

Civil Society Speaking Out: Agendas for a Sustainable Peace in Colombia

In order to build a sustainable peace, it is essential to involve those that have suffered the impact of the conflict in the peace-building process. For this an enabling environment needs to be created – an environment where participative democracy and human rights are respected and promoted.

Building a sustainable peace is a lengthy process requiring long-term engagement and commitment from a wide range of social actors. Civil Society Organisations (CSOs) are essential for promoting dialogue with government, contributing to the construction of public policies and defending rights. CSOs provide collective organisation and access to technical skills that help to rebalance the inequality of power between citizens and the State, and between people and corporations. Whilst recognising and reaffirming that civil society groups and organisations are very diverse in Colombia, as they are in other countries, this report will focus on those groupings that are often marginalised in Colombia, namely women, peasant farmers (campesinos), Indigenous People, afro-Colombians and mestizos.¹

President Juan Manuel Santos recognised the need 'to open up... democracy to build peace and promote citizen participation'.² The peace dialogues have encouraged a tentative opening-up of democracy as victims have been able to participate in putting their proposals to the negotiators. Yet at the same time, Colombia has experienced an escalating number of social protests, 1,027 social protests in 2013 – the highest number in one year since 1975.³

Although the conflict continues and there has been no ceasefire, Civil Society Organisations (CSOs) have started to identify and develop fundamentals that will be essential for non-repetition and a sustainable peace. Integral to a sustainable peace is the promotion of human rights, democracy, good governance and development with social justice. The EU's development policy, Agenda for Change, supports the premise that the objectives of development, democracy, human rights, good governance and security are all intertwined.⁴ The inter-governmental forum in BUSAN⁵ (2011) recognised, amongst other things, the need for sustainable and inclusive growth and greater accountability of governments to their citizens.⁶ Upholding human rights, democracy and good governance as part of integral development policies depends not only on building accountable governance, but also on creating spaces for dialogue and participation. This is recognised by the UK Government in its policies on the 'Big Society' and DFID's 'Agenda for Change' where the importance of a vibrant and active civil society is

re-affirmed.⁷ CSOs are not the political opposition, but rather a critical voice⁸ – the importance of their role for any democracy should be recognised. Social actors working in these organisations are vital for promoting human rights, enabling people to claim their rights, for shaping development policies and for monitoring implementation.⁹

This report sets out some preliminary findings from research visits ABColumbia undertook to Colombia in March and November 2014 and makes a series of recommendations for donors, governments and civil society organisations.

Context

Colombia is facing a crucial and complex moment in its history. The Government of President Juan Manuel Santos opened peace dialogues on 5 October 2012 with the aim of ending the conflict with the guerrilla group the Fuerzas Armadas Revolucionarias de Colombia – FARC, which started in 1964. The dialogues have received opposition from powerful groups in Colombia, including the previous president, now Senator – Alvaro Uribe Velez. Despite opposition, Santos was re-elected for a second four-year term of office on 15 June 2014. The traditional supporter base on the Right was divided between Santos and the presidential candidate supported by Uribe. Santos was re-elected with support from the popular social movements and left-wing politicians, because of his commitment to continue the peace dialogues and end the conflict with the FARC.

By August 2014, the peace dialogues had reached item four in a six point agenda – justice and the rights of victims. Agreements have been made on rural development, FARC integration into the political process and drug-trafficking. This leaves two further items: how to organise the laying-down of weapons by potentially 8,000 FARC guerrillas and the issue of verification. Once accords have been achieved, they will have to be ratified by Congress – which will not be an easy task given the political opposition. There is also a proposal for the country's approval via a national referendum. An agreement with the FARC alone will not bring peace. Despite

¹ 'Mestizo' refers to rural groups who are neither indigenous nor afro-Colombian.

² Remarks to the Peace Council: Presidencia de la Republica, Palabras del Presidente Juan Manuel Santos en la reunión del Consejo Nacional de Paz, 9 October 2014.

³ CINEP/PPP, Informe Especial: Luchas Sociales en Colombia 2013, April 2014.

⁴ European Commission, Increasing the impact of EU Development Policy: an Agenda for Change, 2011.

⁵ Busan Partnership for Effective Development and Cooperation at the Fourth High Level Forum on Aid Effectiveness This forum is made up of representatives from: governments, traditional donors, South South cooperators, the BRICS, private donors, and civil society organisations.

