

## COLOMBIA: THE SEARCH FOR REAL JUSTICE CONTINUES

### Preliminary report of the IV International Caravan of Jurists to Colombia

The International Caravan of Jurists (the “Caravana”) made its fourth biennial visit to Colombia from 23rd to 31st August 2014. Sixty-eight members from 12 countries, including judges, barristers, solicitors, legal academics and law students, visited eight cities in seven departments of Colombia: Bogotá (Cundinamarca), Bucaramanga (Santander), Buenaventura and Cali (Valle del Cauca), Cartagena (Bolívar), Medellín (Antioquia), Pasto (Nariño) and Santa Marta (Magdalena). At both the national and regional level we met human rights lawyers and defenders, victims of human rights violations and state officials.

The Caravana found that in the regions we visited, human rights defenders, including lawyers and justice operators, continue to have their work hampered and to suffer from threats, attacks, and in the worst cases, have been killed for carrying out their work. This work involves struggling to gain access to justice for the most marginalised sectors who have been victims of massive human rights violations, including *campesino* (small-scale farming) communities, indigenous peoples, Afro-Colombian communities, trade unionists, and women.

The continuing dialogues in Havana between the Colombian government and the FARC guerrilla, give hopes that a future peace agreement could end over 50 years of armed conflict. However those we spoke with warned that to ensure a real and long-lasting peace there needs to be an effective transitional process which respects international human rights standards. Within this context the continuing work of lawyers and other human rights defenders will be fundamental in providing access to Truth, Justice, Reparation and Guarantees of Non-Repitition for the hundreds of thousands of victims of the armed conflict.



INNCA University hosted the opening ceremony including talks by prominent human rights defenders and a display of Colombian traditional dances

## SITUATION OF HUMAN RIGHTS DEFENDERS

### Threats and killings

Human rights defenders, including lawyers, continue to suffer threats, attacks and surveillance, and in the worst cases have been killed because of the work they do. According to “We Are Defenders” (*Somos Defensores*), in 2013, every day a human rights defender was attacked in Colombia, and, every 4 days, one defender was murdered.<sup>1</sup> During the first six months of 2014, 194 defenders were attacked, 40 more than in the same period in 2013.<sup>2</sup> As well as continued threats to high profile lawyers in the capital city of Bogotá, lawyers working in conflictive regions far from the capital also continue to be at risk. We were told that the situation for human rights lawyers in Valle de Cauca, Santander and Bolívar is particularly serious.

<sup>1</sup> See “Imagina” - We Are Defenders Semester Report, August 2014 <http://somosdefensores.org/index.php/en/publicaciones/informes-siaddhh/89-informe-semestral-siaddhh-2014-imagina>

<sup>2</sup> *Ibid*

So far in 2014, the Colombian Caravana has written to the Colombian State on more than 20 occasions regarding threats, attacks and killings of lawyers, in particular human rights lawyers.<sup>3</sup>

According to the information received by the Caravana, the majority of death threats and killings of lawyers continue to be carried out by paramilitaries (in cases where the perpetrator is known). There is compelling evidence that despite having formally demobilised and rebranded as criminal groups known as 'BACRIM', in reality paramilitaries continue to act in many regions.<sup>4</sup>

In addition, there are grave concerns from human rights lawyers, defenders and victims about the impending release from prison of many former paramilitaries, due to the benefits of lowered prison sentences in return for information on crimes committed, offered under the "Justice and Peace Law" (Law 975).<sup>5</sup> In its March 2014 Annual Report on Colombia, the Office of the United Nations High Commissioner for Human Rights warned that: "*almost all of the accused will most likely be released after eight years without ever having gone to trial*".<sup>6</sup>



On 27 August the Caravan of Jurists recognised the work of courageous human rights lawyers at an award ceremony held in the British Embassy

