



# DEFENDING

THE LAND AND THE ENVIRONMENT WHERE  
EXTRACTIVE COMPANIES ARE ENGAGED



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Newly constructed bridge crossing the Quimbo dam reservoir that flooded more than 8,500 hectares of farmland. Near La Jagua, Huila, Colombia. March 18, 2017

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José Alvear Restrepo Lawyers Collective (Cajar),  
Observatory for the Protection of Human Rights Defenders FIDH-OMCT

2017

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Observatory for the Protection of Human Rights Defenders (FIDH-OMCT), 2017

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Vereda, known as Mina Walter, which was created and developed without the presence of the Colombian State, Vereda de Alto Caribona, South of Bolivar, Colombia.  
12 May 2017



Miller Dussan, professor and leader of ASOQUIMBO, accompanying local fishermen in front of the Quimbo dam in the river of Magdalena, Neiva, Huila, Colombia, 19 March 2017

## I. INTRODUCTION

According to the Atlas of Environmental Justice, in 2016 there were 115 environmental conflicts in Colombia 92 (80%) of which originated in rural areas affecting a potential area of 12.4 million hectares<sup>1</sup>. These conflicts have shown that extractive projects in these areas bring with them risks to the constitutional rights of local residents and threaten the conditions necessary for a decent life.

The legal and legitimate work of human rights defenders is vital to the protection of the environment and the land, and is instrumental in guaranteeing democracy and the promotion of equitable and sustainable peace. According to public information, from the signing of the peace agreement in September 2016 until February 2017, a human rights defender in Colombia was killed every four days<sup>2</sup>. This bears witness to the major

weaknesses of democracy and peace-building in Colombia.

While there is no consensus or clarity regarding the figures<sup>3</sup> and methodologies used to document the attacks against social leaders and human rights defenders, particularly those living in rural

1. The Atlas of Environmental Justice has compiled an inventory of the main conflicts in the country and is available at: <https://ejatlas.org/>. Also see: Los 115 conflictos que olvidó el posconflicto (the 115 conflicts that the post-conflict forgot about). (January 31, 2017). Colombia Plural. from <https://colombiaplural.com/los-115-conflictos-olvido-postconflicto/>
2. That figure is based on press information compiled by the José Alvear Restrepo Lawyers Collective Corporation - (Cajar) - up to April 15, 2017.
3. The Somos Defensores (We Are Defenders) program reported the killing of 80 activists in 2016. Annual Report 2016 “Contra las cuerdas” (Against The Ropes), p. 7. There were 94 killings according to the organization Cumbre Agraria. Cumbre Agraria: Informe de Derechos Humanos y Vulneración al Derecho Internacional Humanitario 2016 (Report on human rights and international humanitarian law violations 2016), p. 2. Office of the United Nations High Commissioner for Human Rights (OHCHR): 63 killings in 2016 compared to 25 killings in 2015. Annual

areas, the response received from state agencies in Colombia regarding prevention, protection, clarification of the facts and guarantees that similar situations will not be repeated in the future have been insufficient and mostly of a technical nature. Over and above discrepancies in the figures, the Observatory for the Protection of Human Rights Defenders (FIDH-OMCT) highlights the fact that the different national government institutions, international organizations and Colombian civil society that collect these statistics all point out that there has been a significant increase in the number of killings of human rights defenders compared to previous years. Moreover, there is a climate of constant threats and insufficient investigation and prosecution of these crimes.

Concerned about the situation faced by human rights defenders in Colombia, particularly the high levels of violence they are subject to, the Observatory proposed to bolster its efforts, in conjunction with its affiliated organizations in Colombia, to guarantee the defense of human rights in the country by compiling two reports. One of the reports will be published in the coming months with the findings and specific recommendations concerning the situation facing human rights defenders in Colombia identified through a research mission conducted in July 2017<sup>4</sup>. This report will address their situation as well as the paramilitary structures still intact, impunity and the limited institutional response, all of which impact human rights defenders.

The other report which forms part of the strategy to bolster work on Colombia, is this one, where the Observatory and the José Alvear Restrepo Lawyers Collective (Cajar) document several cases of attacks against human rights activists in the context of their defense of the environment and the land from large-scale extractive projects<sup>5</sup>. This phenomenon has been identified as one of the most relevant issues in Colombia today in light of the foreseeable increase in foreign investment in the country, during the post-conflict scenario. That is why this situation requires specific analysis.

Indeed, the groups and individuals defending

the environment and the land are subject to clear and specific risks. According to the report by Global Witness called “Defenders of the Earth”, in 2016 a total of 37 people were killed for defending the land and the environment in Colombia making this country the second most dangerous in the world for those defending these rights<sup>6</sup>.

Since the announcement of the definitive bilateral end of the hostilities between the government and the FARC-EP on August 28, 2016, one of the constants throughout the give-and-take of the peace process has been the escalation of attacks against communities and human rights defenders, especially in areas where extractive industry projects are in the planning stages or are already under way<sup>7</sup>. **While there has been a noticeable decrease in conflict-related violence<sup>8</sup> as a logical consequence of the cessation of hostilities between FARC-EP and the armed forces, attacks against human rights defenders in Colombia increased in 2016 and so far in 2017<sup>9</sup>.**

Despite the fact that the Peace Accords include a chapter aimed at the reform of the rural sector<sup>10</sup> and contain property formalization and land restitution measures, there is no medium-

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Report on Colombia, 2016, p. 10 and 11. The Ombudsman’s Office registered 156 homicides, 33 attacks and at least 500 threats against leaders and human rights defenders between January 1, 2016 and March 5, 2017. Risk Report 010 - 17 AI, March 30, 2017, p. 23, 24 and 28. The Indepaz organization registered 117 killings in 2016. 2016 Annual Report. The organizations agree that the increase in killings of leaders and human rights defenders is indisputable.

4. Observatory for the Protection of Human Rights Defenders (FIDH-OMCT), preliminary conclusions of the international investigation mission, Colombia: No hay paz para las personas defensoras de derechos humanos (No peace for human rights defenders). (July 19, 2017). Available at <http://www.omct.org/es/human-rights-defenders/urgent-interventions/colombia/2017/07/d24455/>
5. The term extractive is used in this report in the broadest sense referring to the extraction of natural resources. It includes both oil and mining companies and infrastructures for hydroelectric energy production.
6. Global Witness: 2017. Defenders of the earth, killings of defenders of the land and the environment in 2016.
7. This has already been pointed out by the Inter-American Commission on Human Rights in its 2015 report. IACHR: “Criminalization of the work of human rights defenders”, December 31, 2015, OAS/Ser.L/V/II. Doc. 49/15, p. 34.
8. See: Resource Centre for Conflict Analysis—CERAC: Monitoring of the de-escalation of the Internal Armed Conflict (August 2016). From <http://blog.cerac.org/co/category/monitoreo-de-desescalamiento>
9. The Information System on Attacks against human rights defenders in Colombia—SIADDDH of the Somos Defensores (we are defenders) Program, registered a total

term plan to remedy the pressure put on the territories by economic interests, mainly from export sectors such as the agricultural industry and companies engaged in extractive activities. In fact, in a post-agreement context one can expect a notable increase in foreign investment in Colombia and trade flows between Colombia and third countries that could exacerbate the vulnerabilities of the groups and individuals defending the environment and the land unless the authorities take appropriate measures.

For example, Mr. Eamon Gilmore, Special Envoy of the European Union (EU) for the peace process with the FARC-EP, said that *“the consolidation of peace will bring major growth in exports and imports thanks to the free trade agreement between the European Union and Colombia”*<sup>11</sup>. With the entry into force of the Trade Agreement between Colombia and the European Union, between 2013 and 2016 there was a 50% increase in exports from Colombia to the EU<sup>12</sup>. In January 2017, the Colombian government modified foreign investment procedures and others, simplifying requirements and eliminating deadlines for the registration of international investments in order to make the national economy more attractive<sup>13</sup>. Judging from the current commercial relationship (90% of Colombian exports to the EU are mineral and agricultural products), it is feared that this announced growth will translate into increased pressure on the land and, consequently, human rights defenders, rural communities and social organizations.

This report focuses on the vulnerability of groups and individuals defending the environment and the land, an underlying issue that until now has been insufficiently addressed : **how interests and influential economic players contribute to this vulnerability, often with the collaboration, connivance or failure to take action on the part of the State.**

## Approach and objectives

This report uses three case studies to illustrate serious human rights violations which include threats, persecution, legal prosecution, arbitrary detentions, defamation, illegal surveillance, etc., committed in Colombia against groups and individuals whose legitimate activities are aimed at defending and protecting the environment and the land, and denouncing human rights abuses linked to the extractive industry.

It presents these cases with a view to identifying and characterizing the role played by national and transnational companies in the threats that this population faces and the way in which the actions and interests of economic powers in rural areas coincide with the action/inaction and presence/absence of state authorities and armed groups operating outside the law.

## Methodology

This investigation was sparked by the outcry over the events documented in the report *“The Human Cost of Oil: A Human rights Impact Assessment on the Activities of Pacific Exploration & Production*

of 335 individual assaults against defenders in the first half of 2017 consisting of 225 threats, 51 killings, 32 attacks, 18 arbitrary arrests and 9 cases of prosecution. There was a 6% increase in attacks against human rights defenders during the first half of 2017 compared to the same period in 2016, i.e. from 314 to 335. Cfr. Somos Defensores Program. Agúzate. Report January - June 2017. Available at: <https://somosdefensores.org/images/informe-semestral-enero-junio-2017-SIADDHH.pdf>

10. See: Final agreement for the termination of the conflict and the construction of a stable and lasting peace. Point 1. Towards a New Colombian Countryside: Reform of the Rural Sector
11. Revista Semana (magazine). “El millonario apoyo de la Unión Europea para el posconflicto” (millions in post-conflict aid from the European Union), May 24, 2016. From <http://www.semana.com/nacion/articulo/proceso-de-paz-union-europea-announces-increase-of-support-for-the-post-conflict/475071>
12. Colombia increased its exports to the European Union by 50% under this trade agreement. (February 27, 2017). Portfolio. From <http://www.portfolio.co/economia/exportaciones-colombianas-a-europa-503728>
13. Decree 119 of January 26, 2017; see: Colombia modernizes foreign investment procedures. (February 10, 2017). The President’s office of the Republic. From <http://es.presidencia.gov.co/noticia/170210-Colombia-moderniza-regimen-de-inversion-extranjero>

Corp. in Puerto Gaitán”, which documents and analyzes the effects of oil exploration and extraction activities – carried out by the Canadian company Pacific Exploration & Production Corp. (hereinafter ‘Pacific’), in association with the Colombian company Ecopetrol in Puerto Gaitán, department of Meta –on the human rights of local communities and the environment<sup>14</sup>. Using a methodology based on the active participation of the affected communities, that study documented the systematic criminalization of human rights defenders by means of judicial prosecution, excessive use of force against those denouncing the negative impact of the companies’ activities, particularly through the emblematic case of the social and environmental leader Héctor Sánchez Gómez.

The events that took place in Puerto Gaitán are by no means isolated. This report focuses on three emblematic cases in different regions of Colombia, **analyzing actions taken against groups and individuals defending the environment and the land, as well making the temporal correlation between actions denouncing violations and defending their rights with different types of attacks against defenders, visible**. The information collected was analyzed by drawing up a time-line and studying the context of these attacks in order to show the correlation between defenders’ activities in defense of their rights and subsequent reactions of persecution on the part of the authorities and illegal groups, national and transnational companies, coupled with the absence of effective protection measures by State entities.

Multiple sources of information were consulted: surveys, rights to petition, review of official information published by companies, state and non-state entities, reading of published material, interviews of human rights defenders and on-site analyses. We also analyzed the situation of vulnerability in which human rights defenders find themselves.

Finally, the report highlights the common elements found in the case studies and **presents a list of recommendations to the Colombian**

**government, companies and international institutions** to help improve the protection of groups and individuals defending the environment and the land, particularly in areas where multinational companies operate.

## Groups and individuals defending the environment and the land

Defenders of the land are “*groups, individuals or institutions that try to promote and protect human rights related to the land, especially by peacefully addressing the negative impact of investment projects. Individually or collectively they take a stand in the form of peaceful actions protected by international law, against attempts to hoard land and demand that human rights as they relate to land be respected. Examples of such action are lawsuits, public campaigns, protests and demonstrations*”<sup>15</sup>.

Issues relating to the environment and the land are interrelated and often inseparable. As a result, the two groups defending environmental and territorial rights are often included in the category of ‘defenders of rights related to land and the environment’ or are defined as ‘defenders of environmental rights’ or simply ‘environmental defenders’. In this report we will refer to them as ‘groups and individuals defending the environment and the land’.

These individuals and groups often face specific threats and difficulties that increase their

14. International Federation of Human Rights (FIDH), José Alvear Restrepo Lawyers Collective - (Cajar) -, Project for Accompaniment and International Solidarity in Colombia -PASO- (July 12, 2016). The human cost of oil: Study of the impact that Pacific Exploration & Production Corp. activities in Puerto Gaitán have on human rights. Bogota No 677, available at: [https://www.fidh.org/IMG/pdf/colombie\\_exec\\_summ\\_es\\_version\\_web.pdf](https://www.fidh.org/IMG/pdf/colombie_exec_summ_es_version_web.pdf)

15. Observatory for the Protection of Human Rights Defenders (FIDH-OMCT) “We Are Not Afraid”, Land rights defenders attacked for confronting unbridled development, Annual Report 2014, available at: [https://www.fidh.org/IMG/pdf/obs\\_2014-sp-web.pdf](https://www.fidh.org/IMG/pdf/obs_2014-sp-web.pdf), p. 8

vulnerability. This is because the rights they are defending clash with the economic interests that both States and companies defend<sup>16</sup>. Companies contribute significantly to perpetrating this situation. In 2015 and 2016 alone, the Business and Human Rights Resource Centre registered more than 400 cases of attacks in Latin America against defenders trying to hold companies accountable for their actions<sup>17</sup>.

Global Witness has provided evidence of alarming growth in the number of attacks against people who defend the land and the territory. In 2016 they recorded at least 200 murder victims from approximately 24 different countries, including Colombia. The report shows that the cases related to extractive industries occur mostly in the mining and oil sectors (33 cases), followed by others such as logging and agro-industry, with 23 victims each<sup>18</sup>. The report also indicates that there are many other rights violations in addition to killings such as, *inter alia*, sexual or judicial harassment, illegal surveillance, threats and the use of force in peaceful demonstrations<sup>19</sup>.

In many cases, the populations most affected by large-scale business, agro-industrial activities or large-scale projects are among the most vulnerable communities. This vulnerability is

exacerbated in contexts of widespread corruption, scant State control, impunity and difficult access to government mechanisms and authorities.

16. Ibidem, p.12-13.

17. Business and Human Rights Resource Centre - CIEDH. (2017). Companies, Civil Liberties and Human Rights Defenders. From <https://business-humanrights.org/en/empresas-libertades-civiles-y-defensores-y-defensoras-de-los-derechos-humanos>.

18. Global Witness: 2017, Op. Cit.

19. Ibidem



Celina Zúñiga, 69 years old, member of ASOQUIMBO: "God tasked me with the defense of the rivers and the Pachamama, and that is what I intend to do." El Jaguito, Huila, Colombia. March 18, 2017



People from the community of Mina Walter are afraid to return to their homes due to threats from paramilitary groups. Santa Rosa, Bolivar, Colombia. May 11, 2017



Héctor Sánchez, a community leader facing threats, meets with unemployed young people to create a plan to help them find jobs. Rubiales, Meta, Colombia. April 10, 2017.

## II. CONTEXT AND LEGAL FRAMEWORK

### Is the development of the extractive industry inevitable?

**T**he role of groups and individuals defending the environment and land occurs in a context where there is strong political will to strengthen the country's economy by reinforcing the extractive sector. The 2010-2014 National Development Plan implemented during President Juan Manuel Santos first term of office confirmed natural resource exploitation as a paradigm and the driving force behind development. This same policy continued during his second term (2014-2018) under the slogan "Everyone for a new country" ("todos por un nuevo país") and included major business concessions to powerful national and

transnational corporate interests<sup>20</sup>, while at the same time, the country is ranked second in the world in terms of biodiversity<sup>21</sup>.