⁶ Partnership for Effective Development Co-operation: Fourth High Level Forum on Aid Effectiveness, Busan, Republic of Korea, 29 November - 1 December 2011, paragraph 28.

⁷ DFID Civil Society Department, Operational Plan 2011-2015, Updated May 2012.

⁸ UN General Assembly, Report of the Office of the United Nations High Commissioner for Human Rights, Summary of the Human Rights Council panel discussion on the importance of the promotion and protection of civil society space, A/HRC/27/33, 26 June 2014.

⁹ Busan Partnership for Effective Development Co-operation: Fourth High Level Forum on Aid Effectiveness, Busan, Republic of Korea, 29 November - 1 December 2011, paragraph 22.

announcements of the intention to include them, the second largest guerrilla group, the National Liberation Army (Ejército de Liberación Nacional – ELN) remain outside of the negotiations. In addition, the paramilitaries Autodefensas Unidas de Colombia (AUC) did not fully demobilise in 2003. The middle ranking commanders continue to operate under a variety of names and are collectively referred to by the Colombian Government as BACRIM (criminal gangs) or by others as post-demobilised paramilitary groups (PDPGs). According to the National Police they number approximately 4,000 (May 2013).¹⁰

The civilian population in Colombia has borne the brunt of the conflict over the last five decades. The National Centre of Historical Memory has documented 1,982 massacres of the civilian population between 1980 and 2012: 1,166 attributable to paramilitaries, 343 to the guerrilla, 295 to government security forces and the remainder to unknown armed groups. The conflict has claimed the lives of at least 220,000 people,¹¹ 5.7 million have been forced to abandon or dispossessed of their land, about 25,000 enforced disappearances (although this crime is massively under-reported) and 27,000 kidnappings (24,482 by guerrilla). The peace dialogues have been undertaken without a ceasefire, which continues to cause untold suffering on the part of the civilian populations; for example, 157,000 people were forcibly displaced in 2013.¹²

Civil society actions – engaging in the peace process

Civil society groups in Colombia have responded to the peace dialogues in a variety of ways. For some, the dialogues in Havana are viewed sceptically, in many cases due to past experience of demobilisation processes. Other groups are unconvinced or against the dialogues because they consider the FARC should be defeated militarily. However, a large section of the population have actively engaged in this process and consider these dialogues are the best chance Colombia has for ending the five decades of conflict between the State and the guerrilla groups.



Space for civil society participation in the peace dialogues has been created in a variety of ways. These included the Victims Forums which are formal spaces for dialogue with civil society. These took place in Colombia, Europe (including London in September 2014¹³) and the Americas. The Forums have seen the active participation of victims, who have come together to formulate and present their proposals on how to ensure truth, justice, reparation and no-repetition. In addition to the Forums, victims have participated in four delegations to Havana.

Colombian women's organisations have also taken an active role in creating, promoting and calling for formal spaces for consultation and participation. Despite the recognition on the part of the State that 'women have been the vortex in which the pain of the conflict has focused with immense intensity',¹⁴ it took considerable work and pressure from CSOs for two women negotiators to be appointed to the government team in November 2013. Until then all negotiators, on both sides, had been male. In September 2014, a Gender Sub-Commission was created to ensure a gender perspective is included in all of the agreements reached in Havana. A 'Women and Peace' Summit was held in Bogotá in August 2014, where women 'demanded a leading role in decision making in the transition to post-conflict'.¹⁵

Communities have also been active in peace-building – in the midst of conflict – with their neighbouring communities. Macayepo is an example of communities creating spaces for peace and reconciliation (see Case Study 1). Victim-led peace-building processes such as the Women's Summit and Macayepo local peace building initiative provide seeds of hope.

Truth as part of a process for sustainable peace

Victims' organisations and communities like the grassroots network Communities Constructing Peace in the Territories (CONPAZ), which is made up of over 100 grassroots organisations,¹⁶ have been discussing their rights to truth, justice, reparation and no-repetition in a transitional justice process. According to the victims, knowing the truth is an essential ingredient for people to be able to move forward: 'the truth, acknowledgment of responsibility, restitution of rights and guarantees of non-repetition are the foundation of reconciliation and the way to obtain forgiveness'.¹⁷ International research supports the idea truth commissions can help to prevent repetition, especially in situations where there have been high levels of impunity in violent conflicts.¹⁸ Regional truth commissions are also important to facilitate local participation of CSOs. Furthermore, knowing the truth about the authors of the crimes helps to prevent repetition. Their proposals include considering a truth commission inaugurated legally, such as by presidential decree, that would not substitute but rather be in addition to the judicial system.¹⁹

Placards featuring disappeared friends and family members are shared at the International Victims Forum in London on 13 September.