### Stigmatisation and use of the justice system to persecute defenders

The Caravana is particularly concerned about the continued stigmatisation of human rights defenders and attempts to discredit their work via accusations of *rebellion* and false allegations of corruption and judicial fraud. Just before our delegation, human rights lawyer Rommel Durán was arbitrarily arrested and held for 20 hours,<sup>7</sup> following various instances of stigmatisation and physical attack against him in the preceding months. Members of the Caravana attended as trial observers in the first instance appearance in Bogota before the prosecutor of 4 human rights defenders from Bolivar who, while bringing cases for 23 victims of human rights violations, were accused of judicial fraud and bringing false prosecutions. The Caravana continues to monitor closely the case of David Ravelo Crespo, a human rights defender imprisoned for murder amidst severe questions as to the judicial process which led to his sentence.<sup>8</sup> The international community must make public pronouncements supporting the work of human rights defenders, visit them in their places of work and closely monitor their protection situation.

### Protection measures

Despite the existence of the National Protection Unit and the precautionary measures it provides to human rights defenders, many of those at risk receive inadequate protection or inappropriate measures, which affects their ability to work. In May 2014, for example, celebrated human rights lawyers Jorge Molano and

<sup>3</sup> See <http://www.colombiancaravana.org.uk/intervention-letters/>

<sup>4</sup> See, for example Human Rights Watch, World report 2014: <http://www.hrw.org/world-report/2014/country-chapters/colombia>

<sup>5</sup> For further information see: <http://www.colombiancaravana.org.uk/wp-content/uploads/2014/08/afa.pdf> (in Spanish) and <http://colombiareports.co/colombias-invisible-victims-neglected-ignored-state/> (in English)

<sup>6</sup> <http://www.hchr.org.co/documentoseinformes/informes/altocomisionado/informe2013EN.pdf>

<sup>7</sup> <http://www.colombiancaravana.org.uk/rommel-duran-castellanos-colombian-human-rights-lawyer-released-from-prison/>

<sup>8</sup> See, for example, joint letter from international networks: <http://www.colombiancaravana.org.uk/call-for-immediate-release-of-lawyer-david-ravelo/>

Germán Romero<sup>9</sup> stated that they would have to stop working because of the pressures against them, unless their protection measures were implemented in full. There are also concerns about the distribution of the Protection Unit's budget. According to civil society figures, although killings have increased, the number of defenders under the protection of the UNP decreased from 3,500 in 2012 to 2,700 in 2013. Some 70.2% of the UNP's budget is implemented via private security companies.<sup>10</sup>

## ACCESS TO JUSTICE FOR VICTIMS OF HUMAN RIGHTS VIOLATIONS

Although ostensibly Colombia protects human rights and access to justice through its advanced Constitution (1991), laws and the adoption of international instruments, in reality there is limited application of these laws and impunity prevails throughout the country. Lawyers have great difficulty in gaining access to prisons to visit their clients. In addition, the Prosecutor General's office (*Fiscalía General de la Nación*) cannot operate effectively in some regions due to lack of resources, resulting in inordinate delays. The judges who participated in the Caravana delegation received information that court judgements are frequently subject to disparaging comments by public officials and are often not implemented. They were told that judges are sometimes subject to prosecution and/ or investigation by the High Judicial Council because of their judgements in human rights cases. The Caravana continues to monitor the case of Judge Juan de Dios Solano in Santander, who is serving a sentence of house arrest, while in ill health, for upholding habeas corpus.

### Land Rights and Restitution

Many internally displaced communities and their accompanying lawyers trying to return to their lands by accessing justice under the Victims' and Land Restitution Law (Law 1448), have faced threats, assaults or even murder.<sup>11</sup> Lawyers and defenders from NGOs like the Inter-Church Justice and Peace Commission (*Comisión Inter-Eclesial de Justicia y Paz*) and the Pueblos Legal Team (*Equipo Jurídico Pueblos*) have received a number of threats this year which appear to be related to their work trying to secure land rights for victims.<sup>12</sup> We were given the firm impression by human rights lawyers and also by several State officials that the Victims' and Land Restitution Law has a number of shortcomings, including severe delays in registering people as victims in order to access the law, and difficulties in geo-referencing areas as apt for restitution (*microfocalización*) because of the persistence of armed conflict, factors which make it difficult to either compensate or return displaced people to their lands.