According to the National Mining Agency (ANM), in 2016 there were a total of 8971 mining permits, 8088 in force and 833 with temporary authorizations, affecting an area of 4,432,789 hectares<sup>22</sup>. The figures in the hydrocarbons sector are also significant. According to the National

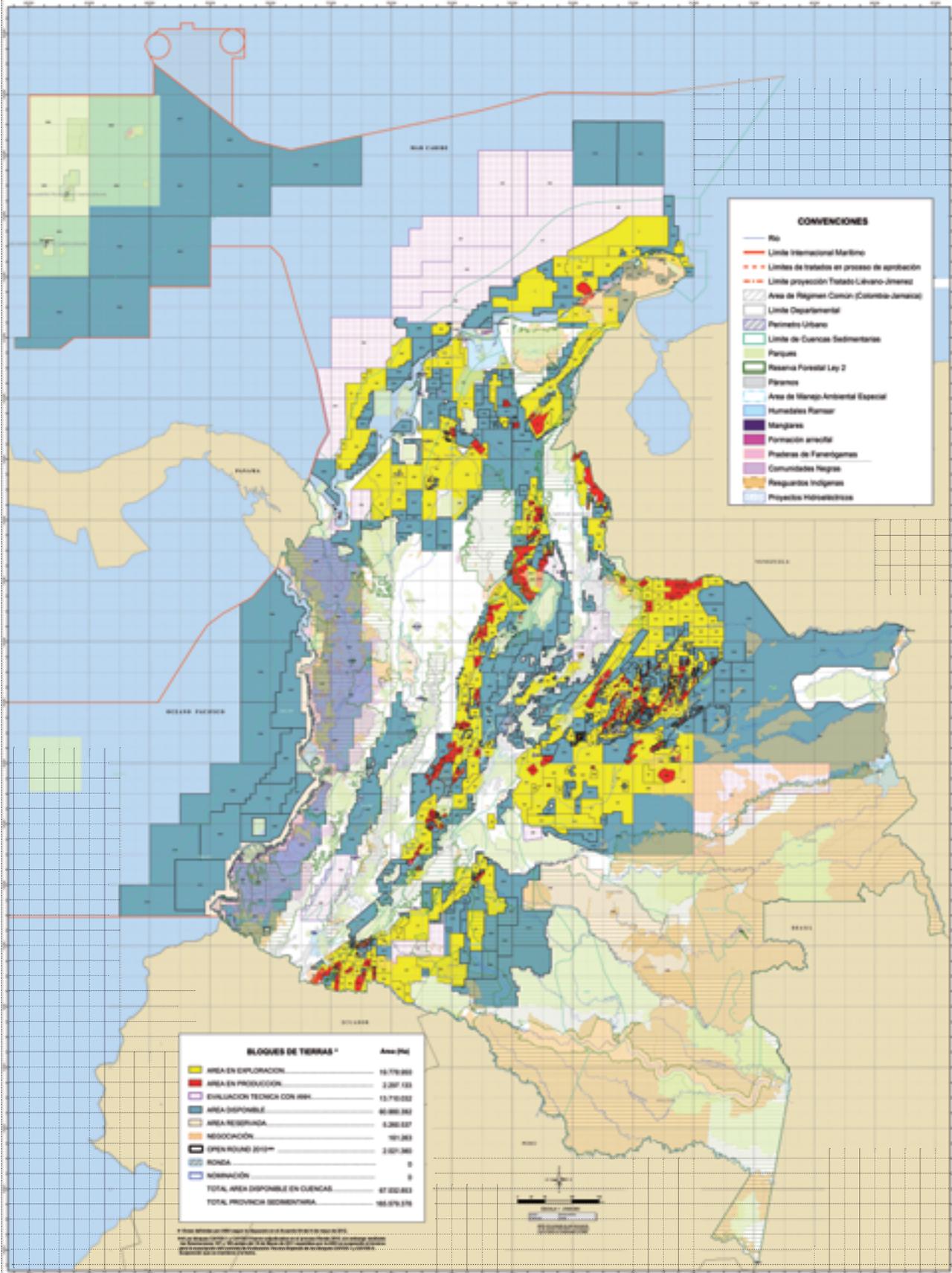
20. The policy of promoting foreign investment is based on two major concepts called 'investor confidence' and 'guarantees of legal stability'. These two basic principles have given rise to, inter alia, tax incentives for foreign investors, the creation of free zones and guarantees to investors that they will not be expropriated. "El Quimbo: large-scale projects, economic, social and cultural rights and social protest in Colombia. Mission Report". Switzerland, 2016, p. 11. From <http://www.refworld.org/pdfid/57ee8b464.pdf>

21. Data from Colombia's Biodiversity Information System. (2017). Sibcolombia. From <http://www.sibcolombia.net/biodiversidad-en-cifras/>

22. Infografía de minería en Colombia (2016). National Mining Agency. From <https://www.anm.gov.co/?q=Infografias-Publicaciones>

**Map No. 1.**

Areas with fossil fuel sites. Source: National Hydrocarbon Agency



Hydrocarbons Agency (ANH), in February 2017 there were 272 sites under exploration, 191 sites in production and a significant area of the country with available sites.

The situation described above was accompanied by the militarization of territories, for which the **Colombian Government created the so-called Energy, Mining and Road Battalions. The number of these battalions has grown in direct proportion to the consolidation of the policy to attract investment from multinational companies into this economic sector**<sup>23</sup>. Over 68,000 troops, i.e. nearly 30% of the Armed Forces, are assigned to these mining-energy battalions<sup>24</sup>. These battalions receive a significant volume of funding from cooperation agreements between transnational mining-energy companies and military forces<sup>25</sup>. This creates distrust among local populations that legitimately question the motives underlying the establishment of these battalions. Their lack of independence and the scant control that citizens have over agreements of this nature creates the risk of distorting the public interest mission of the Armed Forces and shifting it towards the protection of private interests.

Moreover, environmental protection laws in Colombia have not historically been very independent<sup>26</sup> and have been tailored to facilitate extractive projects financed by foreign capital.

This resource exploitation model has been strongly criticized by different political, social

and territorial sectors throughout the country and affected communities have voiced their concern in the form of referendums. Judgment C-273 of 2016 handed down by the Constitutional Court emphasized that communities affected by extractive projects must be consulted in order to adequately guarantee their right to participate<sup>27</sup>. These arguments support the right to citizen participation and autonomy exercised through referendums such as the ones held in the municipalities of Piedras (Tolima) in July 2013, Tauramena (Casanare) December 2013, Cajamarca (Tolima) in March 2017 and Cumaral (Meta) in June 2017, this latter municipality located in the number one oil-producing department in Colombia.

## Insufficient or ineffective protection of groups and individuals defending the environment and the land

23. Corporación Colectiva de Abogados Luis Carlos Pérez CCALCP. (March 30, 2017). Report on the human rights situation in the context of large-scale extractive projects in North Santander and the Magdalena Medio region.

24. El Sector Defensa comprometido (the committed defense sector): 2015. Ministry of Defense. From: <http://www.andi.com.co/Documents/CEE/Colombia%20Genera%202015/Viernes/JoselavierPerez.pdf>

25. See: FIDH-Cajar-PASO, The Human Cost of Oil. Op. Cit.

26. Guhl Nannetti, Ernesto; Leyva, Pablo: 2015, Environmental management in Colombia, 1994-2004: An unsustainable effort? Bogota.

27. Constitutional Court, Judgment C-273 of 2016, Bogota. D.C., May 25, 2016. From <http://www.corteconstitucional.gov.co/RELATORIA/2016/C-273-16.htm>

**Table No. 1.**

Referendum results regarding extractive policies.

Own data based on information from the National Civil Registry.

Referendum	Valid votes	Votes against extractive activities	Votes in favor
Piedras (gold mining activities in Piedras)	2995	2971	24
Tauramena (exploration, exploitation and transportation of fossil fuels in communities near the water recharge areas of this municipality)	4610	4426	151
Cajamarca, (execution of projects and mining activities)	6241	6165	76
Cumaral, (seismic exploration activities, exploratory drilling and production of fossil fuels)	7703	7.475	183

The 1998 UN Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms (UN Declaration on human rights defenders) established that “Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels”<sup>28</sup>.

In this regard, in its 2013 report to the UN General Assembly, the UN Special Rapporteur on the situation of human rights defenders highlighted the relationship between large-scale development projects and activities of human rights defenders, affirming that “it is essential that governments and other relevant agents facilitate the participation of human rights defenders in the preparation of policies and projects, as well as in their implementation and evaluation”<sup>29</sup>.

States must respect, protect, facilitate and promote the work done by human rights defenders and other members of civil society in order for them to act in defense of their rights and those of their community, particularly when these are violated or put at risk by business activities. This includes the obligation of States to protect and guarantee human rights against violations committed in their territory and abroad by third parties, including companies. In this same vein, the State must prevent, punish for and remedy the damages resulting from human rights violations, particularly those caused by businesses<sup>30</sup>.

Although the Colombian Constitution and the international instruments ratified by Colombia include, as a principle, the protection of communities and people working for environmental and territorial rights, in practice they lack enforceability mechanisms and where these mechanisms do exist, their implementation is inefficient and slow.

The efficient investigation and sanction of the material and intellectual perpetrators of attacks

against groups and individuals defending the environment and land constitutes a fundamental safeguard upholding rights and guaranteeing that such attacks will not be repeated<sup>31</sup>. In this connection and in the light of the complexity of the issue, it is incomprehensible that the government’s documentation, investigation and analysis of attacks against defenders, and in particular against environmental leaders, is based solely on reports drawn up by civil society organizations<sup>32</sup> or international agencies, with no monitoring on the part of State institutions, not to mention the lack of a specific sub-category on environmental defenders. It is equally worrying that in the implementation phase of the peace agreements with the FARC - EP and the current negotiations with the National Liberation Army (ELN), there is no consolidated public database at institutional level on socio-environmental conflicts; nor is there comprehensive documentation regarding the implementation and impact of major extractive projects related to these conflicts.

The foregoing explains the reasons for the ‘deep concern’<sup>33</sup> expressed by the UN Human Rights Council in its February 2016 Resolution on human rights defenders regarding the situation of those who deal with issues related to land and the environment and calling on States to promote a safe and supportive environment for their work.

In his August 2016 report, the UN Special Rapporteur on the situation of human rights defenders stressed that the killing of environmental leaders was only the tip of the iceberg and that,

28. General Assembly resolution (A/RES/53/144/), March 8, 1999: Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms. Article 1.

29. Special Rapporteur of the UN on the situation of human rights defenders, A/68/262, October 2013, paragraph 15.

30. OHCHR, Guiding Principles on Business and Human Rights (‘Guiding Principles’), HR/PUB/11/04 New York and Geneva 2011, Principle 1.

31. OHCHR Annual Report: 2016, p. 11.

32. Somos Defensores Program: 2016, p. 9.

33. Resolution 31, Protection of human rights defenders working in the field of economic, social and cultural rights, CIEL p. 10

without a doubt, the true magnitude of the threats and risks faced by defenders of environmental rights has been underestimated<sup>34</sup>.

Publicly, the Colombian government admits that companies may contribute to this situation “by sparking and exacerbating conflict through their activities, by affecting the environment, by financing paramilitary groups and by displacing Afro-Colombian, indigenous and peasant communities”<sup>35</sup>. Moreover, the current and former UN Special Rapporteur on the situation of human rights defenders have repeatedly stressed the impunity with which attacks are perpetrated against human rights defenders in Colombia<sup>36</sup>. What guarantees for protection will the Colombian government provide today to defenders of the environment at a time when corporate interests prevail in the territories?

## Practices related to the extractive industry that violate the rights of groups and individuals defending the environment and the land

The first category of State practices and policies against groups and individuals defending the environment and the land is constituted by actions aimed at restricting their defense activity. This includes the creation of new criminal offenses that criminalize and discourage citizens from lodging complaints, the use of violence as opposed to dialogue in response to local populations’ peaceful complaints and demonstrations, the systematic refusal to provide information or to allow local residents to participate in the decision-making process regarding the future and use of their land and resources, the increase of surveillance measures, failure to acknowledge the receipt of complaints, the absence of justice, the discrepancy between the speed at which judicial proceedings against

them progress as compared to the complaints they file, restrictions on freedom of expression and association, and so forth.

The second category contains actions that stigmatize human rights defenders. Defense of the environment and the land is often delegitimized by powerful economic players — State and non-state actors— who claim that the aim of such activity is to hinder the economy and national development and to stand in the way of activities that generate more tax revenues, etc. This is a well-known strategy that combines public accusation and stigmatization in order to isolate defenders and justify actions taken against them.

The third category includes a wide array of attacks and violent actions: direct threats against the people of the community or their families, attacks, verbal and armed harassment at demonstrations, information theft, communications boycotts, gender-based violence, surveillance and illegal detentions, false legal accusations, etc..<sup>37</sup>

This list is not comprehensive insofar as the persecution of human rights defenders is as varied as their protests and in most cases the different categories of aggression against human rights defenders are not exclusive but rather cumulative.

This report illustrates some of these aggressions and illustrates how defenders, both groups and individuals, find themselves in a situation of inferiority vis-à-vis companies due to the State’s failure to defend or protect them;

34. Report of the Special Rapporteur on the situation of human rights defenders. August 3, 2016, A/71/281, p. 4.

35. Tierra Digna (dignified earth): “Security and human rights for whom?: Volunteerism and Militarization, strategies of extractive companies in the control of territories”. Center for Social Justice Studies, Bogota, 2015, p. 51-73. Also: Presidential Human Rights Program: “Guidelines for a Public Policy on Human Rights and Businesses”, July 2014, p. 31

36. See: Reports of the United Nations Rapporteur on the Situation of Human Rights Defenders, for example, A/HRC/19/55 of December 21, 2011, A/HRC/25/55 of December 23, 2013.

37. Report of the United Nations Rapporteur on the Situation of Human Rights Defenders, A/71/281 of August 3, 2016.



Daniel Ortiz, 48, arrived at Mina Walter looking for work after he lost his job on the Caribbean coast. Since May 2016 he has been working in the ASOMIWA gold mines. Walter Mine, in the Southern Bolivar, Colombia. May 12, 2017

so much so that the State appears to acquiesce to the power of companies<sup>38</sup> while also failing to apply the mechanisms needed to guarantee the protection of citizens' rights in their territories.

## The obligation of companies to respect human rights

The United Nations Guiding Principles on Business and Human Rights ('Guiding Principles') establish the responsibility of companies to respect human rights and exercise due diligence to avoid causing or contributing to, by any action or omission, to human rights violations<sup>39</sup>.

While States have the obligation to respect, protect and fulfill human rights, companies have the responsibility to respect all internationally recognized human rights as established in said Principles. According to the Guiding Principles, acting with due diligence implies "Avoid[ing] causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts" and providing compensation for them

or contributing to such compensation<sup>40</sup>. This includes cooperating and contributing to the development of processes before judicial or extra-judicial mechanisms pursuing the sanction and remedy of said violations. Under these principles, companies must at least respect internationally recognized human rights<sup>41</sup>.

Although some of the Guiding Principles are not themselves legally binding, they have been widely recognized by corporations, civil society, and States that have implemented them through various corporate responsibility practices and partial integration in some national legislations. This acceptance and integration of the principles into binding regulations may, in the future, translate into the adoption of a binding treaty on businesses and human rights.

In June 2014, the United Nations Human Rights Council adopted the resolution establishing the Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights ('Working Group'), with the mandate to draw up a legally binding instrument to regulate the activities of transnational corporations and other businesses based on international human rights law. The purpose of developing a binding instrument is to complement and strengthen the obligations arising from the Guiding Principles and other existing instruments and treaties. The third session of the Working Group, which will take place from October 23-27, 2017, should enter into substantive negotiations on the Treaty.

38. Borrás: October 2015 – March 2016, p. 25.

39. Op. Cit., OHCHR, Guiding Principles, Principle 18.

40. Op. Cit. Guiding Principles, principles 11-13.

41. Op. Cit. Guiding Principles, principles 23.

Leaders of ASOQUIMBO at a meeting in the central park of Neiva. Neiva, Huila, Colombia. March 17, 2017





Deforestation near Mina Walter. Southern Bolívar, Colombia. May 12, 2017



Julia Figueroa, human rights lawyer and leader of CCALP, meets with two lawyers from the region. Bucaramanga, Colombia. May 9, 2017.

### III. CASE STUDIES

The following is an analysis of three cases that illustrate the different categories of human rights violations related to the implementation of large-scale projects in rural territories. In all three cases there is a clear interrelation of the different categories of violations of the rights of human rights defenders.

The following is a brief description of the cases:

- *The case of the women of the Corporación Colectivo de Abogados Luis Carlos Pérez (CCALCP) based in Bucaramanga and the stigmatization of their strategic litigation work regarding issues of impunity and defense of the land.*
- *The case of the environmental leader and president of the Environmental, Agrarian and Community Committee of Puerto Gaitán*

*- Meta (ACAAC) Héctor Sánchez Gómez and his trade union and environmental work in the largest oil field in Colombia. .*

- *The case of university professor Miller Dussán, Legal Representative of the Association of Persons Affected by the El Quimbo Hydroelectric Project (ASOQUIMBO) in the department of Huila.*

The case studies include a short presentation of the regional context and a description of the companies in the relevant regions. Based on this description, an analysis of the time correlation between activities denouncing the negative impacts of companies and attacks on human rights defenders responsible for those activities is made.



Julia Figueroa (CCALCP) embraces Imelda Oliva Martínez Reyes, victim of the forced disappearance of two of her children and the leader of an organization in their memory. Bucaramanga, Colombia. May 8, 2017.

## Case No. 1

### - The stigmatization and persecution of the CCALCP lawyers as 'extreme left-wing women'

The Corporación Colectivo de Abogados Luis Carlos Pérez (CCALCP) is an organization of eight women lawyers that has been working since 2001 in northeast Colombia promoting and defending human rights. Its head office is in Bucaramanga (Santander) and it has a second office in Cúcuta (Norte de Santander).

Because of their successful work on their two strategic lines, *Lucha contra la impunidad. Defensa del Territorio* (Fight against impunity. Defense of the land), especially in the regions of Catatumbo, Magdalena Medio and Guamocó<sup>42</sup>, the eight wom-

en have suffered threats for the last 10 years and have been subjected to multiple incidents such as threatening mail and telephone calls, attacks and physical aggression, robberies and persecution by government agents.