¹⁰ Human Rights Watch, *The Risk of Returning Home*, 2014, page 168: In May 2013, the police reported 3,866 members operating in 167 municipalities. The police estimate that although there was a slight overall reduction in numbers of the PDPG - the Urabeños grew from 1,994 to 2,369 members between February and May 2013.

¹¹ From 1985 - 2012: Centro Nacional de Memoria Histórica, *¡Basta Ya! Colombia: Memorias de Guerra y Dignidad*, 2013.

¹² IDMC Report Global Overview, May 2014, page 10.

¹³ For more information see: ABColombia, *Colombian Victims call for Immediate Ceasefire and Integral Reparation*, September 2014.

¹⁴ Presidencia de la Republica, *Declaración del jefe del Equipo Negociador del Gobierno Nacional, Humberto de la Calle*, 7 June 2014.

¹⁵ Rosa Emilia Salamanca, *Keynote Remarks UN General Assembly: "Ensuring Stable and Peaceful Societies"*, 24 April 2014.

¹⁶ CONPAZ, *Quiénes Somos: una red conformada por familias, grupos comunitarios, comunidades y organizaciones rurales afrodescendientes, indígenas, mestizas, multas de Antioquia, Atlántico, Cauca, Chocó, Putumayo, Magdalena, Meta, Nariño, Valle*.

¹⁷ Public statement by victims that took part in the second delegation to Havana: *Comunicado a la opinión pública Segundo Encuentro de víctimas con la Mesa De Diálogos De la Habana*, 10 September 2014.

¹⁸ International Alert, *Code of Conduct: International Transformation Work*, 1998, Page 10.

¹⁹ CONPAZ, *Propuesta de CONPAZ: Comisión de la Verdad*, July 2014.

Case Study 1: Invisible Borders

'Invisible Borders' was the term leaders of the Macayepo community (Bolívar) used to describe one of the difficulties they encountered when they returned to their village. The region where they live had experienced more than 50 massacres (1999–2001), along with selective killings and forced displacement. The atrocities committed were carried out by all the armed groups, although historically it is a paramilitary strong hold, whose reputation in this region was for working in collusion with the security forces. The political and economic structures of the paramilitaries in this region included businessmen and politicians, some of whom have been sentenced. In the case of Macayepo, Senator Álvaro García Romero was sentenced to 40 years as the author of the massacre.²⁰

The community leaders in Macayepo explained that when they returned, there were 'invisible borders' between villages in the region. These borders existed because some communities were stigmatised as being 'allied' with the guerrilla whereas others with the paramilitaries. As a result, distrust had grown between the communities, leading to insecurity and fear. The community reported receiving no help from government authorities in peace-building, so they decided to tackle the 'invisible borders' themselves, 'even if it generated more dangers and put the leaders at greater risk'.²¹

They started by organising opportunities for neighbouring communities to meet and engage in joint activities. One of the ways they did this was via a football tournament between nearby villages. They went with their families and took food to eat following the matches. As time went on, these spaces became spaces for dialogue, where each shared their own experience of the conflict. They realised that they had all suffered, independently of which armed actor had caused their suffering. This led on to asking one another for forgiveness for believing the other to be 'the enemy'. ABColombia was told that most but that not all of their attempts at reconciliation had been successful.



'Tienda el Retorno' (Shop of the Return) in Macayepo, Bolívar department. The community have returned having been displaced following a massacre.

Dismantling illegal structures that threaten communities and civil society organisations

Ensuring no repetition and how to achieve this is crucial to any peace process. For rural communities, the failure to dismantle the military, economic and political structures of the paramilitaries means that violence has continued in the same manner despite a previous demobilisation process. As a result this has created scepticism about the current process.

Rural communities report that their lives continue to be controlled by these groups. For example, in March 2014 communities in Córdoba, Sucre and Bolívar told ABColombia that the shops and transport were forced to pay extortion money to PDPGs, curfews were imposed and community leaders threatened and some forced to displace. Impunity has been a major factor that has allowed this to continue.

