos*, corruption and perverting the course of justice.

Where officials have tried to investigate these crimes properly they have been subjected to surveillance. This has included phone tapping, interference with their investigations and, in certain cases, their removal from inquiries.

The Caravana understands that evidence of who is responsible in cases of extra-judicial killings and *falsos positivos* has not been allowed to be put under public scrutiny or investigated by the prosecutors' office. When officials do succeed in establishing the "material author" of such crimes, in many cases, they find themselves relocated and their investigations closed. Moreover, cases that should have been investigated by the public prosecutors' office are reassigned to the intelligence services of the State. This has resulted in potential witnesses being killed and members of the military, who have been involved both in physically carrying out the crimes and as their "intellectual authors", not being brought to justice.

More generally, investigators within the prosecutors' office expressed disappointment with their working conditions. The delegation consistently heard complaints that the number of cases is always growing but that the number of staff does not increase. In Bucaramanga, the delegation met with a prosecutor in charge of human rights cases who is viewed by lawyers and human rights defenders as the exception within the prosecutors' office due to his independence and his dedication to his work. He informed us that security for prosecutors and those who come to report crimes is very precarious and likely to become more so, as it has been decided that the prosecutors' office in Bucaramanga should be moved from the high security court building – described as a "bunker" – to a more central location where prosecutors and those making complaints would be in danger. The delegation echoes this prosecutor's concerns that such a move will discourage victims from coming forward and increase the threat of harm to those prosecutors who are diligent in carrying out their duty to investigate.

Impunity: Failure to investigate attacks on lawyers

An almost permanent state of impunity exists for many crimes in Colombia. Despite having a justice system that is acknowledged as being capable, at least on paper, of protecting and enforcing the rule of law, certain crimes can still be committed with the knowledge that there is only a very low chance of conviction and sanction. Lawyers are particularly vulnerable in the face of impunity, especially if their work involves the protection of human rights and taking actions against the State, or against multinational corporations.

During three visits to Colombia since 2008, the Caravana has heard multiple examples of threats against lawyers and, tragically, many attacks which have resulted in lawyers being killed. There are no official public statistics available but an internal report compiled by the Fiscalía General de la Nación that has been seen by the Caravana suggests that since 2002 there have been 4,400 complaints made to Colombian prosecutors by and about lawyers who have received threats, been attacked or been killed. The Caravana strongly suspects that this internal figure underrepresents the true number of complaints made during this period. Colectivo Nacional de Abogados Litigantes (CNAL) reported to the delegates that 1,500 lawyers have been killed since 2006. Several examples have been highlighted in this report and the message is very clear: the Colombian authorities do not do enough to investigate attacks against lawyers. In Nariño, the dismissive attitude the prosecutors displayed towards the case of Dr Edgar Montilla Gonzalez is indicative of the lack of real recognition of the problems of threats and attacks against lawyers.⁴²

A lesson learnt internationally is that allowing impunity on such a large scale to elements of a society who commit crimes against others only emboldens the perpetrators to increase the frequency of their acts.

Section 4.4 of this report details the difficulties faced by members of the justice system in investigating crimes in Colombia. These difficulties apply equally to investigating crimes against lawyers. However, it was suggested to the 2012 Caravana that attacks against lawyers and human rights defenders should receive a higher priority than other crimes. In the Caravana's view, there is a great deal of strength to this proposition, given the essential role that lawyers and human rights defenders play in ensuring access to justice and upholding the rule of law.

⁴² See section 5.2, 5.4, and 5.6 below.

4.7 Failure to investigate & prosecute paramilitary attacks

Since the demobilisation of the coalition of paramilitary groups between 2003 and 2006, successor groups have emerged and have continued the illegal and criminal activities previously conducted by paramilitary groups under the umbrella organisation, Autodefensas Unidas de Colombia (AUC). The crimes attributed to these successor groups are many, including massacres, killings, rape and forced disappearances.⁴³ The Colombian government has repeatedly stated that these groups are not paramilitaries and has tried to reclassify these successor groups as “Bandas Criminales Emergentes”, or BACRIM.⁴⁴ Whatever their classification however, it remains the fact that the Colombian state is under an obligation to combat the threat that these paramilitary groups present to the citizens of Colombia and, where the State’s response is insufficient, it remains liable under international law.⁴⁵

The impunity with which the paramilitary groups carry out their illegal actions in violation of international human rights law is evident throughout Colombia. The 2012 Caravana delegation heard numerous examples of atrocities committed by these groups and only rare examples of successful prosecutions.

In Nariño, the Caravanistas met with Unidad Indígena del Pueblo Awa (UNIPA), which reported that since 2002 there have been 196 reported homicides of Awa people in the region. It is not known exactly how many of these are alleged to be the responsibility of paramilitary groups but there have been convictions in just three cases. Delegates heard from authorities tasked with the responsibility of protecting the population that they did not believe that paramilitaries operated in their area.

In Yopal, Caravanistas met with the Defensoría del Pueblo and the Early Warning System Officer,⁴⁶ and with representatives of local and regional police forces. Each organisation refused to acknowledge the paramilitary threats in the region.

In Sincelejo, the Caravana was informed of the continued presence of paramilitary groups and in particular their involvement with large multinational corporations and wealthy Colombian families. The delegates were told of a general lack of investigation into crimes.

In Antioquia, the delegation met with Colectivo de Abogados Defensores del Eje Cafetero (CADEC). They were told that the State has declared the region to be “post-conflict”, despite the presence of a paramilitary group (Cacique Pipinta) which survived the demobilisation process intact. CADEC has since been informed by State officials that the rate of reported crimes has dropped significantly. CADEC knows this to be false and has determined that the authorities have refused to receive the reports, telling victims to go elsewhere or simply accusing them of lying.

Paramilitary groups are able to operate freely and at whim, even acknowledging their presence through open letters which announce their agendas, of which the Caravana was shown several examples.

43 *Paramilitaries’ Heirs: The New Face of Violence in Colombia*. See n. 1.

44 See section 3.4.

45 The American convention on HR; Velásquez Rodríguez v Honduras, Judgment of 29 July 1988, Inter-Am. Ct. H.R., (Ser. C) No. 4 (1988), paras 172-175; (1) IIA Court H.R. Case of Radilla-Pacheco v. Mexico 2009; (2) IIA Court H.R., Case of Cabrera-García and Montiel-Flores v. Mexico 2010.