In other cases, they have been subjected to serious verbal harassment and legal action organized by national and transnational mining-energy companies. They were likewise victims of persecution, intimidation, unlawful interception and systematic espionage under the Presidency of Álvaro Uribe Vélez through the Administrative Department of Security (DAS), the national center for intelligence that answered directly to the president's office and was disbanded in 2011 following serious allegations of links to paramilitary groups and human rights violations.<sup>43</sup>

42. The same is true in the cities of Bucaramanga and its metropolitan area and in the municipalities of Charalá, San Gil, Curiti, California, Lebrija and San Andrés in the department of Santander and in the cities of Cúcuta and its metropolitan area, Ocaña, Toledo, Sardinata, Tibú, El Tarra, Salazar, Zulia and Cucutilla in the department of North Santander. CCALP: Follow-up report on the situation of human rights defenders - CCALP case, August 20, 2016.

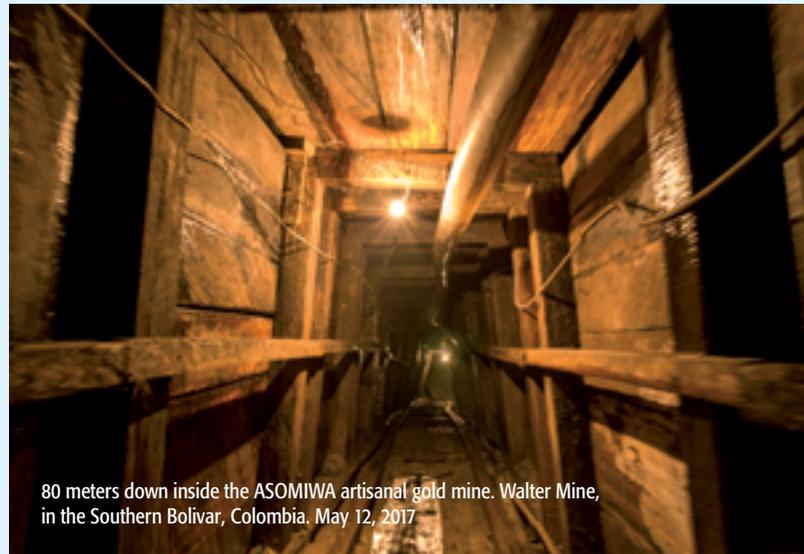
43. DAS was disbanded only to be replaced by the National Intelligence Agency. (October 31, 2011). Revista Semana (magazine). From <http://www.semana.com/politica/articulo/el-das-deja-existir-para-dar-paso-agencia-nacional-inteligencia/2487403>

These aggressions against the CCALCP were promptly reported to the Prosecutor General's Office, supervisory agencies and the national government through criminal complaints. No progress has yet been made in the investigations of the 43 complaints filed since 2009<sup>44</sup>. In August 2016, a study by the National Protection Unit (UNP) showed a 'high' level of risk for the current president of the Corporation, Julia Adriana Figueroa Cortés. As a result she has been assigned high-level protection consisting of an armored vehicle and two bodyguards, but the risk has not diminished. The women's organization has now filed a request for precautionary measures before the Inter-American Commission on Human Rights (IACHR) due to the severity of the attacks and imminent risk<sup>45</sup>.

## **The situation in northeastern Colombia**

The great environmental wealth in the northeastern region of Colombia has led to conflicting interests and visions regarding land use resulting in failure to consider the rights of the peasant, indigenous and communities of the region.

The department of Santander is located in this region and has a population of two million inhabitants. One million are concentrated in its metropolitan area and capital city, Bucaramanga. The department borders on the east with the department of Norte de Santander that has 1.3 million inhabitants, the majority of whom live in rural areas. Here the Páramo de Santurbán (Santander and Norte de Santander) stands out for its endemic ecosystem, the source of water for more than 2,200,000 inhabitants, and for its areas of great environmental value in the region of Catatumbo (Norte de Santander), where proposals for large-scale projects to extract coal, gold, oil and to harness hydroelectric power have contributed to the intensification of socio-political conflicts in the region.



80 meters down inside the ASOMIWA artisanal gold mine. Walter Mine, in the Southern Bolívar, Colombia. May 12, 2017

### **Company: 'Eco Oro Minerals'**

**Eco Oro Minerals:** This Canadian company was formerly called Greystar Resources<sup>46</sup>. It has been established in Colombia since 1994, promoting the gold and silver project called **Angostura** and its four satellites: Móngora, La Plata, Armenia and Violetal, all in the Páramo de Santurbán. The concession includes an area of 30,000 ha. between the departments of Santander and Norte de Santander where there has been a proposal for an underground exploitation<sup>47</sup> since the proposal for an open pit mine was denied in 2010<sup>48</sup>.

Despite strong opposition from both peasants and academic circles, in 2012 the National Mining Agency extended the exploitation license declaring it a '**project of national interest**'. In response, the 'Committee for the Defense of Water and the Páramo de Santur-

44. CCALCP: August 20, 2016, p. 6.

45. Interview of Cajar with Julia Adriana Figueroa Cortés of CCALP, April 28, 2017.

46. Greystar changes its name to Eco Oro Minerals Corp. (August 18, 2011). Eco- Oro. From: <http://bit.ly/2glmJZe>

47. Angostura (s.f.). Eco-Oro. From <http://www.eco-oro.com/sp/Angostura.asp>

48. The Angostura Project and its sad outcome. (December 15, 2016). El Tiempo. From: <http://blogs.eltiempo.com/desmarcado/2016/12/15/ la-increible-historia-eco-oro/>

bán' filed a complaint with the Compliance Advisor Ombudsman (CAO) of the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA)<sup>49</sup>. In September 2014 the Committee re-filed its complaint<sup>50</sup>.

In February 2016, the Constitutional Court declared that Article 173, which allowed mining in the *páramos*, was unconstitutional. A month later, the company threatened to file an international dispute against the Colombian government. Despite this, a resolution was issued revoking the company's permits. Eco Oro formally filed suit against the Colombian government in December 2016<sup>51</sup>.

The Barí indigenous people have lived in the Catatumbo region (Norte de Santander) for several centuries. The Barí people currently live on two reservations and constituted in 24 communities. The total population is just over 4,000<sup>52</sup>. Geostrategic interest in their territories from the extractive industry, illicit plantations and legal and illegal armed groups has been particularly acute in the 21st century.

Serious human rights deficiencies prevail in the department of Norte de Santander, especially in rural areas. Figures show that 22.49% of the population in municipal capitals and 58.91% in rural areas lacks basic needs. Education is of very low quality in rural areas with illiteracy reaching 22.2% outside municipal capitals<sup>53</sup>. It is important to point out that the most serious crimes in the region, such as extra-judicial executions, also occur in rural areas. This illustrates the type of situations faced by the victims of these crimes<sup>54</sup>.

The three guerilla groups, FARC-EP, ELN and EPL, have historically been present in the department. Their presence has kept the department in a continuous situation of armed conflict for the last 50 years. Incursions of paramilitary groups in the area at the end of the

1990s resulted in their control over the territory from that time until their alleged demobilization in 2004. For all of these reasons, there has been an excessive increase in military and police forces in the department that has been justified by the fight against drug trafficking and counterinsurgency. In 2005 the government forces set up Mobile Brigade No. 15 in the region that was dismantled in December 2008 due to multiple complaints lodged against it for extra-judicial executions<sup>55</sup>. The 400 members of the FARC-EP Front 33 are currently in the transition phase towards reincorporation into civilian life in the 'Caño Indio' Territorial Area for Training and Reincorporation in the municipality of Tibú<sup>56</sup>.

## Attacks and stigmatization of CCALCP lawyers

The threats against the women of the CCALCP are directly related to their two lines of social-legal activities: fighting impunity and defending the land. The first line of work focuses on extra-judicial

49. Compliance Advisor Ombudsman, Our Mandate, (sf), from: <http://www.cao-ombudsman.org>

50. Organizations advise the World Bank of the risks of their investment in a mining project in Colombia. (October 16, 2014). Mining Watch. From: <http://bit.ly/2xsKjR0>

51. The Angostura Project and its sad outcome. (December 15, 2016). El Tiempo. From <http://blogs.eltiempo.com/desmarcado/2016/12/15/la-increible-historia-eco-oro/>; Sobre el estado actual de la disputa, ver: CIRDI, Eco Oro Minerals Corp. v. Republic of Colombia (ICSID Case No. ARB/16/41), from <https://icsid.worldbank.org/en/Pages/cases/casedetail.aspx?CaseNo=ARB/16/41>

52. Constitutional Court Judgment T052/2017, p. 3.

53. DANE, 2005 General Census, updated on June 30, 2011.

54. CCALCP Archive, 2016.

55. See, for example, the ruling against 21 soldiers of Mobile Brigade 15 of Counter-Guerilla Battalion 96 for their involvement as co-authors of the crimes of aggravated homicide, forced disappearance and conspiracy to commit a crime surrounding the killing of two young men from Soacha on January 26, 2008. Cajar Publication, 4.4.2017 at: <https://www.collectivedeabogados.org/?Ejemplar-condena-ratifica-que-jovenes-de-Soacha-asesinados-no-eran-delinquentes>. It was subsequently replaced by Mobile Brigade No. 23 and later, with a view to protecting the investment made in the area and to continue the fight against drug trafficking, the military forces created the new elite unit called 'Joint Task Force Vulcano' (among others) which was activated by the Minister of National Defense on December 17, 2011. See: Report on the human rights situation in the context of large-scale extractive projects in the Norte Santander and Magdalena Medio regions, CCALP March 30, 2017.

56. Rendón, Olga Patricia. (August 15, 2017). La reincorporación de los excombatientes inicia en firme. El Colombiano. From <http://www.elcolombiano.com/colombia/acuerdos-de-gobierno-y-farc/la-reincorporacion-de-los-excombatientes-inicia-en-firme-DX7110162>

execution cases<sup>57</sup>. To date, the organization has documented 65 cases of extra-judicial executions giving rise to 79 victims and it is involved in 6 legal proceedings for these crimes against humanity<sup>58</sup>. The second line of work is strategic litigation defending the environment and land against extractive activities, its aim being respect for and protection of local ethnic groups and peasants.

This latter line of work is what sparked the harassment. No sooner had CCALCP begun to defend the rights of the indigenous Barí people against the Ecopetrol company's exploration of the Álamo I oil field, that officials of the state-owned company 'Ecopetrol' began to make accusations against the group of lawyers claiming that it was 'an organization serving the interests of guerilla groups' (September 2006). This information came from a very credible source that passed it along to CCALCP<sup>59</sup>.

This accusation was made at the same time that a motion for protection was filed by CCALCP that was endorsed by the Constitutional Court through judgment T 880/06<sup>60</sup>. In that ruling the Court ordered the company to immediately suspend all oil exploration activities until the presence of indigenous peoples in the region was certified and they were consulted.

The persecution continued throughout 2007<sup>61</sup> and intensified in 2008 in what appears to have been a response to the progress of the legal, social and political actions of the CCALCP lawyers together with the Barí People and the peasant association of Catatumbo 'Ascamcat', in opposition to a projected open pit coal mine project covering over 25,000 hectares in Catatumbo involving nine mining companies<sup>62</sup>.

The persecution included threats, illegal entry into the homes of human rights defenders, failures in the organization's electronic system<sup>63</sup> and a false witness at a judicial hearing. At a time when the country was highly polarized, the alleged witness for the prosecution testified that the social organizations working in the Catatumbo region are all 'guerilla organizations'<sup>64</sup>

and distributed copies of the declaration in the municipality of Tibú, claiming that arrest warrants had been issued for all those he had named in his accusation<sup>65</sup>.

In 2009 there was a rise in the number of attacks against the CCALCP lawyers. In May they discovered that the lawyers had been subjected to infiltration, surveillance and illegal wiretapping by the DAS intelligence agency. This incident is known as the 'chuzadas scandal'<sup>66</sup>.

The number of attacks increased. (1) The office of the Director of the CCALCP was broken into and all the electronic devices were stolen meaning that the work done by the organization

57. Revista Semana. "They gave us five days off for each person killed." (January 26, 2008). From: <http://bit.ly/2wYPpXc>. The Norte de Santander department was one of the first to identify cases of young people killed by soldiers who then dressed them in camouflage clothing and put weapons in their hands to make it look like they were guerillas killed in combat.

58. Interview of Cajar with Julia Adriana Figueroa Cortés of CCALP, April 28, 2017.

59. CCALP Report, March 30, 2017, p. 17.

60. From October 26, 2006 from <http://www.corteconstitucional.gov.co/relatoria/2006/T-880-06.htm>

61. Three illegal entries into the private homes of CCALCP directors, an e-mail threat and spyware infection of the team's computers at the time when the women were working with the families of the victims in the filing of lawsuits against the national army and against the material and intellectual authors of the extrajudicial executions in Catatumbo.

62. The companies were Geofising UE, Compañía Minera Rio de Oro, Compañía Minera la Esmeralda, Promexco, Prominorte, Sopromin, Carbon Fuels and Minerals, Mora y Mora Multiinversiones Mineras. On September 21, 2005, these companies filed a request to the Ministry of the Environment, Housing and Territorial Development for the removal of forest reserve status from the Municipalities of Teorama and Tibú. On September 26, 2005 they requested a joint global environmental license for the exploration and exploitation of coal with an impact on over 25,000 hectares of land covering the municipalities of Convención, Teorama, Tibú and Tarra, inhabited by the Motilón Bari Indigenous People. Despite the aggressive insistence of the business group, this request was rejected on December 9, 2009 and confirmed on February 4, 2011 by virtue of Resolution No. 0157 of the same Ministry.

63. July and August 2008: Total suspension of fixed telephony and internet service in the CCALCP office for one month and permanent changes of the IP address without any explanation from the telephone company. Telephone and Internet service was restored in less than 10 days for all other users on the same block and throughout the neighborhood.

64. August 28, 2008. The criminal process in which the alleged witness made this statement was unrelated to the mining issue. According to reports, the witness was transported by army helicopter to the public prosecutor's office to receive his statement in which he makes false references to a series of civil resistance meetings against the large-scale coal project. In September, at the invitation of the Vice Presidency of the Republic, that same witness along with two other regional leaders attended the Norte de Santander Departmental Human Rights Committee meeting. There, they claimed to have fled the region due to threats against them for supporting coal mining, stating that 'third-parties' were responsible for their having to flee. CCALP: Report, August 20, 2016.

65. Complaint filed with the Prosecutor's Office by CCALP, see CCALP: Report, 20 August 2016.

66. CCALP: 2009

in the last eight years was lost. (2) The company Geofising EU claimed that the guerilla acts through social organizations and sent a letter to this effect to the Ministry of the Environment with a copy to the President of the Republic, Álvaro Uribe Vélez, together with a FARC-EP pamphlet comparing it to a brochure designed by the CCALCP announcing a forum on territorial issues in November 2007. And (3) unidentified people manipulated and edited the video entitled ‘*Catatumbo en la mira*’ supported by CCALCP, which denounces extractive industries’ interests in the northeast region. They uploaded it again onto YouTube under the false title ‘*Catatumbo en la mira de las FARC-EP*’<sup>67</sup>.

In December, after several legal interventions by the CCALCP lawyers, the Ministry of Environment denied the request filed by Geofising EU and the other eight companies to extract the area from the forest reserve allowing coal extraction activities thus preventing them from acquiring the environmental license needed to carry out the project<sup>68</sup>.

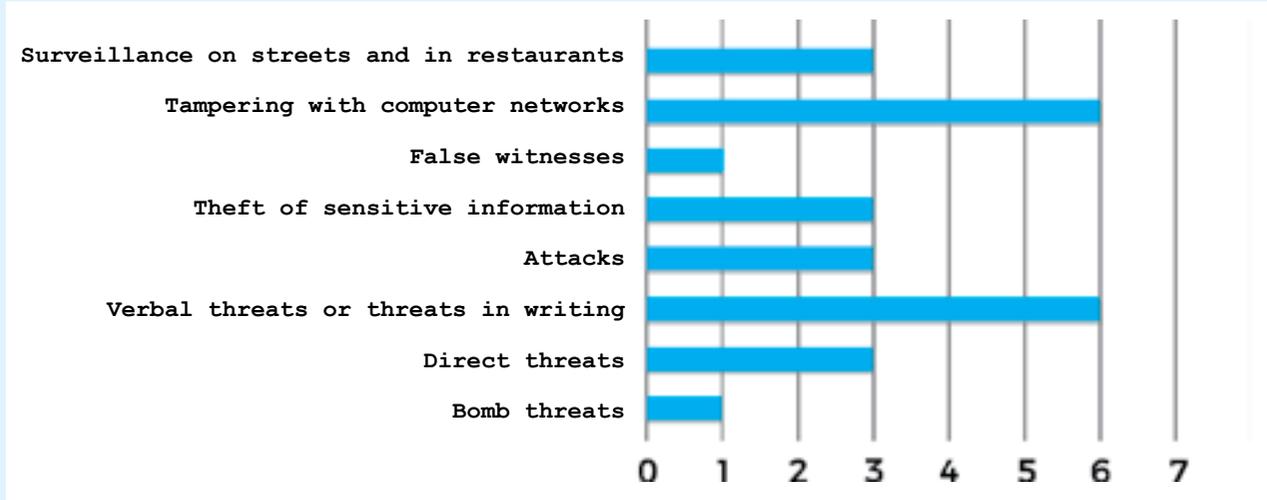
The next several years (2010 to 2014) brought more diverse methods of personal and legal persecution resulting in one of the women lawyers having to temporarily flee the country and adopt permanent self-

protection measures in order to be able to continue working. During this period there was at least one bomb threat, one bomb attack, three direct threats<sup>69</sup>, at least six verbal threats and/or threats in writing, three attacks against different members of CCALCP, three thefts of sensitive information, a false witness denying the extrajudicial executions, six cases of tampering with the office’s computer and/or security networks and three blatant cases of surveillance of organization members on streets and in restaurants.