In addition, the FARC and ELN guerrilla groups continue to operate and continue to violate the rights of communities, despite peace dialogues taking place with the FARC.

The FARC were responsible for the assassination of two members of the Indigenous Guard from the Association of Indigenous Communities from the North of Cauca (ACIN) – Manuel Antonio Tumiña and Daniel Coicué on 5 November 2014 in Cauca. This happened despite the clear position of the indigenous authorities prohibiting the presence of armed groups in their territory.²²

The lack of a bi-lateral ceasefire fuels the belief that nothing will change – according to the victims, 'reparation and protection for victims can only be achieved when there is an end to the armed conflict, there is an urgent need for an immediate and definitive ceasefire'.²³

During ABColombia's visit in March 2014 many people talked of their concerns and fears because the AUC paramilitary leaders who had committed war crimes and crimes against humanity were about to be released, having completed eight years in prison under the Justice and Peace Law. Many communities, leaders and human rights defenders who testified against the paramilitaries expressed concern for their safety. Communities reclaiming their land are particularly fearful.

In June 2011, the Colombian Government introduced an important transitional justice law, the Victims and Land Restitution (Law 1448). As of December 2013, 5,966,211 victims of the armed conflict were registered in the Single Registry for Victims, of whom 5,155,406 were victims of forced displacement. It has taken a couple of years for the framework and all of the institutions for the implementation of Law 1448 to finally be established. However, to date less than 1 per cent of land had been restored to victims.²⁴

The ongoing conflict and the extremely high level of impunity for human rights crimes makes security for the victims a major issue; threats and lack of security have a disabling effect on those wishing to reclaim their land. As one land claimant explained to ABColombia, 'I am going to register my land but we are too afraid to return'.²⁵ This is because the PDPGs continue to operate in the area and the same people behind her displacement continue to live there. These are third parties – or occupiers of 'bad faith' – who moved onto or acquired the land after the original occupants were forced out. This makes the situation very dangerous for land claimants.

Many were dispossessed and forced to abandon their land not only for strategic military reasons but also for economic motives.²⁶ The then UN Special Representative Francis Deng saw displacement as '...a tool for acquiring land for the benefit of large landowners, narco-traffickers, as well as private enterprises planning large-scale projects for the exploitation of natural resources...'.²⁷ The links with economic interests still continue: 'authorities have (intelligence) reports that demonstrate... there are cattle ranchers, businessmen and women, politicians, members of the security forces and companies that are interested in financing the (PDPG) Urabeños violence'.²⁸ According to the UN, the PDPGs also

²⁰ Verdad Abierta, Condenan a 40 años a Álvaro 'el Gordo' García, 23 February 2010.

²¹ Interviews carried out by ABColombia in March 2014 in Macayepo, Bolívar.

²² BBC Mundo, Indignación en Colombia por muerte de guardias indígenas a manos de las FARC, 6 November 2014.

²³ Caritas, Pastoral Social pide cese al fuego definitivo para la reparación de las víctimas, 5 August 2014.

²⁴ Contraloría General de la República, II Informe de seguimiento al proceso de Restitución de Tierras, October 2013, Page 6.

continue to 'benefit from the collusion of some local authorities and members of security forces'.²⁹ This means that land restitution claimants are left exposed, in particular due to the fact that state security forces are implicated in supporting or colluding with PDPGs who frequently protect the interests of third parties who moved onto or acquired the land following the forced displacement.

Case Study 2: Threats against land restitution leaders

In 2014, Enrique Cabezas, a land restitution leader from the Caño Manso community in Curvaradó, received a text message which warned him that he would be killed that night. Enrique managed to escape through the back door just before armed men entered the house through the front. Another Curvaradó land claimant who has received numerous threats against her life is mother-of-two Yomaira Mendoza. For pursuing her land claim and justice for her husband's murder, Yomaira has received threats against herself and her son – she was told 'the order from the boss is to kill you'. Yomaira is too fearful to have her children living with her so they live with her mother in Medellín; she has had seven assassination attempts between March and August 2014. Both Enrique Cabezas and Yomaira Mendoza were eventually forced to leave the Curvaradó River Basin and moved to Bogotá. However, the threats continued along with surveillance, forcing them to leave the country. They left not only for their own security but also because members of their families were being threatened as a result of their work.³⁰ Both these leaders had special protection measures from the National Protection Unit. In August 2014, the Inter-American Commission on Human Rights ordered the Colombian Government to provide Yomaira Mendoza and Enrique Cabezas with adequate protection.³¹