The Caravana met a number of communities who continue in displacement (eg. the Pitalito Community in Santander) or have been forced to return with no guarantees (eg. the Macondo community in Urabá), because they have not been able to access justice through the Law. Rommel Duran Castellanos, the lawyer representing the Pitalito community, was arrested and accused of conspiracy to commit delinquency in August, immediately before our visit. Following emergency protests he was released within 20 hours, with an apology from the prosecutor.

Whilst the Caravana delegation was in Colombia we received a request to file an *amicus curiae* intervention in relation to the Tabaco community in the department of La Guajira. The Tabaco community was forcibly displaced from their land and has still not been compensated despite a ruling from the Colombian Supreme

<sup>9</sup> See Colombian Caravana urgent action letter: <http://www.colombiancaravana.org.uk/wp-content/uploads/2013/05/LETTER-MOLANO-ROMERO-31.05.2014.pdf>

<sup>10</sup> See "Imagina" - We Are Defenders Semester Report, August 2014 <http://somosdefensores.org/index.php/en/publicaciones/informes-siaddhh/89-informe-semestral-siaddhh-2014-imagina>

<sup>11</sup> According to the Human Rights ombudsman's Office, between 200 and 2011 at least 71 land restitution leaders were killed.

<sup>12</sup> See Early Day Motion: <http://www.parliament.uk/edm/2013-14/1145>

Court in 2002.<sup>13</sup> A complaint has been made in the Colombian courts, alleging that justice delayed is justice denied. The Caravana filed an *amicus curiae* on the issue of access to justice.

The Caravana is encouraged to learn that in September a land restitution judge made a landmark legal decision by ordering that 50,000 hectares of land be returned to the Embera Katio People from the Alto Andagueda region in the Chocó department.<sup>14</sup> The international community must call upon the Colombian State to urgently implement this legal ruling, and to build upon this positive example to return lands to the many other communities trying to return, with guarantees for the safety of these communities and their accompanying lawyers and human rights defenders.

### Military Criminal Jurisdiction

Members of the Caravana attended a debate on 27 August in the Colombian Congress, presided over by Congressman Alirio Uribe (pictured left), former member of the CCAJAR lawyers' collective, on the subject of changes to military justice, which would effectively remove access to justice for victims of all crimes carried out by military personnel. We are deeply disturbed at the number of cases currently dealt with under military jurisdiction, which do not advance because of inherent impunity, and which will severely worsen if the current bill on military jurisdiction becomes law.



### Women

Courageous defenders and lawyers advocating for women's rights have drafted and lobbied for landmark legislation to guarantee a legal framework on gender based violence in Colombia, including Law 1257 on violence against women.<sup>15</sup> They also monitor the implementation of fundamental legal decisions such as Constitutional Court order 092 (2008) on women and forced displacement.<sup>16</sup> Many women defenders have been threatened and attacked for doing this work, including most recently on Colombian human rights day, 9 September 2014, when 91 men and women human rights defenders received a threat from the Aguilas Negras paramilitary group, including prominent women's rights organisation *Sisma Mujer*.<sup>17</sup>

Women in the regions visited by the Caravana told us that sexual violence related to the armed conflict continues to be an endemic problem and that despite the existence of Law 1257, public officials have not been trained on its provisions and on how to work with women survivors of sexual violence, which means that it is extremely difficult for them to access justice via the Law. There are also a lack of resources directed towards investigations and prosecutions of allegations of rape and sexual violence.