This persecution was organized, planned and carried out by organized groups. In some cases (surveillance and tampering with security networks) a budget was required. The frequency and intensity of the threats against CCALCP members diminished, but only until 2015. Persecution picked up again in 2016, this time with a different *modus operandi* but still related to their actions in the defense of human rights and corporate interests in the northeast region.

67. CCALP Report August 20, 2016.  
 68. December 9, 2009, Resolution 2365.  
 69. One by the Association of Civilian Victims of the Guerilla and two by unknown parties.  
 70. Prepared by the authors, based on information provided by CCALCP.

**Diagram No 1.**<sup>70</sup>  
 Aggressions against the CCALCP recorded from 2010-2014



## ConocoPhillips Company

*ConocoPhillips* is a US oil company that has been operating in Colombia since 2013 when it acquired a 70% share of unconventional resources of the Santa Isabel oil block in southern Bolívar<sup>71</sup>.

In 2015 the company expressed its interest in consolidating unconventional exploitation activities.

In 2016 residents of San Martín, Sur del Cesar, protested against unconventional methods used by ConocoPhillips at the Pico Plata 1 well<sup>72</sup>. Due to the sustained protests of more than 7,000 inhabitants, the company temporarily suspended its operations in the municipality in September of the same year. In October 2016 the mayor ordered the intervention of the ESMAD police force to take action against the demonstrators<sup>73</sup>. Several people were injured and arrested.

On September 14, 2016, CCALCP filed a complaint against the company with the Comptroller General's office because of the unconventional methods<sup>74</sup> employed.

During that year (2016), the women of CCALCP filed several different suits against different mining and energy projects such as the ConocoPhillips oil project in South Cesar and the Isagen company's Piedra del Sol hydroelectric project.

## Company : Brookfield Asset Management / Isagen

**Brookfield Asset Management:** This Canadian company has been listed on the Toronto Stock Exchange since 1912<sup>75</sup> and has been present in Colombia since 2011 when it entered the energy distribution business with the purchase of the Empresa de Energía de Boyacá<sup>76</sup>. It consolidated its activity in 2016 when it became the majority owner (57.6%) of the company Isagen<sup>77</sup> through the largest

privatization in the history of Colombia<sup>78</sup>. Criticism of the deal was not assuaged by the fact that the sale was in the form of an auction with a single bidder.

**Isagen** operates at least 14 projects in Colombia: seven power generation plants, six hydroelectric plants and one thermal energy plant in five departments around the country. It is also developing five hydroelectric projects in the departments of Antioquia and Santander: **Piedra del Sol**, Río Patía, Palagua, Nare, San Bartolomé, and Tafetanes<sup>79</sup>.

'Piedra del Sol' is a hydroelectric project using the run-of-the-river technique on the Fonce River in the Pinchote, San Gil, Socorro and Cabrera areas of Santander department where the company failed to guarantee the effective participation of the population with respect to the environmental impact of the project.

CCALCP filed a motion for protection in 2016 with the *Autoridad Nacional de Licencias Ambientales* (ANLA – National Authority for Environmental Licences). **This motion led to a ruling from the Administrative Court of Santander protecting**

71. Petrolera ConocoPhillips decides to do business in Colombia. (February 28, 2016). Portafolio. From <http://www.portafolio.co/economia/finanzas/petrolera-conocophillips-decides-enter-colombia-76498>

72. Caracol Radio. "Cesar residents protest against fracking and demand that human rights be respected." (April 22, 2016). From: <http://bit.ly/2xsUXOs>

73. The mayor supporting fracking finds himself cornered. (October 19, 2016). La Silla Vacía (the empty chair). From: <http://lasillavacia.com/historia/la-arraconada-al-alcalde-del-fracking-58418>

74. Fracking is an unconventional technique "to extract unconventional hydrocarbons such as gas and shale oil, gas in compact sand and coal gas. The method entails vertical followed by horizontal drilling. Liquid is then injected at very high pressure to break the rock containing hard-to-access hydrocarbons and release them." In: Principio de precaución (precautionary principle): Herramienta jurídica ante los impactos del fracking (legal instrument to deal with the impact of fracking) Heinrich Böll Stiftung /AIDA, Mexico: 2016, p. 13.

75. About Us, Brookfield Asset Management, (s.f) From <https://www.brookfield.com/en/Our-Firm/About-Us>

76. ¿Quiénes son Brookfield y Colbun, los inversionistas que van por Isagen? (who are Brookfield and Colbun, the investors going after Isagen?), Dinero, 1 of April 2016, from <http://www.dinero.com/inversionistas/articulo/quienes-brookfield-colbun-inversionistas-van-isagen/217656>

77. South America. (s.f). Brookfield Asset Management. From <https://www.brookfield.com/en/Our-Firm/Global-Presence/South-America>

78. Las ocho promesas de Brookfield como nuevo dueño de Isagen (Brookfield's eight promises as the new owner of Isagen). (January 28, 2016). El Colombiano. From <http://www.elcolombiano.com/negocios/venta-de-isagen-brookfield-y-sus-promesas-HC3501292>

79. Piedra del Sol hydroelectric project, ISAGEN, (2015)

the rights of the communities affected by the project and helping pave the way for citizens' participation in environmental decisions prior to the granting of environmental permits, meaning that citizens would have access to technical details.

Similarly, on October 12, 2016, an unconstitutionality suit was filed against Legislative Act 01 of 2016 in relation to the Peace Agreement. It was in this context that aggressions recommenced with a physical attack and at least 15 virtual Twitter attacks accusing the lawyers of being killers and/or 'child molesters' and linking their work to the FARC-EP guerilla forces: "I would march against fracking in San Martín but that initiative is led by a pro-guerilla NGO. I want no part of that @ccalcp @Bucaramanga"<sup>80</sup>. Once again, the organization filed criminal complaints but no progress has been made in the investigation to date.

**The CCALCP's case is characterized by the fact that the multiplicity of causes for conflict in the region have been used as arguments**



Julia Figueroa, human rights lawyer and leader of CCALCP in the street in front of her office where she was the victim of an assassination attempt. Bucaramanga, Colombia. May 9, 2017

both to deny the attacks against this group of lawyers for defending human rights and to dissipate the government's responsibility and the role played by businesses. This situation is common in regions where conflict is more intense and where armed groups are present.

The women members of CCALCP are under a permanent risk of attacks of all kinds (physical attacks, communications sabotage, information theft, virtual attacks, false testimony by witnesses, persecution and others). State measures to mitigate risks are ineffective in protecting the organization and the lack of adequate and effective investigation of the acts of aggression against CCALCP lawyers is one of the main causes.

Moreover, their work to defend the environment and the land puts them at odds with several different international and national companies whose ability to sue the State in international courts allows them to exert pressure on the authorities. Hence, the government ends up facilitating companies' actions and neglecting its duty to protect the environment, the population and the groups and individuals defending the land.

80. Complaint filed before the Bucaramanga Prosecutor's Office, December 19, 2016, CCALCP archive.



Community leader Héctor Sánchez presents evidence of contamination in the village during a meeting between the company Ecopetrol and the community of Rubiales. Rubiales, Meta, Colombia. April 8, 2017.

## Case No. 2

### - Threats, attacks and criminalization of Héctor Sánchez Gómez: “If you go home you’re a dead man”

Héctor Sánchez Gómez is a social leader and environmental defender. He is president of the Comité Ambiental, Agrario y Comunitario de Puerto Gaitán – Meta (ACAAC - Environmental, Agrarian and Community Committee), president of the Junta de Acción Comunal de Rubiales (Rubiales Community Action Board) and a member of the Unión Sindical Obrera (USO Workers’ Trade Union in the Petroleum Industry).

Since 2011, he and other trade unionists

and social leaders of the region have been the target of harassment, persecution and threats by members of the national army, the regional judicial investigation unit (SIJIN)<sup>81</sup>, paramilitary groups and the private security forces of the Pacific Rubiales Energy company for denouncing and calling attention to the irremediable damage caused by the extractive operations of the company Pacific Rubiales and, since July 2016, by Ecopetrol<sup>82</sup>. The Inter-American Court of Human Rights granted him and four other members of the Junta de Acción Comunal de Rubiales precautionary measures on December 17, 2016 as their lives and physical integrity were in danger<sup>83</sup>.

The human rights defender is currently facing five legal proceedings against him, two of them active and one at the accusation stage<sup>84</sup>. Pacific has been involved in the criminal

81. See: IACHR: Precautionary Measure No. 382-12, December 17, 2016, from: <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC382-12-EN.pdf>

82. See: FIDH-Cajar-PASO, The Human Cost of Oil. Op. Cit.

83. IACHR: 2016.

84. Cajar archives consulted on April 9, 2017.

proceedings on several occasions, either as a victim alleging material damages caused by protests, by fully collaborating in the transfer of witnesses to judicial offices, apparently for the purpose of manipulating their testimony, by providing transport services for the investigation commissions or by participating in all legal proceedings as a witness for the prosecution<sup>85</sup>.

## **The situation in the municipality of Puerto Gaitán**

Puerto Gaitán, Meta, is a municipality in the Colombian highlands located on the banks of the Manacacías river. It is composed of 27 villages with 31,139 inhabitants<sup>86</sup>. This is the site of the largest oil field in Colombia dominated by two oil companies, Pacific Exploration & Production and Ecopetrol. More than half of the oil produced in the country comes from the department of Meta and in turn more than half of this production from Puerto Gaitán<sup>87</sup>.

However, the results of this economic activity have not been reflected in the socio-economic situation of local inhabitants. 65.5%<sup>88</sup> of the residents of the municipality live in poverty, while the figure for rural areas is 83.5%<sup>89</sup>. According to 2014 figures from the Identification System of Potential Beneficiaries of Social Programs - Sisben, while 75% of the population in the municipal capital has running water, the figure drops to 14.48% in the villages and to a mere 0.45% in scattered rural settlements<sup>90</sup>. While Puerto Gaitán is the municipality of Meta receiving the highest amount of oil royalties, not even the most basic needs of 65.5% of its inhabitants are met<sup>91</sup>.

Historically, Puerto Gaitán has been characterized by the absence of the government forces and the presence of various illegal armed groups. The FARC-EP was present in the area until the 1990s and since 1994 paramilitary groups have dominated, particularly the Eastern Bloc of the Autodefensas<sup>92</sup>. By the year 2000, several paramilitary structures had been

consolidated in the municipality and the group known as the Autodefensas Campesinas de Meta y Vichada (ACMV)<sup>93</sup> began to exercise control over the land and the communities in Puerto Gaitán where massacres, disappearances and forced displacements took place<sup>94</sup>.

It is worth noting that the period of paramilitary violence at the beginning of the 21st century coincided with the wave of expansion of the oil industry in the region. According to a number of unconfirmed sources, paramilitary groups under the command of alias “Guillermo Torres” mentioned Campo Rubiales in Puerto Gaitán as one of the sources of funding based on contacts made with the well’s engineers in 1995 and which continued until early 2000<sup>95</sup>. According to these accounts, businessmen supported the paramilitary groups with food and remittances. It was also not uncommon to pay for the protection of the trucks transporting crude oil from the well<sup>96</sup>.

Furthermore, in 2016 the Ombudsman’s Office affirmed that the oil industry was what allowed illegal armed groups to become integrated into

85. For more details see: FIDH-Cajar-PASO, *The Human Cost of Oil*. Op. Cit.

86. *Ibidem*, p. 6; SOMO-Indepaz: “Petróleo: Acumulación de agua y tierras en la Altillanura”. Bogota, October 2016

87. Human Rights Action Plan and International Humanitarian Law 2012-2015 (Municipality of Puerto Gaitán, 2013), p. 24

88. *Ibid*

89. *Ibid*

90. Departmental Development Plan 2016-2019, *Gaceta del Meta*, June 16, 2016.

91. See: FIDH-Cajar-PASO, *The Human Cost of Oil*. Op. Cit.

92. Peasant Self-Defense Forces of Meta and Vichada. (s.f.). *The Open Truth*. From <http://www.verdadabierta.com/justicia-y-paz/831-autodefensas-del-meta-y-vichada>

93. Similar to the Peasant Self-Defense Forces of Casanare (ACC), the Self-Defense Forces of Meta and Vichada (ACMV), and the Centauros Bloc of the United Self-Defense Groups of Colombia (AUC) in large parts of Meta, Casanare, Guaviare and Vichada, FIDH: 2016, p. 6.

94. *Ibid*.

95. The money that sustained paramilitary groups in Meta and Vichada. (February 2, 2011). *The Open Truth*. From <http://www.verdadabierta.com/imputaciones/583-autodefensas-campesinas-de-meta-y-vichada-carranceros/2996-la-plata-que-financio-a-los-paramilitares-en-meta-y-vichada>

96. The money that sustained paramilitary groups in Meta and Vichada. (February 2, 2011). *The Open Truth*. From <http://www.verdadabierta.com/imputaciones/583-autodefensas-campesinas-de-meta-y-vichada-carranceros/2996-la-plata-que-financio-a-los-paramilitares-en-meta-y-vichada>. It was not until 2009 that crude oil began to flow through the ODL Pipeline connecting Rubiales with the receiving station in Monterrey, Casanare, see: ODL: “Quiénes somos” (who we are) (s.f) from <https://www.odl.com.co/odl/index.php/quienes-somos-2>

the regional and national economic structure. According to the Public Ministry, these groups offer, *inter alia*, security services for entrepreneurs and companies throughout the territory<sup>97</sup>.

Due to the fact that a large part of the members of the paramilitary groups in the region did not participate in the demobilization process of 2005, new paramilitary structures such as the “Bloque Libertadores de Vichada”, the “Bloque Meta” and the “Urabeños” appeared. According to official data, 640 people from the municipality of Puerto Gaitán were displaced between 2012 and 2015. In 2015, 54 people were expelled from the area, 21 were threatened and two people were victims of attacks, combat and harassment<sup>98</sup>.

The Canadian company Pacific Exploration & Production Corp. has been the subject of multiple complaints, studies and criminal and administrative investigations since the beginning of its operations<sup>99</sup>. The inhabitants of the region point out that the oil company’s security personnel control all the public roads in the region and prevent free movement, particularly of anyone who is critical of oil drilling<sup>100</sup>. In this connection it is important to point out that there are cooperation agreements between oil companies and the Ministry of Defense lacking any legislative framework or public access<sup>101</sup>.

## **Pacific Exploration & Production Corporation / Ecopetrol**

**Pacific Exploration & Production Corporation** (Pacific Rubiales Energy Corp. until August 14, 2015<sup>102</sup>) is a Canadian oil and gas exploration and production company with operations in Colombia and Peru. Created in 2008 through the merger between Pacific Stratus Energy and Petro Rubiales Corp, it manages its operations through a number of different subsidiaries, including Meta Petroleum Limited and Pacific Stratus Energy. It currently covers 5,347,627 hectares under exploration and has

the second largest portfolio of private oil and gas investment in the country, after the State Enterprise Ecopetrol<sup>103</sup>.

According to official information, Pacific E&P has 20 blocks under exploration, 13 under exploration and exploitation, and 14 under production. In 2015 it produced 148,886 barrels of crude oil per day<sup>104</sup>.

Among the member of its board is Mr. Luis Fernando Alarcón Mantilla<sup>105</sup>. He has worked in the public sector, specifically in the Department of National Planning in the Ministry of Finance and Public Credit. He is also on the management team of the Éxito group, is a member of the Board of Directors of Emgesa, and is a member of the Boards of Riopaila-Castilla<sup>106</sup>.

**ECOPETROL** is the largest oil company in Colombia. It was created in 1921 as the Tropical Oil Company and today is a semi-public company with the government holding 88.49% of the shares. The Colombian government is the owner or majority shareholder of refineries and more than 8,500 kilometers of oil and multi-purpose pipelines throughout the country<sup>107</sup>. In July 2016, once the concession contract with Pacific Rubiales was signed, Ecopetrol resumed operations at Campo Rubiales, in the municipality of Puerto Gaitán.

97. Ombudsman: Risk Report No. 001-16. Bogota, January 8, 2016, p. 3.

98. Ibid, p.4-5

99. FIDH-Cajar-PASO, The Human Cost of Oil. Op. Cit.

100. IACHR: 2016.

101. Tierra Digna (dignified earth): 2015, p. 51-73.

102. Annual Information Form for the period ending on 31 December 2016. (March 14, 2017). Pacific Exploration & Production, p. 18.

103. Annual Information Form, December 2016. (March 14, 2017). Pacific Exploration & Production Corporation. From <http://www.pacific.energy/content/uploads/2017/03/Annual-Information-Form.pdf> p. 49

104. Colombia. (s.f.). Pacific E&P. From <http://www.pacific.energy/es/colombia/>

105. This reference is not intended to imply that these people are responsible nor does it establish a link with the events described. The intention here is to simply report on the problematic link that exists between the public and private sectors as a relevant factor in the analysis of the situation of defenders.

106. Board of Directors. (s.f.). Pacific E&P. From <http://www.pacific.energy/es/estructura->

107. FIDH-Cajar-PASO, The Human Cost of Oil. Op. Cit.

In this particular case, according to information gathered by SOMO-Indepaz<sup>108</sup> and based on documentation furnished by Senator Iván Cepeda, Pacific invested at least \$70 million in agreements with the Ministry of Defense between 2007 and 2014 resulting in the creation of the Special Energy and Road Battalion No. 15 that provides security to the oil fields in Puerto Gaitán. Moreover, Pacific supplies lodging, vehicles and fuel for the surveillance of its facilities. The investment also includes the protection of the ODL pipeline<sup>109</sup>.