46 Part of the Public Defender’s Office, the early warning system is a key mechanism in helping protect Colombians from violence by paramilitaries and guerrillas.

4.8 Improper reliance on military justice

Where crimes involve violations of human rights, the consensus in international human rights law is that the proper forum is the civil justice system.⁴⁷ Delegates in all regions were therefore concerned to hear testimony about cases involving human rights violations against civilians who were being tried in military courts. Current proposals to reform the military justice system will prevent victims from seeking justice in the civil justice system where the alleged perpetrators are members of the armed forces. The Caravana is concerned that if implemented these “reforms” will prevent the achievement of justice in Colombia. For example, in Bucaramanga, the investigation of a case of twin brothers who were severely burned whilst in police custody was closed by a military court, despite apparently credible evidence that the boys were set on fire by policemen.

The delegation received reports about the ineffectiveness of military courts in dealing with cases of falsos positivos. In Antioquia, Corporación Jurídica Libertad (CJL) has attempted to get proceedings transferred from military jurisdiction to ordinary civil jurisdiction. They have faced struggles in the military courts – one partner of CJL was prevented from questioning witnesses when he tried to participate in the proceedings and received verbal abuse from the judge.⁴⁸

The delegates were told by CJL about cases where fires were deliberately started in military courts to hide or destroy evidence. CJL’s experience was that frequently the only objective of the military judges was to close cases or declare actions legitimate under military rules. The 2012 Caravana later raised these concerns about the lack of independence of military court judges with the Ministry of Defence in Bogotá.

Military jurisdiction also has an impact on the type of justice delivered. In Yopal, the delegation was informed that imprisoned military personnel are in reality just confined to their battalions and have considerable freedom to move around camp. This was not felt to be an effective form of justice, given the severity of the crimes committed.

4.9 Deficiencies in the Justice and Peace law

There are continuing concerns about the functioning of the Justice and Peace process in Colombia. In Cali, the delegates heard from the widow of a man killed by paramilitaries in 2003. The individuals responsible have acknowledged their crime but, having gone through the Justice and Peace process, have had their sentences reduced. As yet the widow has not received her compensation.

On 1 August 2012, the Supreme Court held that where a guerrilla or paramilitary leader has submitted himself to voluntary confession procedures under the Justice and Peace law, all criminal investigations against him will be halted automatically. As an illustration of how this will work, the guerrilla leader Elda Neyis Mosquera García (Commander of the Frente 47) faced charges for the recruitment and subsequent murder of 15 year old boys, who she relied on to perpetrate attacks against villages. In 2009, she submitted herself to the Justice and Peace process, thereby denying families of the victims the opportunity for further investigation.

In Yopal, human rights defenders and community members raised concerns that paramilitaries are abusing the Justice and Peace process by only giving up enough information needed to secure the reduced sentences available under the process. They were also concerned that the maximum sentence available under the process (eight years imprisonment) is too lenient for the most severe crimes and human rights violations of harassment, torture and murder.

⁴⁷ See Principle 9 of the UN Military Justice Standards - the presumption of civilian jurisdiction in cases of serious human rights violations; and the UN Economic Social Council: Principles Governing the Administration of Justice Through Military Tribunals. See also footnote 45.

⁴⁸ Who said he “wanted to go outside and kick the lawyer’s ass”.

5. Threats, attacks, persecution and killings of lawyers

The legal profession can do more to mobilise itself to ensure that the government and the Fiscalía follows up cases of murders, attacks and threats against lawyers. The local Colegios de Abogados, particularly the Colegio de Litigantes de Cali, have been very vociferous in their condemnation of such killings many of which have happened in Cali. However this needs to be repeated on a national scale and the Delegation is encouraged to note that there is now an Executive Committee of Colombian Litigation Lawyers (Comite Ejecutivo de la Abogacia) which represents over two thirds of the active Colegios and associations in Colombia. Its annual conference in August 2012 paid particular attention to the plight of human rights lawyers and to the many lawyers who have been murdered whilst carrying out their work. The Caravana hopes that the committee will be allowed to grow into a legitimate independent body that represents the interests of the legal profession. The discipline of lawyers and judges is currently entirely in the hands of the Consejo Superior de la Judicatura, which the UN Special Rapporteur on the independence of judges and lawyers found was subject to political interference and could therefore be used to bring pressure on human rights lawyers. In the Caravana's meeting with the judges of the Supreme Court the President indicated his wish that discipline should be put in the hands of the respective professions. This would presuppose the existence of a national bar which could be trusted by all lawyers and members of the public alike. In this regard the delegation also acknowledges the role played by the Spanish Bar Association (Consejo General de la Abogacía) in supporting the creation of a Colombian bar and condemning the murder of Colombian lawyers.⁴⁹

5.1 Assassinations

The 2012 Caravana delegates found a warm welcome from their hosts who were human rights lawyers in many cities, towns and rural areas of Colombia. The delegation had hoped that it would encounter a safer environment but were dismayed to hear evidence that assassinations continue at similar and, in some regions, an increased rate since 2010. There were reports of lawyers killed just two weeks before the delegation arrived in Colombia

The 2012 Caravana delegates who visited Sincelejo heard evidence of the death of Humberto Emilio Aven-
daño Salazar, a lawyer who was killed on 4 August 2012. The delegation's visit in 2012 was the first time that the Caravana delegates had visited Sincelejo as it was previously reported to be too risky. For many years it was too dangerous for human rights lawyers to operate in Sincelejo and there was a general climate of fear. It is widely accepted that successor groups to the supposedly demobilised paramilitaries continue to operate in Colombia⁵⁰ and in this region, in particular. Today there are few human rights lawyers in Sincelejo as a result of the historic and continuing pattern of attacks and threats.

The 2012 Caravana delegates who visited Cartagena were informed that 17 lawyers had been killed in the city in the last five years. The lawyers targeted were categorised by the type of work performed, which includes: lawyers working on land restitution cases; lawyers defending political cases (who are often accused of being members of FARC); and lawyers working on drug trafficking cases. Even the youngest lawyers are targeted. On 5 December 2011, Manuel Alejandro Mielles Gonzalez, a 22 year old law student working in the team of the Administrative Tribunal magistrate, was killed in Cartagena while at work. Before he was killed Manuel also worked for three years as an assistant to a Cartagena lawyer who undertakes land restitution cases.