The voice of women is vital for the defence of human rights and the construction of peace. Women defenders in Bogotá told us they have recently drafted gender-specific recommendations for the National Protection Unit which lay out guidelines for differential protection measures, and are calling for their urgent implementation. Women have also successfully lobbied for a Women's Commission in the Havana negotiations, and are calling for the conclusions reached by this commission to be binding and therefore fully taken into account during the peace negotiations.

<sup>13</sup> <http://www.colectivodeabogados.org/para-no-olvidar/videos/otros-videos/Como-se-desalojo-la-comunidad-de>

<sup>14</sup> See <http://www.semana.com/nacion/articulo/embera-katios-en-choco-se-favorecen-con-fallo-de-restitucion-de-tierras/404398-3> (In Spanish)

<sup>15</sup> [http://www.oas.org/dil/esp/LEY\\_1257\\_DE\\_2008\\_Colombia.pdf](http://www.oas.org/dil/esp/LEY_1257_DE_2008_Colombia.pdf) (In Spanish)

<sup>16</sup> <http://www.corteconstitucional.gov.co/relatoria/autos/2008/a092-08.htm> (In Spanish)

<sup>17</sup> See <http://www.abcolombia.org.uk/subpage.asp?subid=554&mainid=23>

## Indigenous peoples

Indigenous leaders and indigenous lawyers strive to gain access to justice for their peoples, and have been involved in creating important jurisprudence leading to a partial framework for indigenous peoples' rights in the country, including provisions in the political Constitution of 1991, and more recently Constitutional Court Orders 004 and 092 (2009) and special decree laws related to indigenous people within the Victims' and Land Restitution Law (2011).

Nevertheless, indigenous peoples continue to suffer disproportionately the effects of the armed conflict and large-scale development projects implemented in their territories without their free, prior and informed consent. Lack of compliance with laws and agreements made with the Colombian State have led indigenous people to hold social protests with other rural and urban sectors of civil society to demand their rights.

At least 35 indigenous peoples in the country continue to be at risk of physical and cultural disappearance. Indigenous people face many barriers to justice, including institutional discrimination, the large distances required to travel to report crimes against them, lack of translators in court cases, and the lack of synergy between indigenous justice systems and the ordinary justice system.

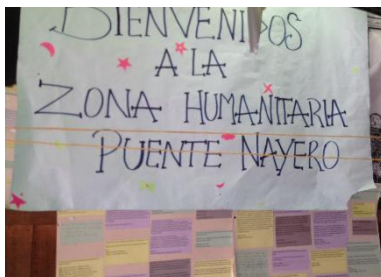
## **THE CASE OF BUENAVENTURA**

The Caravana is particularly concerned about the situation in the Afro-Colombian city of Buenaventura in the Valle del Cauca Department, which we visited for the first time. We were informed that the extremely high levels of violence are too severe for human rights lawyers to work there. The very few human rights defenders face death threats and cannot carry out their functions properly because of the general atmosphere of terror.

The Caravana visited the *Puente Nayero* Humanitarian Space, created by a local fishing community as an attempt to keep out armed paramilitary groups which continue to operate throughout the city despite heavy militarisation by the State. The Caravana is concerned about how the international community can guarantee that the proposed expansion of the port for international trade will not contribute to the displacement of these fishing communities and the loss of their traditional ways of life.



Local fishing villages resist displacement



The *Puente Nayero* Humanitarian Space



There are plans to expand the port.

The Caravana notes that on 15 September the Humanitarian Space was granted precautionary protection measures by the Inter American Commission on Human Rights. It is important that the international community urges the Colombian State to implement these measures. Urgent international support is also needed for the work of other human rights defenders and the Human Rights Ombudsman's Office in the city.

## CONCLUSION

The Caravana will launch its full report in early 2015, and is committed to engaging with the international legal community, members of parliament and civil society groups to work towards full guarantees for human rights in Colombia. We are determined to continue to monitor events and to continue our support of human rights lawyers in Colombia, who will remain one of the keys to peace and justice.

Colombian Caravana UK Lawyers' Group - October 2014



IV International Caravan of Jurists - delegates 2014

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