Considering the consistently high number of human rights violations in the area where the oil company operates, despite the presence of public security forces, a question emerges about the impact of these agreements and the effectiveness of guarantees in place to protect the rights of the population.

### ✓ **Time-line of the criminalization, threats and attacks against Héctor Sánchez Gómez**

Lawsuits against Héctor Sánchez date back to 2011. Civil protests were held in July and October in the municipality of Puerto Gaitán against Pacific for the precarious working conditions, persistent environmental damage and the lack of social investment in the areas surrounding the oil wells. The protests took place amid a very tense atmosphere between the workers and the companies accused of wrongdoing given the refusal of Pacific and Meta Petroleum Corp to respond in a timely fashion and its failure to process and resolve the demands raised by workers. The legitimate claims lodged led to disturbances and public disorder violently repressed by the public police forces and private security agents working for the company<sup>110</sup>.

The participation of Héctor Sánchez in the negotiations to reach an agreement that put an end to the protests marked the beginning of persecution against him<sup>111</sup>.

Starting in October 2011, Héctor Sánchez received threats of legal action against him and was subject to arbitrary detention, physical torture, offers of payment to leave the region, illegal roadblocks and wiretaps. Pacific's security company, the Police and the National Army allegedly took part in these initiatives. On November 23 Héctor Sánchez was arrested three times, by the National Army, by the National Police and then by Pacific's private security company. Later that same day, Pacific's private security officers stopped Hector Sanchez on the road to Campo Rubiales and tied him to a tree until 6:30 pm when the security officer of PRE-MPC-ordered his release in response to the calls received from the Ombudsman's Office and officials of the Vice Presidency of the Republic. After that, Héctor Sánchez was offered a check for three hundred million pesos to abandon the region<sup>112</sup>.

In 2012, after the first direct *death* threat and the warning from Pacific's security chief "that if he did not leave the village he would kill him", he was forced to leave the region.

It is worth noting that according to information from CINEP's database, during that same year, 2012, there was a wave of killings in the region including 32 assassinations of civilians in Puerto Gaitán, most of them attributable to paramilitary groups, marking a drastic increase compared to previous years<sup>113</sup>. One of the victims, **Álvaro Lozano Ariza**, was killed on September 9 at the Rubiales police inspection office located in an area where it was impossible to travel without a permit from Pacific Rubiales. At the end of the year a paramilitary group killed **Milton**

108. SOMO-Indepaz: "Petróleo: Acumulación de agua y tierras en la Altillanura". Bogota, October 2016

109. SOMO-Indepaz: "Petróleo: Acumulación de agua y tierras en la Altillanura". Bogota, October 2016 p. 90.

110. FIDH-Cajar-PASO, The Human Cost of Oil. Op. Cit., p. 10 and 11.

111. IACHR (2016).

112. These events were reported to the local Ombudsman's office in Puerto Gaitán on November 23, 2011. IACHR: 2016.

113. FIDH-Cajar-PASO, The Human Cost of Oil. Op. Cit.

**Enrique Rivas Parra**, member of the Junta de Acción Comunitaria pertaining to the Villa Ortiz neighborhood. He was a worker at Termotécnica (an operator of Pacific), a human rights defender as a trade unionist of the USO, and spokesperson for the improvement of working conditions. Milton had received threats on December 11, 2012, just days before his killing<sup>114</sup>.

According to the military authorities and the municipal government, the motive for these crimes was confrontation between paramilitary groups over the control of organized crime. However, according to CINEP and interviews with community members, in many cases these attacks targeted people involved in social conflicts the previous year. One complaint indicated that *“there is good reason to believe that the wave of crime in Puerto Gaitán over the last year is related to the protests and demands of oil workers in 2010 and 2011”*<sup>115</sup>.

Six months after being forced to leave the region, Héctor Sánchez decided to return. The death threats persisted and spread to his family. The threats against him came at exactly the same time as Héctor Sánchez’s demands that workers’ rights be respected through the filing of a criminal complaint by the USO against foreign and national executives and some of Pacific’s contractors. Héctor Sánchez’s key activities both as a witness and through advocacy activities were answered with death threats.

This situation culminated at the end of the year with the arrest and imprisonment of the environmental defender. While attending a meeting at the offices of Pacific Arrayanes on December 4, 2013, more than 50 agents from the CTI, police and SIJIN took him into custody for the alleged crimes of kidnapping, conspiracy to commit crimes, threats, obstruction of public roads and other offenses. The criminal hearing resulting from the charges filed by Pacific began in 2011<sup>116</sup>.

Accused of crimes clearly disproportionate to

his participation in work strike at Pacific in 2011, Héctor Sánchez was held in a maximum security yard at La Picota prison for ten weeks<sup>117</sup>. On February 19, 2014 he was released from prison but the case against him was not dropped. In one of the cases (obstruction of public roads) he was acquitted after more than three years of legal action against him<sup>118</sup>.

That was when the *modus operandi* of the persecution broadened. He was still being followed by people on motorcycles and cars without license plates and two weeks after having formed the Environmental, Agrarian and Community Committee in Rubiales to document damages caused by Pacific in the region, the attacks extended beyond Puerto Gaitán<sup>119</sup>.

During 2015 and 2016, rights advocacy activities (peaceful protests, advocacy meetings, legal action and verification commissions) continued to be answered with people following him, death threats, assassination plans and arbitrary arrests. **One death threat even came just at the same time as the completion of the Verification Commission on Environmental Liabilities made up of the communities and Ecopetrol and Pacific during the process of Pacific’s transfer of the Rubiales Field to Ecopetrol**<sup>120</sup>.

114. Noche y Niebla, CINEP, consultation period from January 1 to December 31, 2012, municipality of Puerto Gaitán, from [https://www.nocheyniebla.org/query\\_web.php](https://www.nocheyniebla.org/query_web.php)

115. Ibid.

116. Cajar archive, 2017.

117. The National Directorate of the Prosecutor’s Office acknowledged that the charges against him were disproportion and it therefore replaced the prosecutor who initially heard the case. The new prosecutor granted the request by the defense to revoke the detention order. This case was taken up by Specialized Analysis and Context Prosecutor’s Office No. 16 in Bogotá under file 505686105635-2011-80417. Cajar archive, 2016.

118. Case file No. 20128014800, heard by the mixed jurisdiction court of the Puerto López, Meta circuit. Cajar archive, 2016.

119. The first attack against him outside of Puerto Gaitán took place in front of the USO trade union offices Bogota.

120. During the verification, Héctor Sánchez received a WhatsApp message with a photograph of a pamphlet in which people calling themselves the “Social Cleaning Group” threatened to kill Hector Sánchez and other members of the Environmental Committee for “hindering the work of other people and companies”.

The same criminal proceeding was then reactivated and Héctor Sánchez's defense lawyer was informed of the indictment hearing. Up to that point, the prosecutor in the proceeding had been changed four times.

Here it is important to note the evident imbalance in the progress of the criminal proceedings against Héctor Sánchez and those duly filed against the company. When criminal proceedings against Héctor Sánchez were in the indictment phase, the criminal complaint lodged against the company by the USO was still at a preliminary stage in the Human Rights Prosecutor's Office, without any progress having been made in the investigation. The same occurred with the numerous criminal complaints filed with the Prosecutor's office and the Ombudsman for threats made against the environmental leader<sup>121</sup>.

**Several national and international organizations<sup>122</sup> have drawn attention to the company's improper meddling in the proceedings against Héctor Sánchez and others**, including accusations of bribes of regional prosecutors<sup>123</sup>, the use of subcontractors in court cases and incessant detentions, accusations and stigmatization.

The disproportionate and arbitrary use of the judicial system in this context served to paralyze and neutralize Hector Sánchez's work defending the land and the environment. Moreover, this occurred against a backdrop of numerous human rights violations with the presence of illegal actors. Pacific Rubiales had absolute control over the land in a secluded and isolated region where, despite the strong presence of public security forces, they have failed to prevent the persecution

and threats against the environmental leader. Although Héctor Sánchez has been under the protection of the National Protection Unit since August 2016, due to the specific characteristics of the region these measures have been less than ideal and insufficient. In November 2016, the Inter-American Commission on Human Rights granted precautionary measures Héctor Sánchez. Despite this, State protection remains deficient and the IACHR has been informed accordingly.

In its 2016 report, the Office of the High Commissioner for Human Rights in Colombia again stressed that arrests in the context of these legal cases "often result in prolonged detention before the accused is eventually released due to lack of evidence. This compromises the diligence, legality, impartiality and independence of the investigations"<sup>124</sup>. Similarly, the lack of progress made in investigations and especially the lack of sanctions against the perpetrators and intellectual authors of the attacks against human rights defenders creates a climate of impunity perpetuating this sort of crime. Héctor Sánchez received his last threat on March 25, 2017 and is currently awaiting an indictment hearing in one of the five proceedings against him.

121. On February 20, 2017, three years after the attack in May 2014, the 32nd District Prosecutor's Office of Bogota called Héctor Sánchez for the first time for an interview with regard to the investigation. From the tenor of the interview it was evident that no progress had been made during those three years.

122. FIDH, OMCT, Canada, SOMO, etc.

123. Letter of complaint filed by the USO to the Prosecutor General of Colombia, Cajar archives, 2013.

124. OHCHR 2016 report, p. 11



Miller Dussán, professor and leader of ASOQUIMBO, is interviewed by local media during an event in support of resistance. Neiva, Huila, Colombia, 17 March 2017

## Case No. 3

### - Judicial intimidation of Miller Dussán: “Quimbo is going ahead because it is going ahead”<sup>125</sup>

Miller Dussán is a recognized human rights defender, academic and community leader in Huila. At age 67, Miller is a tenured professor and researcher at the Universidad Surcolombiana de Neiva, and is also the legal representative of the Asociación de Afectados por el Proyecto Hidroeléctrico El Quimbo (ASOQUIMBO - Association of Persons Affected by the El Quimbo Hydroelectric Project), and human rights defender in connection with that hydroelectric project. He has been a spokesperson, president and one of the promoters of ASOQUIMBO since it was established in 2009. The organization has successfully mobilized large segments of

the community against the installation of the El Quimbo megaproject and against new extractive projects in the region. This effort has resulted in the organization of different groups and has drawn national attention to the catastrophic damages that the El Quimbo project has caused<sup>126</sup>.

Although the process has involved a host of people, Miller Dussán has become the public face of the resistance against this large-scale project. This made him the target of a judicial intimidation and a criminalization strategy by the company Emgesa that included members of the armed forces and unlawful meddling in the independence of the judges in charge of the legal action taken against the Quimbo project. Since 2012, Emgesa and members of the

125. Statement made by former President Álvaro Uribe Vélez regarding the El Quimbo hydroelectric project (July 1, 2015); Surprise in Huila by the flooding of El Quimbo. (July 1, 2015). Huila Newspaper. From: <http://bit.ly/2wYU7uY>

126. Repressed dissidence: How an Italian multinational is pursuing environmental defenders in Colombia. (January 23, 2017). Open Democracy. From: <http://bit.ly/2jWrsOV>

national police have initiated four criminal and disciplinary proceedings against Miller Dussán. Two of those criminal proceedings alone could lead to a 12-year prison sentence for the human rights defender.<sup>127</sup>

## **Background information on the department of Huila**

The department of Huila is located in the Andean region in southern Colombia. It has extensive wastelands as well as large water reserves. In the department 12 sub-basins channel water into the department and the country's most important river, the Magdalena<sup>128</sup>.

The Betania hydroelectric power station, built in the 1980s, is located on the lower Magdalena River at the mouth of the Páez River while El Quimbo hydroelectric plant is located in the upper portion, 12 km upstream from Betania. There are plans to build several other energy facilities in the region in addition to these<sup>129</sup>.

The FARC-EP guerilla forces have historically been in this area since the 1960s and grew in the 1980s with the arrival of fronts 17, 2, 3 and 13. In the 1990s they were bolstered with fronts 61, 64 and 66 under the guidance of the Southern and Eastern Blocks, and by the subsequent arrival of the Joselo Lozada, Teófilo Forero and Héroe de Marquetalia mobile columns<sup>130</sup>. It is estimated that members of this guerrilla group are making the transition to civilian life in the rural areas of Icononzo and Planadas in Tolima.

Although Paramilitary groups had a strong position between 2002 and 2003<sup>131</sup>, they did not subsequently play a major role. Nevertheless, they did significantly impact the population<sup>132</sup>. Today, however, there are emerging structures which, in social organizations consider "are the same paramilitary groups but with a different name"<sup>133</sup>.

"El Quimbo" is a large-scale hydroelectric project that affects the municipalities in the south-central area of the department of Huila (Gigante, Agrado and Garzón, and to a lesser extent, Thesalia, Altamira and Paicol). It was built by the Italian energy multinational ENEL with an investment of close to 1.231 billion dollars and intends to use the water power from the Magdalena River for private profit<sup>134</sup>.

The project was initially promoted by former president Álvaro Urbe Vélez and later defended by the current president Juan Manuel Santos and the Ministry of Mining and Energy as part of a strategic plan<sup>135</sup> to allegedly provide 5% of country's energy<sup>136</sup>. The initial project dating back to 1997, its construction, and finally its entry into operation in 2015 have been marked by serious irregularities and breaches of both environmental regulations and judicial rulings and it has had irreversible environmental consequences<sup>137</sup>.

**Moreover, this megaproject has been accompanied by a strategy of judicial intimidation actions taken against social leaders who, from the time the project was first proposed, denounced the risk of ecocide**

127. Ibid.

128. Huila Government: "Plan Huila 2050". From <http://www.planhuila2050.com/huila-en-contexto/productor-de-agua-para-colombia>

129. Miller Dussán presentation - others such as the Magdalena River Master Plan proposed by the Hydrochina company.

130. UNHCR: "Diagnosis of the Department of Huila". (s.f), p. 2.

131. Huila. Conflict analysis. (June 2010). UNDP, SIDA (Swedish International Development Authority). From [https://info.undp.org/docs/pdc/Documents/COL/00058220\\_Analisis%20of%20conflictividad%20Huila%20PDF.pdf](https://info.undp.org/docs/pdc/Documents/COL/00058220_Analisis%20of%20conflictividad%20Huila%20PDF.pdf)

132. According to the inhabitants of Huila, the situation in the department did not favor paramilitary groups. However this is not because of a lack of interest on the part of regional leaders who would have supported illegal action against subversive groups, but rather due to a lack of major landowners seeking to defend their interests by illegal means. Unlike northern Colombia where self-defense groups established themselves in livestock or agro-industrial areas and were supported by important, well-known ranchers and landowners, in Huila there are small and medium-sized owners and producers. Ibidem, p. 10.

133. Ibid.

134. El Quimbo hydroelectric power station. (s.f). Emgesa. From: <http://www.proyectoel-quimboemgesa.com.co/site/CentralHidroeléctricaElQuimbo/Historia.aspx>

135. El Espectador newspaper. (January 7, 2016). From: <http://bit.ly/1OQNp8c>

136. Un desastre forestal llamado Quimbo (a forest disaster called Quimbo). (April 9, 2016). Revista Semana (magazine). From <http://sostenibilidad.semana.com/medio-ambiente/articulo/el-quimbo-un-desastre-forestal/34869>

137. For a more detailed analysis, see the Report of the International Commission of Jurists (ICJ): Quimbo: large-scale projects, economic, social and cultural rights and social protest in Colombia. 2016; from: <http://bit.ly/2gkL4OJ>

and the irreparable and irreversible impact that it would have on the local population, the economy and social and cultural relations throughout the region<sup>138</sup>.

The initial 1997 proposal by the hydroelectric power company Betania SA to build the El Quimbo hydroelectric plant was rejected by the government<sup>139</sup>. Ten years later, the project developers petitioned the Ministry of Environment, Housing and Territorial Development (MAVDT) that in 2007 requested reports on the project's viability. Meanwhile, the Ministry of Mining and Energy declared that the entire "area needed for the construction and operation of the El Quimbo project" was of public utility and social interest<sup>140</sup>. The area initially encompassed 7,482.4 hectares and was later enlarged to cover 41,687.99 hectares<sup>141</sup>.

On May 9, 2009, the Attorney General of the Nation advised the MAVDT to refrain from granting the environmental permit for the project because it had not removed it from the Forest Reserve area and because of the difficulty in restoring productive activity given that comparable alternative lands had not been found. However, six days later, the MAVDT, openly ignoring this request, authorized the project and granted the environmental permit to Emgesa thus giving the company a green light to build the dam<sup>143</sup>. Upon issuing the permit it dismissed claims that the project was located in a high seismic risk area (with between 80 and 120 weekly tremors of different intensity)<sup>143</sup> and a high potential risk of being affected in the event of an eruption of Nevado Huila Volcano, and simply ignored the fact that a large part of the project had not been removed from the forest reserve<sup>144</sup>.

These events led to the mobilization of the affected population in the department of Huila. Among other organizations, the Association of Persons Affected by the El Quimbo Hydroelectric Project (ASOQUIMBO) was created on July 26, 2009. ASOQUIMBO spearheaded civil resistance against the construction of the hydroelectric

project based on scientific and technical studies.