The role of impunity in maintaining illegal structures

There are over 17,000 open investigations into forced displacement. So far less than 1 per cent have been sentenced.³²

The economic paramilitary structures have remained intact due to a failure to prosecute those involved in land grabbing. In Colombia, 99 per cent of cases of land grabbing have not been prosecuted.³³ In October 2014, the Human Rights Ombudsman (Defensoría) reported that 109 participants in the Victims Roundtables (Mesas de Víctimas) had been threatened.³⁴ In the 21 month period from January 2012 to September 2013, over 700 displaced land restitution claimants and their leaders reported receiving threats; no one has been charged yet with these crimes (see Case Study 2).³⁵ As a result there is little to dissuade the attacks on social actors. In fact there has been an increase in the number of killings of leaders and human rights defenders working on land rights. The number of defenders killed

increased from 32 in 2010 to 78 in 2013, with the majority of these working on victims' issues and land restitution.³⁶

The Colombian Constitutional Court in sentence T-025, Auto 299 (2012), indicates one of the major threats to returning communities are occupiers of 'bad faith', who continue to live in the area (see Curvaradó, Case Study 3). If a secure environment is to be created for those who want to return it will be essential not only to evict but also to prosecute third party 'bad faith' occupiers who grabbed the land. The EMCAR (escuadrón móvil de carabineros) is a special mobile police force which is able to enter areas to carry out eviction orders against occupiers of 'bad faith'. This is particularly important in areas where there is collusion between the local police, the occupiers of 'bad faith' and PDPGs. However, if eviction orders are to have a long term benefit, local police will have to ensure that the occupiers of 'bad faith' do not return. Whilst these networks continue even community leaders with protection measures from the State continue to be threatened (see Case Studies 2 and 3). The effective operation of the Rule of Law to support and protect the rights of communities is the key to open up space for land restitution claimants to realise their rights.

Case Study 3: A Step Forward: a recent eviction in the Curvaradó region

An initial notice was served in 2014 to William de Jesus Ramirez Castaño,³⁷ a cattle rancher and occupier identified by INCODER as being of 'bad faith'. There are various eviction notices on occupiers of 'bad faith' that have been issued and are being carried out by EMCAR.³⁸ This was an important step forward for the communities seeking land restitution. The situation related to the collective land title under Law 70 in Curvaradó. This is a case that has attracted considerable international attention. In total there are three eviction notices for occupiers of 'bad faith'; according to the Colombian CSO, the Inter-Church Commission of Justice and Peace (CIJP), they have until 24 November 2014 to leave the land they are occupying which belongs to the communities of Curvaradó and Jiguamiandó. The communities and their leaders have been supported by rulings in their favour from the Constitutional Court and legal work by CIJP. This case demonstrates that with sufficient attention, pressure and resources, the government can take action to evict powerful occupiers of 'bad faith'. However, not all communities have this level of support; there remain many more occupiers of 'bad faith' in Curvaradó and other areas where communities are looking to return to their land.

Despite these challenges, communities are finding ways of claiming their rights to their land and increasing their own protection. Colombia's Indigenous Peoples are asserting their rights, pressing for land claims, defining their own plans for land use and environmental management in their territories, and developing strategies to promote peace and economic and cultural development.³⁹

²⁵ For many victims of forced displacement they were stigmatised and discriminated against for being forcibly displaced from areas controlled by one illegal group or another. Interview conducted by ABColombia in the community of Currulao, Apartado June 2013.

²⁶ ICTJ and the Brookings, Criminal Justice and Forced Displacement in Colombia by Federico Andreu-Guzmán, July 2012.

²⁷ Report of the Representative of the Secretary General on internally displaced persons submitted in accordance with Commission resolution 1999/47, Addendum. Profiles in displacement: follow-up mission to Colombia; E/CN.4/2000/83/Add.1, 11 January 2000, paragraph 23.

²⁸ Stated in an interview with General Naranjo, former chief of Colombian Police: El Tiempo, 'Hay gente interesada en mantener a los Urabeños': General Naranjo, 26 February 2012.

²⁹ Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, 31 January 2012 Art 42, page 9.

³⁰ CIJP, Frustrado atentado y seguimientos ilegales a líderes comunitarios, 10 July 2014.