Caravana delegates meet community lawyers in Sincelejo



49 See <http://www.abogacia.es/2013/03/11/carlos-carnicer-denuncia-un-nuevo-asesinato-de-un-abogado-en-colombia/> (accessed 25 April 2013).

50 See n.1. - Paramilitaries' Heirs: The New Face of Violence in Colombia, Human Rights Watch Report, February 2010.

The group that visited Cali were given a list of 45 lawyers killed in the last five years. On 11 January 2012, Dr Elizabeth Cuellar Quintero, President of the Colegio de Abogados de Buga (Buga Bar Association) was killed in Buga by a drive-by assassin on a motorbike. A further seven lawyers were killed in Cali between January and June 2012.

While there is a high level of risk of practising in the legal profession in general, human rights practitioners face even worse dangers. It is clear that human rights defenders are particularly targeted; for example on 13 February 2012, Jorge Humberto Martinez Candamal, a member of an international human rights organisation, was shot dead in Tulua. The Caravana delegates who visited Antioquia also heard that in addition to lawyers, judges have also been killed. One of the most recent killings was on 19 July 2012, when Judge Jorge Alberto Restrepo Gonzalez, a judge of the Criminal Court of Envigado, was murdered in Medellín. Delegates were given reports of five investigators of the Medellín criminal prosecutorial unit who were assassinated while carrying out work in connection with the mass burial ground from a massacre in Cesar.

In the period between January and June 2012, the Caravana wrote to President Santos voicing the concern of the international legal community about the deaths of:

Dr Elizabeth Cuellar Quintero, 11 January 2012 in Buga, Valle de Cauca;
Braulio Pardo Velasquez, 26 January 2012 in Cali;
Claudio Urruchurto Navarro, 3 February 2012 in Barranquilla;
Rodrigo Pinillo Palmero, 5 February 2012 in Villavicenio;
Jorge Humberto Candamil Martinez, 13 February 2012 in Tulua;
Richard Edward Floria Sanchez, 24 February 2012 in Cali;
Jose Manuel Garzon Silva, 29 February 2012 in Bogota;
Hugo Salazar Hidrobo, 23 March 2012 in Cali;
Amilkar Cruz Mena, 26 March 2012 in Cali;
Carlos Humberto Libreros, 25 April 2012 in Cali;
Arley Cordoba Hoyos, 3 May 2012 in Cali; and
Julian Eduardo Pedraza Cardona, 9 June 2012 in Cali.

5.2 Death threats

The unremitting activities of perpetrators of violence against human rights defenders take many forms and have several serious consequences. The communication of death threats against lawyers, their families, and those who work in their organisations, profoundly affects the way that their work is carried out. Extra precautions have to be taken, such as moving house to safer accommodation, ensuring their children are accompanied to and from school and other activities, and ensuring maximum security is in place at lawyers' offices. Protection from attack is provided by Peace Brigades International (PBI) in some cases, whereby lawyers are accompanied in their daily work by a PBI volunteer.⁵¹

Delegates heard evidence in every region visited by the Caravana of seriously high levels of death threats received by human rights lawyers. In Bucaramanga, at the offices of Equipo Jurídico Pueblos (EJP), delegates interviewed Leonardo Jimenez, a lawyer who has received so many death threats that the Inter-American Commission on Human Rights ordered the Colombian State to provide protective measures for him.

Delegates who visited Bucaramanga met the human rights defender Jhonel Cárdenas Castrillón and heard testimony as to how he was arrested by the army in March 2011 and kept at a police station for three days, during which time he was tortured before being released. He was depicted on television as a member of a guerrilla organisation accused of enlisting child soldiers. After his release he filed a complaint against the police but the case was closed by the prosecution service. After leaving Colombia, members of the Caravana heard that Jhonel Cárdenas was the subject of an attempted assassination on 7 September 2012.

⁵¹ See section 6 for more information about protection schemes.

When the delegates visited the offices of CCALP (Corporacion Colectivo de Abogados Luis Carlos Perez) in Bucaramanga they were given evidence of 27 death threats since 2005 against their lawyers all of whom are female.

Female lawyers working in Barranquilla have been subject to death threats in 2012 on 30 August and 14 November. Delegates met with lawyers and members of COLEMAD (Colectivo Mujeres al Derecho), an NGO in Barranquilla that represents rural women who have been resisting attacks from armed groups trying to force them off their land for many years. COLEMAD provides assistance to those who are affected by the armed conflict and force displacements.

The lawyers who participated in the meeting, including Luz Estela Romero, explained that the lawyers themselves are threatened and attacked in the same way as their clients. The identification of lawyers with their clients clearly violates provision 18 of the United Nations Basic Principles on the Role of Lawyers.⁵² Martha Diaz, a lawyer working with COLEMAD, received an email on 30 August 2012 while the delegation was visiting, stating that she and COLEMAD members were military targets and that they should leave Barranquilla immediately. Martha Diaz was stopped in the street outside her home and told she “had better leave before nightfall”.

Delegates also met lawyers from AFUSODO (Asociacion de Familiares por un Solo Dolor) who represent victims of extra judicial killings. This group received the same death threat on 30 August. The lawyers had to apply to the Inter-American Commission on Human Rights for an order forcing the Colombian state to provide protective measures. However, after seeking this protection, the affected lawyers were harassed by local police who refused to take their complaints of threats seriously. They are very concerned about the connections that the Colombian police and the army have with paramilitaries in the region. This is particularly relevant for the lawyers' work on extra-judicial killings and for land restitution, as they suspect collusion.

A representative of ANDESCOL (Asociacion de Desplazados Colombianos), which represents displaced persons, met with the 2012 Caravana and described the support provided by Colombian human rights lawyers in the following terms: “They put themselves in the firing line with us”. ANDESCOL is working on a study into the Victims Law and Land Restitution Law (Law 1448), which they do not consider to be positive because it does not give any real guarantees that the victims will receive compensation or that the land will be returned to them.

Death threats in Sincelejo

Adil Melendez is a lawyer and member of MOVICE, in Sincelejo, working on cases of land restitution. He has received ten death threats and been subject to three assassination attempts. The latest death threat came on 26 August 2012 while the Caravana delegation was in Colombia. The Colombian State has granted him protection measures comprising three bodyguards and a bullet proof vehicle. Nevertheless, Mr Melendez told the Caravana that he had had to change the bodyguards because he did not trust the ones who had been assigned to protect him. He was also planning to return his vehicle to the State because they had just reduced his budget for petrol, which meant that he was no longer going to be able to afford to use it, rendering the protection measures ineffective.