Work began in November 2010. According to information from the company<sup>145</sup>, the resettlement of the La Escalareta, Domingo Arias and Balseadero communities began in 2011 and 2012. In March 2012 work began on diverting the Magdalena River, but these efforts were affected by the March floods that caused an environmental impact on the fish population.

In 2012 ASOQUIMBO, among other activities for the defense of their rights, filed a request with the Comptroller General of the Republic for a study on El Quimbo. As a result, in August this oversight body called on the Delegate Comptroller for Investigations, Fiscal Hearings and Coercive Jurisdiction to initiate a fiscal responsibility proceeding for alleged environmental damages. This investigation tied the National Authority for Environmental Permits (ANLA) to irregularities in the processing of the permit and implied that serious social, environmental and economic impact was caused by its authorization of the project.<sup>146</sup>

138. Miller Dussán Archive.

139. After analyzing the documentation submitted by the company, the Ministry of Environment and Sustainable Development declared in July 1997 that none of the three alternatives presented was viable due to lack of technical justification, the disproportion between the flood area and the volume of electricity generated, the impossibility of restoring productive activity in the region and its cultural repercussions. International Commission of Jurists (ICJ): 2016, p. 18 and Order 517 of July 31, 1997, based on Technical Concept No. 147 of the same year.

140. Resolution 321 of 2008. With this authorization EMGESA was empowered to demand "expropriation and impose the easements needed" in the event that the landowners refused to sell. Resolution 321 was issued without having first removed 95% of the area of El Quimbo that is within the boundaries of the Protected Amazon Forest Reserve because it is exclusively up to legislators to regulate the elimination, modification or removal of these areas of the reserve. See: Dussán, Miller: A Public Environmental Hearing required the suspension of the Quimbo hydroelectric project, November 13, 2016.

141. That resolution was amended by Resolution 328 of 2011, by virtue of which 11,079.6 hectares were included under the declaration of public utility and social interest. Soon thereafter, resolution 03 of January 20, 2012 declared an additional 23,125.99 hectares to be of public utility and social interest. Today a total of 41,687.99 hectares are included. Of these, just over 8,000 hectares are available for the construction and operation of the dam. The rest are reserved for the construction of alternate roads, resettlements and reforestation. International Commission of Jurists (ICJ): 2016, p. 19.

142. Resolution 0899 of 2009. Ibid.

143. According to the weekly reports produced by the Popayán Volcanological Observatory, between 80 and 120 seismic events of varying intensity occur weekly in the Garzón area. Miller Dussán interview, March 14, 2017.

144. International Commission of Jurists (ICJ): 2016, p. 19.

145. Timeline, Emgesa, (sf) from: <http://bit.ly/2wEND4l>

146. Official note IE 52195 of August 27, 2012, Miller Dussán archive.

Protests, public mobilization and strikes intensified in 2013. The dispossession of thousands of people in an unlawful process riddled with excessive use of force on the part of the police and army<sup>147</sup>. In judgment T-135/2013, the Constitutional Court rejected the census conducted by Emgesa between 2009 and 2010 for not having included all the victims of the El Quimbo Project (In that census the company included only 1,537 people directly and 1,500 indirectly affected.) and demanded that a new census be conducted within six months including all the people affected by the filling of the dam reservoir<sup>148</sup>. The current census indicates between 28,664 and 32,000<sup>149</sup> people were affected by the hydroelectric plant. In this area of six municipalities affected by the dam, the unmet basic needs index stands at between 44.92% and 23.58% at best<sup>150</sup>.

The company's controversial filling of the dam reservoir commenced on a Friday in June 2015 at 8 in the evening. The reservoir covers a total of 8,586 hectares that used to be rich in fertile, endemic biodiversity for the production of cocoa, tobacco, corn, beans, banana, coffee and papaya<sup>151</sup>. **The decision to fill the reservoir blatantly ignored a judicial order of the Administrative Court of Huila of February 5, 2015<sup>152</sup>.** The court had ordered a precautionary measure to prevent the reservoir from being filled in response to a class action suit in November 2014 filed by local residents warning of the danger of massive losses for fish farming projects in the Betania reservoir that would be caused by the filling of the El Quimbo reservoir<sup>153</sup>.

Similarly and **despite the court's ban, the President of the Republic Juan Manuel Santos, authorized the start of operations of the hydroelectric plant by issuing Decree 1979 of October 6, 2015<sup>154</sup>.** In the view of the Administrative Court, this was a clear example of putting private interests over the common good and setting "a disastrous precedent of disrespect for the Judiciary, undermining the foundations of the social contract"<sup>155</sup>. One month later, the Constitutional Court declared the Legislative

Decree unconstitutional, arguing that the project was disproportionate insofar as it ignored the project's environmental, food production, social and cultural costs<sup>156</sup>.

As predicted, not long after biomass decomposition caused strong odors and mosquito infestations in neighboring inhabited areas. Animals were also attracted by the decomposing of biomass and the fish mortality increased notoriously after the dam was filled<sup>157</sup>.

### **The company EMGESA S.A. ESP**

EMGESA SA ESP is a company controlled by the Italian company Enel<sup>158</sup>. Through Enel Américas (formerly Enersis) it operates on four continents and in 31 countries in Latin America, including Argentina, Brazil and Peru. In Colombia, it holds 48.48% of Emgesa shares and 48.41% of Codensa (Compañía Distribuidora y Comercializadora de Energía S.A.)<sup>159</sup>.

EMGESA SA ESP is active in Colombia in the departments of Bolívar, Cundinamarca and Huila with 13 power generation plants: 11 hydroelectric plants (Guavio, Betania, Quimbo, Guaca, Paraiso, Charquito, Tequendama, Limonar, La Tinta, San Antonio and La Junca)<sup>160</sup> and two thermal generation plants

147. Sánchez Espitia, Bladimir: "El video que el gobierno colombiano no quiere que veamos". February 20, 2012, from <https://www.youtube.com/watch?v=BFv4HG8ALeA>

148. Constitutional Court Judgment T-130 of 2013, from: <http://bit.ly/MxuDdM>

149. Miller Dussan Archive.

150. International Commission of Jurists (ICJ): 2016, p. 16.

151. Ibidem

152. Alluded to in the Constitutional Court judgment C-753 of 2015, from <http://www.corteconstitucional.gov.co/RELATORIA/2015/C-753-15.htm>.

153. Class action suit lodged in 2014 before the Administrative Court of Huila; see *Ibid.*

154. *Ibid.*

155. Tribunal Administrativo ordenó suspender el inicio de operaciones de El Quimbo. (December 10, 2015). *El Espectador*. From <http://www.elespectador.com/noticias/judicial/tribunal-administrativo-ordeno-suspender-el-inicio-de-o-articulo-604644>

156. Constitutional court: Judgment C-753 of 2015.

157. *Planeta Paz: El Quimbo, más problemas que energía*. 2016.

158. Colombia. (s.f.). Enel. From <https://www.enel.com/it/aboutus.html>

159. Share participation of Enel Américas. (s.f.). Enel. From <https://www.enelamericas.com/es/conocenos/a201609-participacion-accionaria-en-america.html>

160. 2016 Annual Report. (s.f.). Emgesa. p.111.

(Termozipa, Cartagena) that generated 14,952 GWh in 2016<sup>161</sup>.

It is worth noting that the company is governed by several members of Colombia's political class<sup>162</sup> that have moved from the public to the private sector, unhindered, to stand on the company's Board of Directors<sup>163</sup>.

- ✿ José Antonio Vargas Lleras has been at the helm of Codensa (he is one of its shareholders), the Asociación Nacional de Empresas de Servicios Públicos Domiciliarios y Actividades Complementarias e Inherentes -ANDESCO, the Comité Colombiano del Consejo Mundial de Energía, and the Comisión de Integración Energética Regional - CIER, and has been secretary to the Presidency of the Republic. He is brother of Germán Vargas Lleras, vice president of the Republic from 2014-2017.
- ✿ María Consuelo Araujo was Minister of Culture and Chancellor under the Álvaro Uribe Vélez presidency. She is the sister of the politician Álvaro Araujo Castro, convicted for his dealings with paramilitary groups in 2010. .
- ✿ Luisa Fernanda Lafaurie was Minister and Deputy Minister of Mines during the presidency of Andrés Pastrana (1998-2002). She was a member of the board of directors of the oil transport platform in Colombia OCENSA<sup>164</sup>, Ecopetrol, Minercol, Ecogas, ISA, Isagen. She is the sister of the chairman of Fedegan, José Félix Lafaurie<sup>165</sup>.

The filling of the reservoir had a major impact on people's lives and on the environment. 970 people presented papers<sup>166</sup> during a public environmental hearing in November 2016 demanding that ANLA immediately suspend the project as the only way to guarantee the State and Emgesa's compliance with the economic, social, environmental and cultural compensation measures laid down in the Environmental Permit<sup>167</sup>. **More than one hundred lawsuits**

have been filed to date involving violations of the right to life, to a minimum subsistence and other violations caused by the El Quimbo megaproject<sup>168</sup>. Two class action suits calling for the immediate suspension of the project are also under way against the company and the ministry.

Meanwhile, Emgesa's 2016 Annual Report flags the "management" of the class action suits filed by the fish farmers and the "management" of the 108 fundamental constitutional rights cases against the hydroelectric power project as major milestones and celebrates its 96% success rate in the courts<sup>169</sup>. It also presents the dismissal of eight proceedings (environmental investigations and sanction proceedings) as another one of its achievements.

Currently, the population is awaiting the mandatory response from ANLA with respect to requests made at the public environmental hearing convened by virtue of Order 2997 of June 1, 2016.

## ✓ **Criminalization and threats against Miller Dussán for his activities in defense of the**

161. Emgesa. (s.f.). Enel. From <https://www.enelamericas.com/es/conocenos/a201609-emgesa.htm.html>
162. This reference is not intended to imply that these people are responsible nor does it establish a link with the events described. The intention here is to simply report on the problematic link that exists between the public and private sectors as a relevant factor in the analysis of the situation of defenders.
163. Board of Directors. (s.f.). Endesa. From <http://www.emgesa.com.co/es/accionistas/gobiernocorporativo/organos-administracion-gobierno/Paginas/junta-directiva.aspx>
164. Luisa Fernanda Lafaurie Rivera. Chairperson with administrative functions of the Ocesa board of directors. (March 28, 2008). Revista Dinero. From <http://www.dinero.com/caratula/edicion-impresa/recuadro/luisa-fernanda-lafaurie-rivera-presidente-funciones-administrativas-junta-directiva-oc/60131>
165. Luisa Fernanda Lafaurie. (s.f.). Grupo Éxito. From [https://www.grupoexito.com.co/files/HV\\_Luisa\\_Fernanda\\_Lafaurie-Español.pdf](https://www.grupoexito.com.co/files/HV_Luisa_Fernanda_Lafaurie-Español.pdf)
166. Sostenibilidad Semana (magazine). "El Huila se cansó de la hidroeléctrica de El Quimbo". (November 14, 2016). From <http://sostenibilidad.semmana.com/medio-ambiente/articulo/huila-se-canso-de-la-hidroelectrica-de-el-quimbo/36475>
167. Dussán, Miller. (November 13, 2016). Audiencia pública ambiental exigió suspensión del proyecto hidroeléctrico El Quimbo. From: <http://millerdussan.blogia.com/2016/111301-audiencia-publica-ambiental-exigio-suspension-del-proyecto-hidroelectrico-el-qui.php>
168. Pérez Trujillo, Carlos Andrés. (May 17, 2015). Las batallas jurídicas contra una represa. Diario el Huila (newspaper).
169. 2016 Annual Report. (s.f.). Emgesa. p.78.

## ***rights of the communities affected by the El Quimbo project***

The facts used to discredit the human rights defender Miller Dussán date back to when the environmental permit was awarded and before the dam reservoir was filled. After the destruction of the most important bridge in the region—for which the company was liable according to the Comptroller General of the Nation<sup>170</sup> and which had serious economic and social repercussions—<sup>171</sup> approximately 300 local residents (including Miller Dussán) held a peaceful demonstration in January 2012 at the site of the destroyed bridge. Prior notice had been given to the local authorities and a request was submitted to set up negotiating tables to resolve the conflict. Three weeks later, Emgesa's lawyer filed a criminal complaint against Miller Dussán for the alleged crime of obstruction of public roads affecting public order.<sup>172</sup> However, the environmental leader was not informed about the court case against him until two years later when the CTI<sup>173</sup> ordered a search of his house under the assumption that it served as ASOQUIMBO's office<sup>174</sup>.

**On March 7, 2012, a disciplinary action was initiated as the result of a complaint filed by a Colonel of the National Police with the Huila Regional Prosecutor against Miller Dussán allegedly for “leading and directing several protests against the construction of El Quimbo”<sup>175</sup>. This proceeding was dismissed two years later since the only evidence presented failed to comply “with the elements required to corroborate a punishable behavior”<sup>176</sup>. The only evidence presented in the complaint was a video montage consisting of several audio-visual recordings that the human rights defender himself had previously published.**

Regional protests, public mobilizations and strikes intensified in 2013. Thousands of people were dispossessed of their land in an unlawful process plagued with excesses on the part of police

and army forces<sup>177</sup>. In this context, the Constitutional Court issued judgment T-135 of March 2013 indicating non-compliance on the part of Emgesa for failing to include all of the victims of the El Quimbo hydroelectric project in the census<sup>178</sup>. It ordered the company to carry out a new census in accordance with the established legal parameters within a period of six months. The company subsequently used this order to improperly influence the judicial branch as will be discussed later.

At the same time as the complaints and the decision of the Constitutional Court, two peaceful repossessions of land took place in the municipality of Tesalia (La Guipa estate, village of Altamira ) and Garzón (El Palacio and Santiago estates, village of Majo) in April and June of 2013 by residents due to frequent failures on the part of the government and the company to relocate them. **Three weeks later, the legal representative of Emgesa filed a new complaint against Miller Dussán as the legal representative of ASOQUIMBO for invasion of land.** The complaint was filed at Specialized Prosecutor's Office 35, National Directorate of Prosecutors. This was the

170. Office of the Comptroller General of the Republic: Technical Report, on-the-spot verification to the PHE - El Quimbo. September 29, 2014 From: [https://drive.google.com/file/d/0B4eDxt54Nu\\_fMWVucUJUXhPWwS/view](https://drive.google.com/file/d/0B4eDxt54Nu_fMWVucUJUXhPWwS/view)

171. See the technical report drafted by the Office of the Comptroller General of the Republic where it notes that it initiated preliminary inquiries against the MADS, the CAM and the INVIAS by virtue of Orders No. 015 and 6-068-11 of 2011, claiming that its actions “were the result of the analyzes and visits made (August 23 and 26, 2011 and December 19 and 21 of the same year) and in light of the seriousness of the situations that put the country's resources and the life and integrity of the citizens of the sector at stake - allegations M. The bridge was reconstructed and inaugurated in December 2015 by the Vice President of the Republic and brother of one of the company's shareholders. Infrastructure Team of the National Government inaugurates Paso del Colegio Bridge, in Huila. (December 17, 2015). Radio Santa Fe From: <http://www.radiosantafe.com/2015/12/17/equipo-de-infraestructura-del-gobierno-nacional-inaugura-puente-paso-del-colegio-en-el-huila/>

172. Interview with Miller Dussán and Germán Romero, March 2017.

173. The Technical Investigation Body (CTI) is a directorate of the national judiciary's Attorney General's Office.

174. Interview Miller Dussán and Germán Romero, March 14, 2017.

175. Miller Dussán Archive.

176. Dussán, Miller (October 2, 2014). The prosecution dismisses the suit filed by Huila police commander against professor Miller Dussán for defending the territory and its communities. From <http://millerdussan.blogia.com/2014/100201-procuraduria-archiva-demanda-de-comandante-de-policia-huila-contra-el-academico.php>

177. Sánchez Espitia, Bladimir, El video que el gobierno colombiano no quiere que veamos! February 20, 2012 at: <https://www.youtube.com/watch?v=BFv4HG8ALeA>

178. Constitutional Court judgment T-135 of 2013

information received by the environmental defender from Criminal Prosecutor 123<sup>179</sup>. Miller Dussán was accused of urging citizens to repossess their lands on April 14 and June 11, 2013 by using a megaphone at a public rally.

In November 2014, the then Attorney General of the Nation, Eduardo Montealegre, ordered this case to be sent to National Prosecutor's Office 35 in Bogota under the thematic heading 'Protection of Natural Resources and the Environment'. Coincidentally, this is the same prosecutor's office that had been investigating ANLA since 2012 with regard to Emgesa's environmental crimes<sup>180</sup> in the El Quimbo project based on the complaint of the National Office of the Comptroller General<sup>181</sup>. After five years, this investigation is still at the evidence collection phase.

Previously, Emgesa's lawyer, Jaime Bernal Cuellar, had paid a visit, along with the other legal advisers, to the president of the Administrative Chamber of the Huila Council<sup>182</sup>. There, he and the former Constitutional Court Judge Eduardo Cifuentes, also a lawyer for the company<sup>183</sup>, requested an academic training activity in the area of influence of the El Quimbo project. The training was to exclusively focus on the execution of judgment T-135/2013 of the Constitutional Court that ordered, *inter alia*, Emgesa to conduct a new census of the people affected by the El Quimbo project. The magistrates of the Administrative Chamber of the Council of the Huila Judiciary, prosecutors, court clerks and CTI investigators, along with Emgesa's lawyers, were invited to this training activity while civil society organizations were left out.

The Sectional Council of the Judiciary of Huila submitted the application to the *Rodrigo Lara Bonilla* Judicial School of the High Council of the Judiciary in Bogota that finally convened the event on July 28, 2014 in the city of Neiva, the capital of the department. The objective was to train judges to deal with the 'deluge'<sup>184</sup> of motions for protection lodged by those affected by the El Quimbo megaproject since, in the words of the company's attorney, "many citizens were unlawfully advised by people interested in self-profit to file false doc-

uments (...)"<sup>185</sup>.

The end of 2014 and especially 2015 were key moments for the lawsuit against environmental leader Miller Dussán. The Center for Social Justice Studies called Tierra Digna filed a request before the Council of State for the annulment of the environmental permit granted for the El Quimbo Hydroelectric Project (November 2014). That same month, entrepreneurs of the Colombian Federation of Aquaculture (Fedeacua) filed a class action suit against the Ministry of Environment and Emgesa SA for the danger of mass mortality in the fish farming projects of the Betania reservoir that would result from the filling of the El Quimbo dam reservoir. In October 2015, a candidate opposing the construction of new dams was elected as governor of the Department of Huila<sup>186</sup>.

At that point court cases were reactivated. This coincided with the pressure exerted by the different sectors of civil society throughout the department and the judicial obstacles standing in the way of filling of the dam reservoir. In 2016, the hearing for the alleged crime of 'road obstruction' against Miller Dussán progressed to the indictment stage while the proceeding before Prosecution Office No. 35 continued at the initial investigation stage following the failed 'conciliation' process in which **the company demanded Dussán publicly accept that he had abated the invasion of company land and pay compensation in the amount of 2.5 billion Colombian pesos to Emgesa**<sup>187</sup>.

As part of his legal defense strategy, Miller Dussán began to build national and international

179. Register No. 413966000594201300788, Miller Dussan archive.

180. Register No. 410016000584201200105, Miller Dussán file.

181. Case files 015 and 6-068-11 of 2011, Miller Dussán file.

182. Response to the right of petition of August 4, 2014, of the Lara Bonilla Judicial School of the High Council of the Judiciary, Miller Dussán file.

183. Ibid.

184. Falsos afectados de El Quimbo se las verán con la justicia (people falsely claiming they were affected by El Quimbo will have their day in court). July 29, 2014). La Nación newspaper, from <http://www.lanacion.com.co/index.php/informe/item/238723-falsos-afectados-de-el-quimbo-se-las-veran-con-la-justicia>

185. Ibid.

186. Disidencia reprimida: Cómo una multinacional italiana está persiguiendo a defensores ambientales en Colombia. (Repressed dissidence: how an Italian multinational is pursuing environmental defenders in Colombia). (January 23, 2017) Open Democracy. From: <http://bit.ly/2jWrsOV>

187. Miller Dussán file.

networks to draw attention<sup>188</sup> to the improper use of the criminal justice system to prosecute opponents of this large-scale project with a view to guaranteeing its construction. Together with other sectors, he also lodged a request for an environmental public hearing that took place in November 2016 where a broad alliance in the department unanimously requested the suspension of the project<sup>189</sup>.

Since the only social activism in which the human rights defender engaged was that of environmental protection with respect to the damages caused by the El Quimbo project, **Emgesa's strategy clearly focused on judicial intimidation undertaken at the highest national level. Its ultimate goal was to undermine regional resistance to large-scale dams and regional extractive projects.** The judicial strategy was to tarnish the public image of the human rights defender by stigmatizing his persona and isolating him from his social networks, above all by thwarting his actions for the protection of people's rights in the face of the economic model based on the extractive industry. The ultimate goal was to neutralize the democratic exercise of subjecting the hydroelectric project to public scrutiny.

This legal persecution also attempted to **divide social resistance by discrediting the visible face of environmental resistance movement and threatening Miller with imprisonment.** In the end, the company succeeded: the requirement to guarantee people's rights, and particularly to compensate those affected, was significantly diminished thus guaranteeing that Emgesa's project would move ahead while containing economic and socio-environmental investment in the region at a minimum. The result also distorted the scientific arguments and evidence provided by ASOQUIMBO and Miller Dussán of the shortcomings and serious flaws in the implementation of the project<sup>190</sup>.

On March 30, 2017, **Judge No. 1 of the Garzón Circuit granted the request of the defense to dismiss the road obstruction charges due to the fact that "no crime had been committed"**<sup>191</sup>. By doing so he acknowledged the social problems and the right to exercise peaceful civil protest in the face of serious human rights violations, and

that these rights must not be attacked by Emgesa.

On April 17, 2017, the multinational company Enel Emgesa reported that "it had filed (...) a request with the national Attorney General's Office for the withdrawal of the criminal suit which the Company had lodged against Mr. Miller Dussán"<sup>192</sup> as part of the criminal investigation proceeding for the alleged invasion of land three years earlier. It is therefore expected that the prosecutor office will issue the corresponding decision to dismiss the case in the terms established.

188. See the manifiesto called "Para el cese a la persecución judicial en contra de Miller Dussán y Elsa Ardila, y en apoyo a la Asociación de Afectados por el proyecto hidroeléctrico El Quimbo (Asoquimbo), en Colombia" (for the cessation of judicial persecution against Miller Dussán and Elsa Ardila, and in support of the Association of Persons Affected by the hydroelectric project El Quimbo [Asoquimbo], in Colombia), February 3, 2017, managed by Democracy Center, from <http://democracyctr.org/corporate/resources-for-action-2/campana-de-solidaridad-con-miller-dussan-y-asoquimbo/manifiesto-de-la-sociedad-civil-internacional-in-support-a-miller-dussan-and-asoquimbo/>.

189. Miller Dussan: November 13, 2016 and El Espectador newspaper. "Arranca audiencia pública sobre El Quimbo en el Huila" (the public hearing on El Quimbo begins in Huila) (November 11, 2016). From <http://www.elespectador.com/noticias/medio-ambiente/arranca-audiencia-publica-sobre-el-quimbo-el-huila-articulo-664972>

190. Fierro, Julio. (April 24, 2017). Support in the analysis of threats and risks of the El Quimbo hydroelectric project in relation to the territorial planning of its areas of influence.

191. Follow-up to the Miller Dussán interview of March 14, 2017.

192. DH Colombia: Dismissal hearing: there was no violence or crime; a constitutional right to social protest having been exercised, March 30, 2017.



Tribute to ASOQUIMBO members from the Mayor of Neiva for their fight against the Italian transnational company ENEL that built the Quimbo dam on the Magdalena River. Neiva, Huila, Colombia. March 17, 2017

## IV. FINDINGS AND COMMON DENOMINATORS

**T**he cases selected seek to identify and characterize both the role played by companies in the threats faced by groups and individuals defending the environment and the land in Colombia and the conjugation of the State's actions with the economic interests of actors

### 1. Human Rights Defenders

First of all, the three cases presented illustrate the diversity of human rights defenders working to safeguard the environment and the land. These defenders include social leaders, academicians and professors with different areas of expertise, and environmental groups who have devoted

their lives to the defense of human rights in particularly hostile situations due to the presence of armed actors and powerful economic interests.

The women attorneys in the CCALP have suffered attacks directed at them similar to those directed at the trade union and environmental leader Héctor Sánchez Gómez and the academician-activist Miller Dussán. The purpose of these attacks against them is to disarticulate or weaken the movements behind them. This proves that the risks run by defenders safeguarding the environment and the land amidst operations by companies are indiscriminate and occur when the communities achieve positive outcomes or are able to publicize their situation.

## 2. The role of the State, companies and illegal armed actors

Secondly, by analyzing these cases, the role played by the various actors can be identified and an initial typology of the various attacks suffered by groups and individuals defending the environment and the land can be established, though not exhaustively.

### ✓ **Companies and the State: criminalization of human rights defenders, imbalanced application of justice, impunity and stigmatization**

First, Action aimed at restricting the work of groups and individuals defending the environment and the land stands as the first tier of government practice and policy. This includes the codifying of new provisions criminalizing and disincentivizing complaints, as well as violent police responses to citizens' peaceful demonstrations. According to the Observatory report, there have even been "specific laws enacted to criminalize human rights defense activities"<sup>193</sup> and to restrict their scope and capacity to act and especially their mobilization and social protest.

The cases of Héctor Sánchez and Miller Dussán exemplify how defenders of the environment and the land face criminal proceedings for broad, ambiguous offenses, such as the obstruction of public roads, as a result of their participation in dialogue round-tables and public demonstrations.

Another part of this strategy is the increase of surveillance measures and military presence, palpable in the checkpoints established on the road and in the outskirts of oil company facilities in the department of Meta, all which Héctor Sánchez has faced time and again. This also includes lim-

itations on Internet access and illegal interception of communications that occurred for instance the espionage of CCALCP lawyers by the Administrative Department of Security (DAS).

These actions not only generate serious psychological damage to individuals, their families and groups, heightening their sense of a lack of protection, they also constitute a violation of the rights to freedom of expression and association which underpin democracy.

Impunity and a lack of legal symmetry are reflected in a lack of legal safeguards, flawed investigations, sentences and sanctions, and in a lack of comprehensive reparations on the part of the Colombian authorities which thus perpetuates the exclusion of guarantees of non-repetition<sup>194</sup> that also affects human rights defenders.

The high levels of impunity owe to the fact that criminal and/or sanctioning investigations should be carried out promptly by the investigating entity by virtue of the complaints lodged. These investigations do not yield specific results because the reasonable periods for obtaining substantial results are largely surpassed and the perpetrators can thus no longer be found. Here, the State's omission in investigating aggressions and crimes committed against human rights defenders fosters the repetition of these crimes against them bringing with it a climate of insecurity. In the case of the CCALCP lawyers, failure to promptly and effectively investigate reflected in the lack of progress on cases tied to the 43 complaints lodged since 2009 clearly shows the severity of the situation.

Furthermore, interference and undue pressure has been exerted by companies on the judiciary in disregard of its independence thus giving rise to an imbalance between the effectiveness with

193. Observatory for the Protection of Human Rights Defenders (OMCT-FIDH). The criminalization of human rights defenders in the context of industrial projects: a regional phenomenon in Latin America (2016), p. 23, available at <https://www.fidh.org/IMG/pdf/criminalisationobsangocto2015bassdef.pdf>  
194. CCALCP Archives, 2016

which complaints against human rights defenders are treated as compared to those lodged against companies. In the case of Héctor Sánchez Gómez, the company stood as a civil party in the criminal proceedings against him and contributed, specifically through its lawyers' intervention providing evidence and witnesses to the public prosecution. This violates article 8 of the American Convention on Human Rights consecrating the right to a fair trial.

All three cases illustrate this lack of symmetry. **While swift progress was made on the complaints lodged against human rights defenders, others filed in response to threats to communities and their organizations, irregularities in project implementation, environmental damage, and others filed against the State and companies met with unjustified delays.** This lack of symmetry is mirrored in the amounts of fines issued in disciplinary and judicial proceedings. While the company filing the legal case against Miller Dussán, demanded payment of 2,500,000,000 Colombian pesos, that same company received a fine of merely 2,503,259 pesos from the ANLA<sup>195</sup>. Communities in particular are extremely vulnerable to exploitation and abuse as they are already sidelined and excluded from decision-making. This power imbalance is reflected in all decision-making, from initial phases of projects to their go-ahead decisions, their preparation and their subsequent implementation<sup>196</sup>.

Furthermore, the public prosecution has not taken into any special consideration cases involving women. The fact that justice is denied to the women of CCALCP despite the fact that they are highly professional and have a great impact, meaning that their voices will be heard, explains why other female victims' cases go unnoticed as they do not have the same chance of being seen and heard.

As the IACHR indicated in its report on the criminalization of human rights defenders, many criminalization processes are preceded by stigmatization coming from the government and/or sectors surrounding the very companies or corporations.

The criminalization of groups and individuals defending the environment and the land ultimately aims to prevent proper democratic participation of citizens thereby ensuring the implementation of extractive projects. As a result, investment in social and environmental affairs is curtailed to the maximum to the benefit of the accumulation of capital. Companies do not acknowledge the negative impact that extractive activities have on the lives of the local population.

**Secondly**, human rights defenders find themselves exposed to stigmatization. Their work to defend natural resources is de-legitimated by powerful economic players, be they state or non-state actors. Their work is presented as aiming to thwart the economy and the nation's development. This very well-known strategy of public naming and shaming aims to isolate defenders and pave the way to justifying facts used against these communities and defenders. One illustration of this strategy is the stigmatization suffered by the CCALP lawyers when companies singled them out as belonging to an "organization close to the guerrilla".

**This stigmatization at times borders on undue criminalization.** The cases presented reveal different strategies whereby companies used criminal and/or administrative law to try leaders and human rights defenders for opposing development, regardless of whether or not the companies were located in areas of conflict with paramilitary groups present. For instance, the strategy to persecute Miller Dussán in the courts sought to fragment the social fabric and thwart his human rights defense work in the face of the mega-projects in the area.

Companies instrumentalize justice as a means of pressure and of bullying human rights defenders. While defenders are not always convicted in the trial, there is a trend towards placing them in

195. Resolution 0381 7 April 2016, issued by the ANLA, mentioned in Emgesa's 2016 Annual Report (s.f.) p. 198.

196. Report by the Special Rapporteur on the situation faced by human rights defenders. 3 August 2016, A/71/281, p. 15.

remand prison. As has been seen, certain proceedings have continued their course based on false evidence and testimony. The judges' and public prosecutors' lack of impartiality and independence in accepting crimes that were never committed. Together with other irregularities, this situation constitutes a violation of the minimum safeguards for a fair trial.

This abusive judicialization of human rights defenders in certain cases translates into deprivation of liberty. Yet even when there is no deprivation of liberty, the human rights defender becomes stigmatized, resulting in inhibition which in many cases spreads out to the defender's entire group thereby constituting a violation of the defender's right to honor and dignity<sup>197</sup>. Stigmatizing also has a psychological impact on the family and generates a feeling of a great lack of protection and vulnerability. Human rights defenders are forced to devote all of their economic, social and emotional resources and all of their time to legal defense in criminal court proceedings instead of focusing on the defense and promotion of human rights.

Criminal accusations generally come hand in hand with media and social campaigns to delegitimize human rights defenders. This affects their status in the impacted communities, including potential job or professional losses<sup>198</sup>. The combination of judicialization and media campaigns generates a public climate of abstention that weakens support for defenders given the consideration that the independence of justice must be respected. This constitutes a manifest violation human rights defenders' honor and reputation.

To a great extent, **this phenomenon owes to the government's corporate capture, that leads to subordinating the public interest to companies' private economic interests.** The presence of former government cabinet members on the boards of directors of major private sector companies generates a conflict of interest and leads to questioning the impartiality and effectiveness of the supervisory bodies. All of this ties in to the growing 'revolving door' phenomenon".

Along these same lines, a clear example

of conflict of interest lies in the creation of the so-called energy battalions and the agreements signed between military forces and companies. While in principle these mechanisms aim to provide security guarantees for investors operating in areas where there are illegal armed groups, in practice, this has translated into excessive use of force against human rights defenders' work and their activities for denouncing corporate abuses.

However, not only governments make use of exerting their influence this way. Business actors also use judicialization against the very State by filing suits and using arbitration procedures provided for in trade and investment treaties to sway decisions made by environmental authorities, such as potential revoking of licenses. This holds even when environmental impacts are manifest and human rights are significantly impacted, such as in instances of the re-location of entire communities. The high cost of this type of action generates a dissuasive effect on the State and its decision-making to protect human rights and the environment when reviewing authorizations granted to companies.

### ✓ **Armed actors' attacks coincide with human rights defenders' actions to defend the environment and the land**

The **third** tier involves many threats, attacks and violent actions. There are direct threats to community members or their families, robberies, verbal and armed abuse at demonstrations, theft of information, deprivation of communications, gender violence, surveillance and illegal detentions, false charges in courts, and so forth<sup>199</sup>.

197. OAS, American Convention on Human Rights, article 11.

198. Observatory (FIDH/OMCT), 2014 Annual Report published by the Observatory for the Protection of Human Rights Defenders (OBS), "No tenemos miedo". Defensores del derecho a la tierra: atacados por enfrentarse al desarrollo desenfrenado", 2014, available at [https://www.fidh.org/IMG/pdf/obs\\_2014-spweb.pdf](https://www.fidh.org/IMG/pdf/obs_2014-spweb.pdf).

199. Report by the United Nations Special Rapporteur on the situation of human rights defenders, A/71/281, 3 August 2016

The analysis of the three cases reveals a chronological relation between the defenders' action to claim for their rights in a court of justice and reactions that come in parallel to or after the attacks and persecution by both legal and illegal actors and/or national and transnational companies and how this is coupled with a lack of effective protection measures provided by the State.

The stigmatizing of CCALCP lawyers came at the same time as defenders' action regarding Ecopetrol's Barí indigenous people. Persecution against CCALCP intensified after court decisions and administrative rulings in favor of the rights of the communities they defended.

Along these same lines, Miller Dussán saw himself involved in criminal proceedings that coincided with the filing of complaints regarding the impact of the El Quimbo project. Likewise, Héctor Sánchez received threats while denouncing and collecting evidence of the environmental and social impact of the activities of extractive companies in Puerto Gaitán.

The coincidences in time constitute indications that should be investigated by the corresponding institutions. The motives behind action by armed groups against persons defending the environment and the land must be investigated and stand as a basis to reflect on the complex relationship between a host of State actors, businesses and illegal armed groups.