Ingrid Vergara, a member of MOVICE in Sincelejo, who deals with land restitution cases and documents human rights violations by paramilitaries, has been regularly threatened. For many years she has received threats by email, telephone and leaflet. In the past, her house was broken into and her daughter was physically assaulted. Both she and her husband benefit from protection measures, but she nonetheless continues to receive threats, the source of which has not been investigated.⁵³

52 The United Nations Basic Principles on the Role of Lawyers 1990 were created to set standards of protection by the state for lawyers, so that lawyers may effectively represent their clients without intimidation or attack. See in particular, Principles 16, 17 and 18:

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; ...

17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their function

53 See Amnesty International's Urgent Actions: Colombia Human Rights Defender's Family, 3 December 2010, <http://www.amnesty.lu/spip/spip.php?article4258>

Delegates who travelled to the far south of Colombia met with lawyers from Pasto and Tumaco in the Department of Nariño. These lawyers work with Afro-Colombian communities and Awa indigenous communities as members of two regional NGOs, UNIPA and Guasimí. Twenty threats have been issued by paramilitary groups and the FARC to UNIPA as an organisation and to its individual members, via emails, telephone and text messages.

The delegates heard testimony from human rights lawyer, Diana Montilla, about the harassment she and her father, Edgar Montilla, have suffered. Edgar Montilla is a human rights lawyer from Nariño and has been the victim of death threats and an assassination attempt in 2011. During this attempt on Edgar's life one of his bodyguards was shot and injured before returning fire and killing one of the perpetrators. The chronology since that assassination attempt strongly suggests that the police and prosecutors were more interested in pursuing the bodyguard than in investigating the attempt on Edgar Montilla's life.

In their meeting with prosecutors in Nariño, Caravana delegates were informed that prosecutors in Tumaco also receive death threats from paramilitaries and guerrillas. The public prosecutor working with the Awa communities, who met with the delegation in Pasto, stated that public prosecutors receive threats frequently.

In meetings with the judiciary there were reports of many threats and attacks on judges and people working in the court system. The delegates who visited Medellín met with Luis Fernando Otálvaro Calle, National President of ASONAL. He reported on a number of attacks on justice system operators and described the current context as one of intimidation, with judges and prosecutors experiencing persecution from illegal groups and also from the State. Some authorities and institutions have publicly named judges as guerrilla members, completely undermining their work, the independence of the judiciary and the rule of law. Mr Otálvaro, in his capacity of as President of ASONAL, asked for international support for judges at risk.

In Cali, 2012 Caravana delegates met Beatriz Eugenia Libreros, Penal Judge in the Court of Cali.⁵⁴ She has received protection since December 2011, which has kept her alive after her car was shot at while she was driving on a road she used on a regular basis.

At times the level of risk to lawyers is so great that they cannot visit their clients. The coastal region in Nariño is so dangerous that any lawyer or prosecutor risks attack from paramilitaries. It takes two days to travel between the state capital Pasto and the coastal town of Tumaco and the road is very hazardous. Land mines have been placed around the bases of electricity pylons and lawyers travelling to see their clients have to mount very tight security in order to reach Tumaco safely.

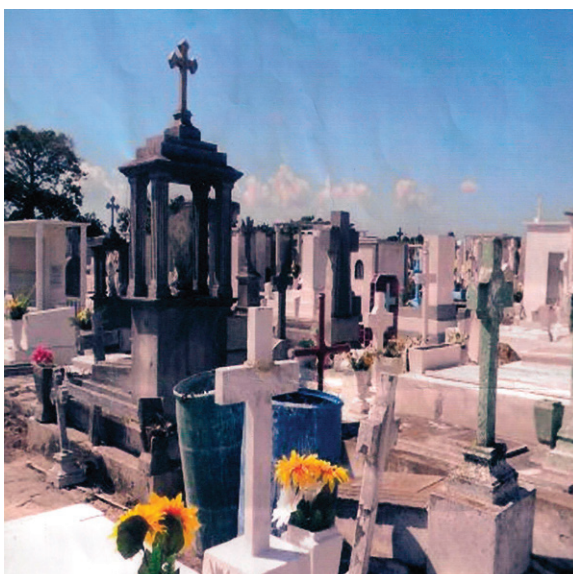


Image of Graveyard - Sent as part of a death threat

⁵⁴ See section 4.5.

5.3 Spurious proceedings

One of the means of preventing human rights lawyers from doing their work is the launching of baseless proceedings against them. Lawyers and human rights defenders of CJL faced criminal prosecution from the Prosecutor's Office which led to tracking and interception of emails by RIME (Regionales de Inteligencia Militar). For example, Elkin Jaramillo Ramirez has been charged of libel and slander and the criminal proceedings have been promoted by Battalion Commander Bejarano Muñoz.

Criminal proceedings against human right defenders are usually the result of military intelligence reports prepared by members of RIME, who have no judicial functions under the Constitution. The use of testimonies which have been disqualified in other criminal proceedings, and informants who are encouraged to testify against human rights defenders in exchange for legal and economic benefits, are tactics regularly used by the military as part of the strategy of the prosecution.

The case of Judge Juan de Dios Solano Solano in Bucaramanga highlights the lack of independence of the judiciary through this particular means of pressure. His use of judicial powers in releasing a suspected guerrilla was publicly denigrated by President Santos. Judge Solano has since been convicted and sentenced on criminal charges of perverting the course of justice.⁵⁵ The Caravana was gravely concerned when the lawyer Yira Bolanos Arturo was arrested and imprisoned on 1 June, 2011. Ms Bolanos was a member of the host committee in Popayán in August 2010 when the Second Caravana visited the south of Colombia. Although all charges were dropped, Ms Bolanos was not released and was detained without a hearing until 16 April 2012, when the charges were ultimately dropped. She was finally released on 27 July 2012, less than a month before the Caravana arrived. This was the second time that she has been imprisoned on the charge of rebellion because of the work she does in representing political prisoners.

5.4 Surveillance

ACADEHUM lawyers met with the 2012 Caravana delegation in Bogota on 26 August 2012 and gave an update on the DAS case of surveillance targeted against human rights lawyers. The Caravana had been concerned for some time prior to the 2010 Caravana visit about revelations of police, intelligence agency and political involvement in a campaign intended specifically to undermine the work of human rights lawyers.

The following day a small group of delegates met with representatives of several human rights lawyers' organisations in the offices of ACADEHUM. Lawyers described obstacles to their work, including the interception of communications. Most notable of these tactics is the tapping of mobile telephones. Delegates were aware of the crimes perpetrated by the DAS in the recent past and the fact that many lawyers had been targeted. Several of the representatives present elaborated on how they had seen entire files compiled by the DAS, detailing their lives. Some of these files included details of their childhood, which theatres or restaurants they liked to visit, and information regarding their families. It is now common knowledge that the DAS tapped the mobile phones of a number of human rights lawyers. It was explained to delegates that although the DAS has been abolished (and some perpetrators have been convicted), the machinery that the DAS used during the period of illegal activities still exists. Delegates were told that this intelligence equipment has been sent to intelligence departments in the army and military. The 2012 Caravana was also advised that this equipment has the ability to recognise the voice of any person being tapped no matter what mobile phone they are using.

CJL in Medellín recently received evidence that all its members had been subject to intelligence gathering by the G3 Group in the DAS. Members were followed and photographed as they went about their work.

⁵⁵ See Box on Judge Solano. Section 4.9

Delegates also heard that one organisation had temporarily stopped using its email system as it was believed that emails were being intercepted. Javier Alejandro, a member of the human rights commission of Universidad Industrial de Santander, had his email hacked. Such interception clearly undermines the legitimate work of human rights defenders. In addition to being a form of harassment which causes tremendous fear, such communications are likely to be used out of context to concoct charges of rebellion against those targeted.

The threat of surveillance is of such nature and scope that it inevitably undermines the relationship between lawyers and their clients, as much of that communication is by its very nature private and confidential. The implications of surveillance for the basic functioning of lawyers as professionals, and for access to justice by ordinary Colombians, are self-evident.

Delegates who visited Pasto heard testimony that on 6 March 2012 Dr Edgar Montilla and his daughter were photographed during a march organized by MOVICE, by people who identified themselves with police identity cards. The photographers were persuaded to delete the photos, however they continued to follow Dr Montilla and stated that they were doing intelligence gathering. In the following months Dr Montilla remained under surveillance and police were seen quite openly near his office. The last time they were seen openly was 25 July 2012, when Dr Montilla's bodyguard told them to go away.

5.5 Cyber attacks and burglaries of offices

Lawyers also face interference with their work by other means. Delegates heard evidence that lawyers have had their offices burgled and documents, computers and other items vital to their work have been stolen.

In a meeting at the ACADEHUM offices in Bogota, delegates were told of a viral threat that ACADEHUM itself had suffered. Their website was hacked and a virus installed - anyone attempting to use the website was warned that it contained a virus (and was thereby deterred from accessing it). This limited the information that ACADEHUM could publicise until the virus was removed. They were forced to spend money to remove the virus and to increase security on the website to prevent similar attacks.

In Nariño delegates heard further testimony about the harassment of Dr Edgar Montilla; his office was raided on the November 2011 and computers and a gun owned by a bodyguard were stolen. It was clear that Dr Montilla was specifically targeted because other lawyers working in the same office were not affected.

Lawyers from Equipo Jurídico de los Pueblos (EJP) in Bucaramanga reported the intrusion of a paramilitary group in their offices in 2010.

Attacks on land restitution lawyers

On 4 July 2012, lawyers and human rights defenders working on land restitution cases received threats from a group calling itself the "Anti-Restitution Army". Those threatened include: members of the **Colectivo de Abogados "José Alvear Restrepo"** (CCAJAR), **Yessica Hoyos** and **Soraya Gutiérrez**, the latter also being Vice-President of International Federation of Human Rights (FIDH); **Diego Martínez**, executive secretary of the Permanent Committee for the Defence of Human Rights (CPDH); **Ivan Cepeda**, founder of the National Movement of State Crime Victims (MOVICE); **Jeison Paba**, **Juan Díaz Chamorro**, **Pedro Geney**, members of MOVICE; **Franklin Castañeda**, President of the Foundation of the Committee in Solidarity with Political Prisoners (FCSPP); **José Humberto Torres**, member of the FCSPP; **Gloria Cuartas**, member of Colombianos y Colombianas por la Paz; **Aida Quilcué**, High Counsellor of the Regional Indigenous Council of Cauca (CRIC); **Lilia Solano**, President of the Justice and Life project; and **Piedad Cordoba**, a former senator of Colombia.

Corporación Jurídica Libertad

Delegates visiting Antioquia met with lawyers from the Corporación Jurídica Libertad (CJL). Since its establishment in 1993, CJL has experienced threats and aggression because of its work.

In 2002-2003, there was a deepening of this persecution when CJL began to report on extrajudicial killings, the falsos positivos cases. One of many means of persecution is the bringing of criminal cases against CJL lawyers therefore interrupting their human rights work. Prosecutors have linked CJL's human rights work in Medellín with specific cases of collaboration with guerrillas, using a military intelligence network of witnesses to assert these untruths.

Some organisations campaigning against human rights lawyers are linked to the state, such as the Association of Victims of Guerrillas. This organisation is using blogs and websites to write discrediting information. There are cable television programmes that “analyse” organisations like CJL and CCAJAR. On one such programme the presenter, Jaime Restrepo, is known to be a paramilitary proxy.

CJL has invested a great deal of effort into having proceedings transferred from military to civil jurisdiction. In proceedings within military jurisdiction, human rights lawyers representing victims have experienced some very uncomfortable situations and have received many threats from paramilitary groups in Medellín.

Military judges frequently attempt to close cases or issue decisions that legitimise military actions. There have also been some astonishing cases, for example fires started in military courts in an effort to hide or obscure evidence.

Success in the face of death threats and harassment

CJL has had spectacular successes despite the obstacles to carrying out its work. They have successfully prosecuted several cases of extrajudicial killings. CJL in conjunction with other organisations has raised this issue with the United Nations Human Rights Council in Geneva. The U.S. Congress voted to suspend military aid to the Colombian Government for two years in 2007 to 2009 because of the extrajudicial killings and continued evidence of links between public forces and paramilitary groups. CJL lawyers have promoted criminal cases against businesses which provide finance for paramilitaries. CJL has persuaded the public prosecutor to bring cases against military perpetrators, and has helped to reduce the number of cases sent to military courts.