The use of different *modus operandi* such as pamphlets, emails, telephone calls, breaking and entering homes and threats to human rights defenders and their families has grave psychological consequences for individuals and entire families and groups whose feeling of a lack of protection is heightened. All of these types of attacks of human rights defenders constitute not only a violation of freedom of expression and association which is what underpins true, stable democracy, but also violate defenders' physical integrity and stand as warning signals regarding their risk to their right to life.

In most cases, the various types of aggression against human rights defenders are not mutually exclusive, but rather cumulative.

This report illustrates how both individual defenders and groups of defenders find themselves in an unequal situation to companies given that the State takes no action to defend or protect them. This is true to the extent that it seems to yield to the companies' power and influence<sup>200</sup>. Furthermore, the State fails to apply adequate mechanisms to ensure citizens remain on their land.

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200. Borrás: October 2015 – March 2016, p. 25.



A lucky fisherman on the Magdalena River. Now, this river flows into the reservoir generated by the dam built at Quimbo, thereby severely reducing the number of fish. Near Las Jaguas, Huila, Colombia. 2017

Marisol Cueto, one of the founders of Mina Walter, (second on the left), with her nieces Mayerly, Yessica and Viviana, in her restaurant. She is now worried that both her business and her family may be displaced. Mina Walter, Southern Bolívar, Colombia. May 12, 2017



## V. RECOMMENDATIONS

**T**he report underscores the companies' responsibility for the current situation of both groups of and individual human rights defenders and calls upon the State to bolster its protection mechanisms in order to more effectively prevent the various types of aggressions suffered by human rights defenders from becoming murders. The bolstering of these mechanisms should include assigning a specific role to economic agents as well as the adoption of a differential approach allowing for an evaluation of the risks that defenders of the land and the environment face. This must be done through detailed research and analysis of the links between social and environmental conflict, the presence of business actors, the convergence of economic interests and armed groups, and the increasingly vulnerable situation of human rights defenders.

### A) General Recommendations

#### (1) *For the Colombian government*

A.1.1 Bolster mechanisms for the protection human rights defenders to make them more effective in preventing the various aggressions defenders suffer from becoming killings. This includes:

- Analyzing the role that economic actors play and taking a differential approach in order for the risks faced by defenders, and particularly by defenders of the land and the environment, to be evaluated;
- Taking a gender-based approach to analyzing cases involving women human

rights defenders in vulnerable situations;

- Performing detailed research and analysis of the relationship between social and environmental conflicts, the presence of business actors, the convergence of economic interests and armed groups, and the increasingly vulnerable situation of defenders of the environment and the land;
- Adopting the proper collective measures for groups of defenders of the environment and the land in rural areas;
- Conducting public information campaigns and capacity building sessions for agents to raise awareness about, and support, human rights defenders, their legitimacy and the importance of their work as well as their right to freedom of expression and peaceful protest;

**A.1.2** Reduce the legal gaps that increase risk to human rights defenders such as the weakness of environmental legislation and legislation protecting the rights of indigenous peoples, their right to land and customary titles to land and resources, particularly by:

- Using a participatory process to bolster legislation on prior consultation and environmental impact studies in order to ensure company compliance;
- Adopting legislation on companies' criminal liability for actions committed by their security personal or their subcontracted security services;
- Revising and strengthening the ANLA structure in order to enhance its monitoring capabilities and the enforcement of the conditions provided for in environmental permits;
- Amending, derogating or repealing legislation unnecessarily and disproportionately restricting the right to freedom of association, expression and peaceful assembly.

**A.1.3** Act on the investigative front by:

- Comprehensively tackling investigations, bearing in mind patterns of intimidation and violence aimed at individuals and/or groups defending the environment or the land, including analysis of the political and economic context;
- Putting in place a Special Investigative Unit in the Colombian Prosecutor General's Office to lead high impact processes against paramilitary phenomena and crimes against defenders. Endowing such Unit with the human, technical and financial resources it needs to ensure the autonomy and independence of judicial investigations;
- Effectively, transparently and independently investigating and sanctioning both State agents (i.e. police, inspectors, prosecutors, judges) and private agents involved in cases of abuse and in the criminalization of workers and trade union leaders as well as human rights defenders;

**A.1.4** Preventing Corporate Capture of the State by adopting strict legislation to avert the revolving door phenomenon;

**A.1.5** Establishing an independent fund to pay for Environmental Impact Assessments -EIAs – and Human Rights Impact Assessments –HRIAs – to ensure that extractive projects are not implemented in areas where there would be great environmental and social impacts and ensuring that local communities can participate from the outset of the process;

**A.1.6** Ensuring that State security forces have been properly trained in the use of force respecting human rights;

**A.1.7** In order to properly protect defenders of the environment, a firm, legally binding instrument must be adopted to ensure full implementation of the rights to access proclaimed in principle 10 of the Rio Declaration on the Environment and Development in

Latin America and the Caribbean. The three fundamental 'rights to access' set forth in principle 10 are directly related to the problems faced by defenders of the land and the environment, i.e. a) access to information; b) access to public participation; and c) access to justice. The recognition and effective application of these human rights will reduce human rights violations committed against those defending the environment and will provide them with reparation. Furthermore, the regional instrument must include specific safeguards for environmental defenders in order to ensure their rights<sup>201</sup>.

**A.1.8** Actively participate in the adoption of an international instrument on companies and human rights containing mechanisms to reinforce human rights defenders' means of action and access to justice in the event of corporate abuses.

## **(2) Recommendations to corporate actors**

**A.2.1** Properly recognize the legitimate role and work of those defending the land and the environment;

**A.2.2** Take measures to identify, prevent, mitigate and ensure accountability for the actual and/or potential negative human rights impact faced by defenders in their work;

**A.2.3** Ensure that their activities, including those stemming from trade or commercial relations, do not cause or contribute to human rights violations. These due diligence processes must be based on significant, direct participation of the rights-holders who could potentially be affected and therefore require that special attention be paid to those defending the land or the environment;

**A.2.4** Disseminate information on major development projects planned or underway in a timely, accessible fashion to affected communities and human rights defenders;

**A.2.5** Take a public stance distancing yourself from paramilitary groups alleging to operate in defense of government interests;

**A.2.6** Fully cooperate with the Special Investigation Unit established as a result of the Peace Accords;

**A.2.7** Refrain from committing any physical aggression or from perpetrating any verbal or legal attacks on those defending the environment and the land;

**A.2.8** Hold meaningful consultations with those defending the environment and the land when drawing up, implementing and evaluating projects and during the due diligence and environmental impact assessment phases;

**A.2.9** Establish the complaint mechanisms needed to avoid, mitigate and combat any direct and indirect impact of human rights violations;

**A.2.10** Ensure that private security companies and other subcontractors respect the rights of those defending the environment and do not cause or contribute to causing any type of harassment or violent acts against the communities affected and ensure that they establish mechanisms for accountability in the event of complaints;

**A.2.11** Duly recognize the legitimate role and work of leaders and representatives of the affected communities;

**A.2.12** Refrain from resorting to criminal law to contain social resistance to operations or as a way to bring about acceptance of company decisions.

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201. Ciel: 2016, p. 6.

### **(3) To the Special Rapporteur on Economic, Social, Cultural and Environmental Rights, (ESCE) of the Inter-American Commission on Human Rights and the United Nations Committee on Economic, Social and Cultural Rights**

- A.3.1 Underscore the grave situation of human rights defenders working on issues tied to business operations and the risk this entails in the effective protection of ESCE rights;
- A.3.2 Investigate the link between increasing criminalization of defenders of the land and the environment that denounce company actions and the negative impact on ESCE rights;
- A.3.3 Ensure that there is follow-up on cases of attacks and criminalization of human rights defenders and include this as a cross-cutting area of work on ESCE rights.

### **(4) To the United Nations Working Group of the Issue of Human Rights and Transnational Corporations and the Special Rapporteur on the Situation of Human Rights Defenders**

- A.4.1 Bear in mind the additional risks generated by the presence of armed actors in combination with acts of physical, legal and verbal harassment on the part of company actors of both groups and individuals defending the environment and the land;
- A.4.2 Identify the various categories of attacks that defenders of the environment and the land are subject to and the relationships between these different categories;
- A.4.3 Encourage companies to adopt adequate policies to enable them to establish open dialogue with groups of and individual de-

fenders of the environment and the land and to prohibit all types of aggressions on the part of their employees or other companies with which they have business relations;

- A.4.4 Formulate specific recommendations so that both States and companies take measures to bolster safeguards for human rights defenders working in the context of corporate activity.

## **B) Specific recommendations**

### **(1) Recommendations on the case of the women from the CCALCP**

#### **To the Colombian government**

- B.1.1 Afford adequate protection measures, using a differential approach, to CCALCP lawyers to ensure their security and effective work in defending human rights;
- B.1.2 Investigate and effectively sanction those responsible for threatening and attacking the CCALCP and provide guarantees of non-repetition. The link between extractive companies and the operations in their areas and attacks against human rights defenders should be exhaustively investigated;
- B.1.3 Ensure the effective enforcement of court decisions including those made by the Constitutional Court and other local and administrative courts on the operations of mining company projects in the area and community participation in licensing.

#### **To the companies Conoco Phillips, Brookfield Asset Management and Isagen**

- B.1.4 Abide by court and administrative decisions even when they do not align with the company's financial interests;
- B.1.5 Refrain from stigmatizing defenders of the land and environment, from affronting their honor and dignity, and from attacking their personal safety. .

## **(2) Recommendations on the case of Héctor Sánchez Gómez**

### **To the Colombian government**

- B.2.1 Preclude criminal proceedings opened against him based on disproportionate portrayal of the facts;
- B.2.2 Effectively implement the precautionary measures dictated by the IACHR to guarantee the safety of Héctor Sánchez Gómez and other social leaders from Rubiales;
- B.2.3 Progress in the investigation of criminal complaints on the threats and attacks against Héctor Sánchez Gómez and other human rights defenders and members of the Comité Ambiental y Agrario de Puerto Gaitán;
- B.2.4 Progress in the court and administrative cases stemming from complaints lodged about the negative impact of Pacific's operations in Puerto Gaitán;
- B.2.5 Avoid signing cooperation agreements between Public forces and investigative judicial entities and corporations;
- B.2.6 Ensure that the companies awarded the oil and mining concessions, as well as security companies and other sub-contractors, fully respect the rights of human rights defenders and neither cause nor contribute to causing any type of harassment or violent action against them nor instrumentalize the justice system to prevent them from exercising legitimate human rights protection work;

- B.2.7 Establish mechanisms to ensure the judiciary's independence and prevent undue interference by companies.

### **For the companies Pacific Exploration & Production Corp. and Ecopetrol**

- B.2.8 Refrain from interfering with, abusing or thwarting the complaints lodged by human rights defenders and representatives from communities affected by business activities;
- B.2.9 Actively participate in good faith in dialogue with the community;
- B.2.10 Act with due diligence in ensuring that the security companies do not commit human rights violations or affect activities of groups or individual defenders of the environment and the land or trade union leaders, including at checkpoints, by limiting circulation in certain areas, by violently repressing social protest, and so forth.

## **(3) Recommendations regarding the case of Miller Dussán**

### **For the Colombian government**

- B.3.1 Dismiss the current criminal and disciplinary proceedings based on weak evidence against Miller Dussán and whose codification provides clear evidence that the right to protest and perform activities to defend the environment is being persecuted;
- B.3.2 Sanction irregular actions both of the company and of public civil servants in the authorization and licensing of the El Quimbo hydroelectric project;
- B.3.3 Effectively apply the sanction of Decree 1979 authorizing the filling of the dam reservoir against court findings;

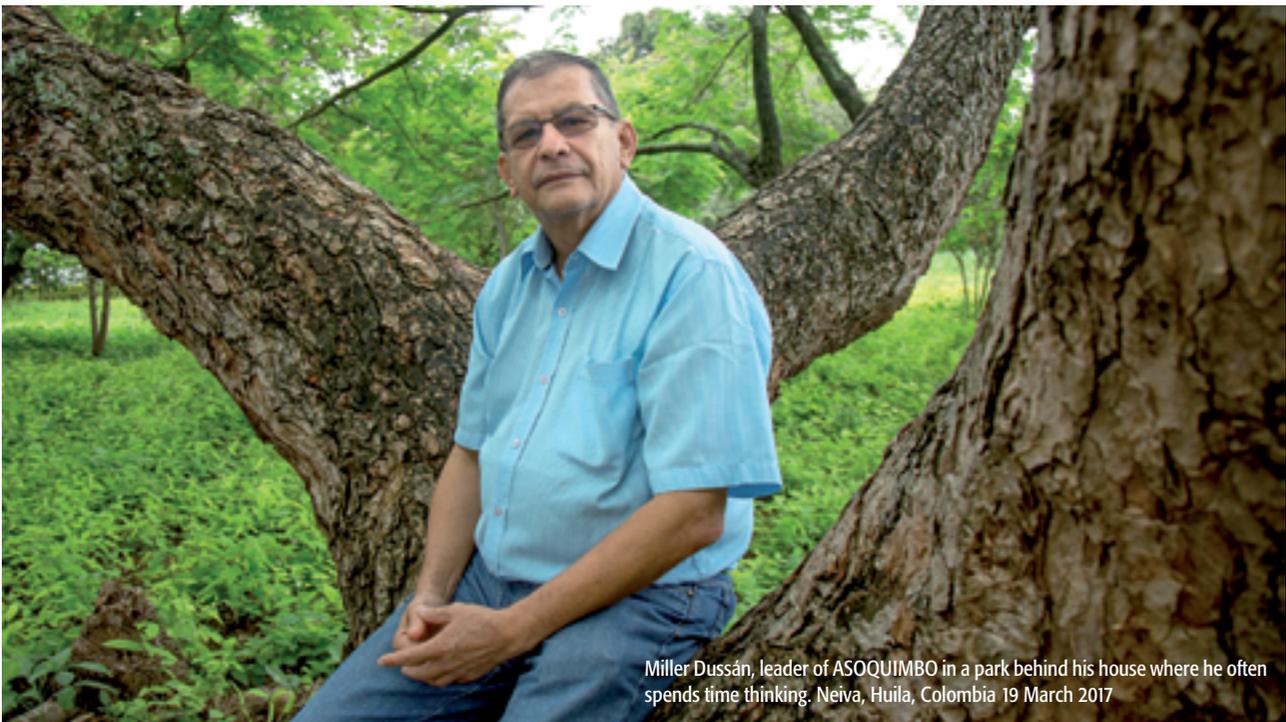
B.3.4 Require adequate reparation measures for the victims of the negative impact of the filling of the El Quimbo dam reservoir;

B.3.5 Accept the community's requests for environmental hearings before the ANLA.

### To the company Emgesa

B.3.6 Compensate victims for the filling of the dam reservoir and adopt measures to mitigate its negative impacts;

B.3.7 Refrain from lodging criminal complaints against Miller Dussán and other human rights defenders for their legitimate defense of their rights, the environment and the land.



Miller Dussán, leader of ASOQUIMBO in a park behind his house where he often spends time thinking. Neiva, Huila, Colombia 19 March 2017



Members of ASOMIWA working with mechanized rotating barrels to separate out the mud in gold mining. Southern Bolívar, Colombia May 12, 2017

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The Observatory  
for the Protection  
of Human Rights Defenders

**T**he Observatory for the Protection of Human Rights Defenders: is an FIDH – OMCT partnership. Established in 1997, the Observatory is a programme of action based on the conviction that strengthening cooperation and solidarity for human rights defenders and their organizations contributes to breaking their isolation. It is also based on observing the absolute need for a systematic response on the part of NGOs and the international community to the repression of human rights defenders. The Observatory's activities lie in consultancy and cooperation with national, regional and international non-governmental organizations.

Along these lines, the Observatory sets as a priority the implementation of a systematic warning system to the international community regarding cases of harassment and repression of human rights defenders, particularly when urgent intervention is required. Observation in courts of trials and, when necessary, direct legal assistance; the most specific customized assistance possible including material assistance to ensure the security of defenders who have become victims of grave violations; drafting, publishing and internationally disseminating reports on violations of the rights and freedoms of individuals and organizations throughout the world fighting for human rights; sustained action before the UN and specifically the office of the Special Rapporteur on Human Rights Defenders and mobilization vis-à-vis regional and international intergovernmental organizations.

The Observatory's activities lie in concertation and cooperation with national, regional and international non-governmental organizations. In order to respond to the concern about effectiveness, the Observatory has adopted flexible criteria to examine the admissibility of cases that are communicated to it, based on the "operational definition" of human rights defenders adopted by FIDH and OMCT: "Each person victim or at risk of being the victim of reprisals, harassment or violations, due to his or her commitment, exercised individually or in association with others, in conformity with international instruments of protection of human rights, to the promotion and realisation of the rights recognised by the Universal Declaration of Human Rights and guaranteed by the different international instruments".

To ensure its activities of alert and mobilisation, the Observatory has established a system of communication devoted to defenders in danger.

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**La Corporación Colectivo de Abogados José Alvear Restrepo (CCAJAR)** was created in 1978, and is one of the first non-governmental organizations for the defense of human rights in Colombia. It has 38 years of experience in legal representation, before national and international bodies, of victims of serious human rights violations and crimes against humanity. Its aim is to ensure the effectiveness of their rights to truth, justice, and full reparation and to obtain guarantees of non-repetition. Litigation activities are complemented with national and international advocacy as well as training and organizational strengthening to empower victims to defend and to achieve the enforceability of their rights.

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