6. Lack of Adequate Protection for Human Rights Defenders

Following the failure of the Colombian State to fulfil its obligations to investigate and prosecute attacks on human rights defenders and to address systemic patterns of impunity, the State has also breached its duties under international human rights law to protect lawyers, human rights defenders and other civil society actors who are at risk as a result of their work or associations.



Community leaders in Yopal launch a protection organisation

6.1 Process issues: input, lack of appeals

Concerns about the lack of protection, and of effective measures of protection, were expressed by the individuals and groups with whom the 2012 Caravana delegates met during their regional visits. The issues presented in the regions were then raised by delegates in various meetings with authorities in Bogota. Overall, the delegation concludes that the assurances and justifications offered by various state agencies did not satisfactorily address the fact that many Colombian human rights defenders and lawyers continue to receive inadequate or no protection despite the grave risks that they face.

During the Caravana's meeting with the Unidad Nacional de Protección (UNP),⁵⁶ delegates were concerned that there are obvious due process flaws within the current framework. As an example, there is no right of appeal against a decision of the UNP, only a review of the decision based on the same information initially provided by the applicant for protective measures. The UNP representative indicated that the body would be willing to consider additional information in the case of a negative decision, but that would mean that the process would begin anew. Moreover, the applicant would have access to some but not necessarily all of the information that was considered by the decision-making panel. It also remained unclear to the delegates whether the applicant would be given details of the reasons for a negative decision.

Given the reports that the Caravana delegates heard from other sources about individuals from vulnerable sectors such as trade unionists receiving negative decisions without reasons, this lack of a record is highly concerning. What it means is that an applicant has no effective opportunity to challenge or correct the factual basis of a negative decision. The delegates were also concerned that the UNP did not view this inability for applicants to receive the information on which a decision is based as problematic. It became apparent during the meeting with the UNP that this due process point had in fact not been considered at all.

⁵⁶ See section 7.3 for more details about this meeting.

6.2 Suspect nature of risk assessment process

The 2012 Caravana delegates met with very few authorities who would acknowledge the lack of confidence that human rights defenders have in the UNP and the State's provision of protection measures. The concerns expressed by human rights lawyers with whom the Caravana delegation met stem from the recent history of the DAS and the State's use of its protection programmes to gather intelligence about lawyers and their clients. A primary concern of lawyers continues to be their clients, who frequently are alleged victims of state crimes and misconduct, including crimes committed by the police. Lawyers continue to articulate concerns about the risk assessment process, which is carried out as part of the overall process used to make a decision on an application for protection. The delegation also heard concerns expressed about the use of private companies to carry out protection measures.

Delegates were informed about the Presidential Programme on Protection which characterised the UNP as the State's answer to the criticisms and the articulated need for an independent group with its own budget and autonomy. The Programme referred to the mechanism created for evaluation and assessment of levels of risk, pointing to the CERREM (Comité de Evaluación de Riesgo y Recomendación de Medidas), the composition of which was described as broader, including experts, civil servants/state officials and members of social organisations. However, this emphasis on the CERREM is a slight misrepresentation because the CERREM determines what measures are adopted only after another narrower body called the Grupo de Valoración Preliminar (Preliminary Assessment Group) decides on the all-important assessment of risk. As the UNP confirmed in the Caravana's meeting, the Grupo is the gatekeeper body for protective measures. Its composition does not inspire confidence that it will actually be autonomous and credible, given the representation of bodies like the police and the Ministry of Defence. Other groups like the Defensoria del Pueblo, the Attorney General and the Fiscalía have no vote at this stage.

6.3 Delay in implementing protection measures

The UNP told delegates that the normal timeline is 30 days for the evaluation process and around six days to implement the measures, although the process can take longer if special measures are required. The UNP states that protection measures are in place for approximately 11,000 Colombians, however the 2012 Caravana heard many reports of protection measures which were ordered but not implemented.⁵⁷

It is likely that the multiplicity of agencies and instruments that deal with protection measures is contributing to the lack of effective protection. The delegation recognizes that the UNP represents an effort to unify some of these varied programmes, however divisions still exist. For example, while Ministry of Interior Human Rights Directorate is responsible for policy with respect to the protection of human rights defenders and lawyers, the implementation of such policies is in the hands of the UNP.

The delegation was also led to understand that the Presidential Programme is involved in the evaluation of measures and creation of protocols for protective measures in light of the diversity of beneficiaries. A further potential for division is the establishment of the *Mesa Nacional de Garantías*,⁵⁸ a process established in 2009 to advance such important objectives as: generating confidence in the state authorities by strengthening dialogue between national and local groups; developing strategies for the generation of effective measures for protecting human rights defenders; and monitoring the measures that have been provided. To date however, human rights lawyers have not been included among the categories of persons at risk; the reason for this is unclear. However, one specious argument that may be at play is that lawyers should not be dealt with as a category of defenders at risk because they are in danger due to their work rather than because they are lawyers.

⁵⁷ For example, see the case of Edgar Montilla in section 5.2. A list of reports of non-implementation was provided to the Programa Presidencial de Derechos Humanos y Derecho Internacional Humanitario at the Caravana's meeting on 31 August 2012..

⁵⁸ Part of the Ministry of the Interior.

6.4 Additional concerns about the protection framework

One of the features of the protection scheme that is difficult to comprehend is the division of protection between categories of judges. Senior Court judges automatically qualify for protection under the ambit of the Consejo Superior de la Judicatura, but municipal judges do not. The latter may qualify under a risk assessment but the UNP requires that the individual judge demonstrate risk associated with their work. As one of the 2012 Caravana delegates (who is a judge) pointed out, the distinction between high court judges and lower court judges is illogical as it is first instance judges who have direct contact with defendants.

Similar concerns arise in relation to trade unionists, who are one of the most vulnerable and persecuted groups in Colombia. Yet, the 2012 Caravana delegates were told that trade unionists are consistently assessed as being at 'Normal Risk', and thus ineligible for protection. Although the UNP stated that it was possible to obtain protection measures and be assessed at a higher level of risk without proving the existence of threats, this appears to be a significant barrier for trade unionists seeking protection.

6.5 Inadequate resources for effective protection

The lack of adequate protection measures is partly a product of delay or non-implementation, as indicated above. However, a lack of available resources is also a significant problem. It was emphasised to the 2012 Caravana that the lack of petrol provision negates the usefulness of the armoured vehicles that are provided as a protection measure.

However, when the delegation raised this issue with the three separate agencies listed below, it received three different answers: The UNP's position is that petrol is not to be considered a protective measure; the Presidential Programme said that a lack of petrol is purely down to budget constraints; and the Human Rights Directorate defended the provision of petrol as being sufficient, although they noted that an increased allowance could be applied for, subject to justification.



Caravana presentation to human rights lawyers in Bogota

7. Meetings with Colombian national authorities

7.1 Meeting held in the Vice-President's office with Katarina Herrera, Coordinator of the Presidential Programme for Human Rights and International Humanitarian Law

A number of concerns were presented regarding the implementation of protective measures, such as impunity, military jurisdiction and the stigmatisation of human rights lawyers and judges. The case of Juan de Dios Solano Solano was highlighted. Ms Herrera stated that the Government was aware of the need to respect the judiciary and there was no intention to stigmatise judges.

The 2012 Caravana also expressed concerns on the level of attention and support for victims and their access to justice through the Justice and Peace Law. Ms Herrera confirmed that the Government was funding legal representation of victims through the National Ombudsman's office, the 'Defensoria Publica'. They made a commitment to monitor the situation and confirmed that it is part of President Santos' policy to ensure that more attention is given to the victim as well as attention to the capacity of the State.

7.2 Meeting held at the Deputy Attorney General's office, with Jorge Fernando Perdomo Torres, Head of the Human Rights Division

Mr Perdomo Torres was provided with documented evidence on threats, attacks and killings of lawyers during the period of 2002 to 2012. The report, from the national office of the local prosecutor service, shows that the majority of the 4,400 cases recorded by the local Fiscalía have not even been investigated.

Mr Perdomo Torres agreed to review the cases of attacks on lawyers and see which ones are being investigated. After stating that many paramilitary groups are responsible for attacks on lawyers and human rights defenders, and that these people are targeted because they are linked to their work, Mr Perdomo made a commitment to consider whether a specialist unit for lawyers should be set up.

7.3 Meeting in the office of the National Protection Unit, with Juan David Bello Guevara, Special Projects Manager

Mr Bello Guevara stated that the National Protection Unit was established in November 2011 under the Ministry of Interior and he described the methodology and procedures for risk assessment for entitlement to protection, implementation of protective measures and appeals on refusal.

The delegates welcomed the creation of the Unit but expressed concerns which had been raised during their visits to the regions. Concerns included: the lack of independence due to the membership of the Unit's committees; a lack of transparency because applicants for protection are not told on what evidence decisions are reached; and that there is no effective appeal process for an 'adverse' decision.

7.4 Meeting held at the Ministry of Justice and Law, with Joaquín Vélez, Adviser to the Minister of Justice and Law and Mario Córdoba, Adviser to the Deputy Minister of Justice and Law

Mr Vélez stated that under the mandate of President Santos there is a clear policy not to continue with the verbal attacks on lawyers so common during President Uribe's time in office, but that this is based on a code of behaviour rather than a written policy. When asked about the recent declarations of President Santos regarding the Mapiripán IACHR judgement⁵⁹ and the acknowledgement that one of the vital witnesses had lied, Mr Vélez stated that comments which denigrated the lawyers working for the victims were probably hypothetical.

With regard to IACHR preventive measures which have not been implemented Mr Vélez noted that the Special Protection Unit has competence for this and committed to speed up the implementation of the protection schemes on those lawyers.

7.5 Meeting held at the Ministry of Defence with Gerany Boyaca, advisor to the Ministry of Defence on Inter American Court of Human Rights Cases

The 2012 Caravana delegates expressed concerns to Ms Boyaca about human rights abuses committed by the military, and in particular the breadth and expansion of military jurisdiction. The issue of falsos positivos was also discussed as well as the effects of multinational companies on indigenous communities in Colombia. Ms Boyaca accepted the delegates' report and committed to monitor potential human rights abuses in indigenous areas.

7.6 Meeting in the office of the National Protection Unit, with Juan David Bello Guevara, Special Projects Manager

2012 Caravana delegates expressed the concerns of ANDAS (Asociación Nacional de Ayuda Solidaria) about the land restitution process, specifically in regard to the security of applicants, and questioned how the government intends to source the land to be allocated to applicants. The delegates also expressed concerns over the logistics of the process and the length of time it would take to process all the expected claims.

In response to concerns about the security of claimants, Mr Arteaga agreed that the assassination of 30 community leaders engaged in demanding the restitution of their lands is a national problem. He informed delegates that there are 2,000 families affected by threats and violence and that so far roughly 100 people have requested protection since the start of the land restitution process.

According to Mr Arteaga, 1,000 applications out of a total of 20,000 are under consideration. He recognised there was a problem of titles being sold illegally to multinational corporations and wealthy landowners. The Ministry is committed to set up training on land rights.

⁵⁹ The Mapiripán massacre was one of the most shocking acts of atrocity committed by the AUC. Worse, it was facilitated by the Colombian armed forces. In 2005 the ICHR ruled that the Colombian State was responsible for the massacre. See the judgement at http://www.corteidh.or.cr/docs/casos/articulos/seriec_134_ing.pdf
In 2011 it became apparent that some individuals may have fraudulently claimed victim status in order to qualify for compensation. In response, President Santos and his government launched a series of verbal attacks on human rights organisations and the ICHR itself. See the following public statement by Amnesty International for further details: <http://www.amnesty.org/en/library/asset/AMR23/034/2011/en/5ceb45f9-2e6e-4bea-a1ed-7505f4d7d4b2/amr230342011en.pdf>

7.7 Meeting at the offices of INPEC, with Lieutenant Colonel Pompy Pinzon. (Sub director of INPEC, director of custody and vigilance)

Lieutenant Colonel Pompy Pinzon acknowledged that the prisons in Colombia are very old and overcrowded. A policy exists to close the oldest ones and open new ones but no timeframe was given.

Delegates highlighted the problem of political prisoners being discriminated against by INPEC guards; they are often called terrorists and put in cells with paramilitaries. Lieutenant Colonel Pompey Pinzon agreed to investigate these particular cases. He pointed out that many guards are badly educated but accepted that training could help. He stated that the UN Special Rapporteur for persons deprived of their liberty has set up on-going monitoring activities.

The 2012 Caravana delegation, the Solidarity Committee with Political Prisoners (FCSPP) and other NGO's have been denied access to prison visits. INPEC confirmed that they may be permitted to when the current health crisis diminishes..

7.8 Meeting at the National Ombudsman's Office, with Yanet Moreno, advisor on indigenous issues

Following the visit to the region of Nariño, 2012 Caravana delegates expressed concerns on the very complicated situation of the Awa communities. In mid-August 2012, the FARC took over the electricity towers and planted land mines so that people cannot leave the community. Although the local Defensoría del Pueblo converted their reports into early alerts there has been no response from the national office.

The Colombian Constitutional Court issued two orders⁶⁰ for the protection of the 32 indigenous groups under threat of disappearance, including the Awa community. The IACHR issued protective measures on 16 March 2011. As a result the Awa community is entitled to permanent monitoring from Ombudsman's national office so reports and submissions can be presented to the IACHR.

The Awa are often victims of summary (arbitrary) proceedings and are accused of being involved with guerrilla groups. They cannot afford lawyers and the public defenders appointed by the Ombudsman do not speak the indigenous languages. They stated that there is a need for specific local Ombudsmen who can act as public defenders and able to understand their culture and languages.

⁶⁰ Auto 04-2009 (<http://www.corteconstitucional.gov.co/relatoria/autos/2009/a004-09.htm>) and Auto 174-2011 (<http://www.corteconstitucional.gov.co/relatoria/autos/2011/a174-11.htm>).

8. List of participants

Alejandro Gámez Selma	Spain
Aleksandra Zernova	United Kingdom
Alice Krispijn	Netherlands
Andrea Righetti	Italy
Angus King	United Kingdom
Ben Elliot	United Kingdom
Ben Newman	United Kingdom
Camilla Graham Wood	United Kingdom
Carol Huddart	Canada
Charlotte Gill	United Kingdom
David Palmer	United Kingdom
Endika Zulueta	Spain
Freda Greal	Ireland
Glenys June Hunt	United Kingdom
Gwawr Thomas	United Kingdom
Heather Neun	Canada
Henk van Dijk	Netherlands
Jacinta Jones	United Kingdom
Jeffrey Forrest	United Kingdom
Johannes Boertjens	Netherlands
Jonathan Rayner	United Kingdom
Julie Goffin	Belgium
Karen Dussan	France
Keith Etherington	United Kingdom
Kirsty Brimelow	United Kingdom
Marina Brilman	Netherlands
Mark Cunningham	United Kingdom
Mikel Cordoba	Spain
Natasha Lloyd-Owen	United Kingdom
Neena Archarya	United Kingdom
Nick Hanning	United Kingdom
Peter Burbidge	United Kingdom
Peter Ingelse	United Kingdom
Sara Chandler	United Kingdom
Sarah Smith	United Kingdom
Sean O'Reilly	Ireland
Siobhan Lloyd	United Kingdom
Sneha Ganguly	United Kingdom
Stefania Mary Grant	United Kingdom
Sue Willman	United Kingdom
Vanessa Willems	Belgium
Yasmin Husain	United Kingdom

9. List of organisations

Organisations represented

Advocaten Voor Advocaten / Lawyers For Lawyers (Netherlands)
Association France Colombie Justice (AFCJ)
Asociación Libre de Abogados de Madrid
Avocats Sans Frontières Canada
Avocats Sans Frontières France
Bar Human Rights Committee, England & Wales
Centrale des Syndicats du Québec (Canada)
City of Westminster & Holborn Law Society
Chartered Institute of Legal Executives (England & Wales)
Comisión de defensa de la Asociación libre de abogados (Spain)
Federation of European Bar Associations (FBE)
Fundación del Consejo General de la Abogacía, España
Law Society of England & Wales
Law Society of Ireland
Lawyers' Rights Watch Canada
Solicitors International Human Rights Group (England & Wales)
Stichting Rechters voor Rechters / Judges for Judges (Netherlands)
Union Internationale des Avocats (Belgium)

Entities that provided advice and support to the Caravana

AB Colombia
Alliance for Lawyers at Risk
Avocats Sans Frontieres, Canada
Bar Human Rights Committee (England & Wales)
Chartered Institute of Legal Executives
Fundación Abogacía Española
Law Society Charity
Law Society Human Rights Committee (England & Wales)
Peace Brigades International
The British Embassy, Colombia
The Foreign and Commonwealth Office, UK Government
The Funding Network
The London Mining Network



Asociación Colombiana de Abogad@s Defensor@s de Derechos Humanos

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Colombian organisations that provided support to the Caravana

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Colectivo de Abogados "Luis Carlos Pérez"
Colectivo de Abogados "José Alvear Restrepo"
Colegiatura de Abogados de Cali
Corporación de Abogados "Helenita González Pérez"
Corporación Guasimí
Corporación Jurídica "Yira Castro"
Equipo Jurídica Pueblos
Fundación Comité de Solidaridad con Presos Políticos
Fundación Juventas
Fundación Misión Aurora
Humanidad Vigente
Mesa de Defensa de DD.HH de Boyacá
MOVICE Movimientos de Víctimas de Crímenes de Estado
Observatorio de derechos humanos de la UPTC
Observatorio de derechos humanos y Violencia Política de Boyacá y Casanare
ONIC Organización Indígena de Colombia
Red de Abogados Indígenas
Red Humana

Organisations which assisted the Alliance for Lawyers at Risk sub group of the Caravana

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Organisations thanked in the Judges' Report

AB Colombia, Advocaten Voor Advocaten / Lawyers For Lawyers (Netherlands), Association France Colombie Justice (AFCJ) Asociación Libre de Abogados de Madrid, Avocats Sans Frontières Canada, Avocats Sans Frontières France, Bar Human Rights Committee, Centrale des Syndicats du Québec (Canada), City of Westminster & Holborn Law Society, Chartered Institute of Legal Executives, Federation of European Bar Associations (FBE), Fundación del Consejo General de la Abogacía, Law Society of England & Wales, Law Society of Ireland, Lawyers' Rights Watch Canada, Law Society Charity, Law Society Human Rights Committee (England & Wales), Peace Brigades International, Solicitors International Human Rights Group (England & Wales), Stichting Rechters voor Rechters, The British Embassy, Colombia, The Foreign and Commonwealth Office, UK Government, The Funding Network, The London Mining Network, Union Internationale des Avocats (Belgium)

The Judges Report: Judges at Risk, can be found at <http://www.colombiancaravana.org.uk/our-work/reports/>

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promoting access to justice
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