³¹ Inter-American Commission of Human Rights, Resolución 22/2014, Medida Cautelar No.140-14: Yomaira Mendoza y otros respecto de la República de Colombia, 13 August 2014.

³² Human Rights Watch, The Risk of Returning Home, September 2013.

³³ Human Rights Watch, The Risk of Returning Home, September 2013.

³⁴ Cited in: Human Rights Watch, World Report 2014: Colombia. National and Regional roundtables known as Mesas de Víctimas were formally created under Law 1448 and made up of social organisations that represent the victims.

³⁵ Human Rights Watch, World Report 2014: Colombia.

³⁶ Programa Somos Defensores, Informe Anual 2013 'D de DEFENSA', February 2014.

³⁷ Ministry of the Interior, 'Respuestas Notificación Judicial' and 'Inspección de Policía Ad-hoc de Curvaradó y Jiguamiandó – Choco: Notificación por AVISO de los Autos No.001 y 002'.

Case Study 4: Zenú Indigenous Guard

The Zenú are one of the 34 Indigenous Groups declared at risk of extinction by the Colombian Constitutional Court. In response to the escalating violence linked to confrontations between armed groups, the Zenú indigenous population have declared their neutrality and have appointed individuals into an organised and unarmed Indigenous Guard based on traditional teachings aimed at abstaining from violence whilst asserting the communities' rights. The Indigenous Guard patrol their territory and demand that armed actors leave their lands. The men and women of the Indigenous Guard also strive to protect community members from becoming involved in the conflict, particularly the young who are at risk from forced recruitment, and act to protect the communities. They have developed protection mechanisms such as early warning systems to alert communities to the presence of armed actors. However, they have often been caught in the crossfire of the fighting or targeted and accused of sympathising with one of the armed groups. Their independent stance has provoked harassment, displacement and assassinations. Between 2008 and 2012, more than 44 members and leaders of the Zenú have been assassinated. Threats, particularly against leaders, have increased recently.

The community has requested that the state implement special protection measures for the community, which the Indigenous Guard would operate. In order to be able to protect their territories more effectively, the unarmed guard need T-shirts to identify themselves and radios for communication and small motorbikes because their territory is extensive. These measures would allow them to develop their protection and to mobilise their members very quickly, as the Indigenous Guard rely on their strength-in-numbers approach to confront armed actors, as they never carry arms. According to the community, the National Protection Unit (NPU) response to these requests has so far been temporary, insufficient, and not in line with the indigenous cosmivision.

Civil Society Organisations calling for development with Social Justice

Peace is only sustainable insofar as it is just, insofar as it respects the dignity of all.⁴⁰

According to the leading peace NGO, CINEP, the peace dialogues have opened a small window of opportunity: 'the ruling class, or at least a significant portion, is willing to negotiate what has so far been non-negotiable in the history of the country: access to and control of land and territories.'⁴¹ A recent report by the Comptroller General's Office identified that the State has adopted a variety of reforms over the years that supposedly seek a just, equitable and inclusive distribution of land, but the reality has been the opposite. The structural issues of land concentration, trade and Colombia's development model were major focus points of the 1,027 social protests in Colombia in 2013. These protests generated high levels of citizen participation and mobilised a wide variety of sectors in different geographical regions with an agenda for development with social justice. They focussed on the need for structural change



The Zenú Indigenous Guard of Alto San Jorge in Córdoba

to the Government's National Economic Development Plan (2010-2014) which promotes the mining and energy sector and industrial agriculture, both facilitated by foreign direct investment and a range of free trade agreements. These issues have been at the root of at least 85 per cent of the 1,027 protests in Colombia in 2013.

In addition, around 15 per cent of the protests in 2013 were related to the lack of implementation of commitments⁴² made by the State to address these issues (see Case Study 5). Other protests raised issues of poverty, inequality and lack of services. These issues were also raised by the third delegation of victims to Havana in their final statement: we petition for 'peace with truth, justice, reparation and guarantees of nonrepetition which results in a country which protects and ensures the dignified existence of all its inhabitants in conditions of social justice'⁴³ The structural nature of poverty, inequality and land concentration have all been intensified in the conflict. Corruption at local government level is an obstruction to the implementation of socially just policies. For victims, dignified living conditions are an essential element in the construction of peace.

Case Study 5: Protest in Catatumbo

The Catatumbo protest by 16,000 people in June 2013 was due to the immense frustration experienced by the campesinos (peasant farmers) as a result of the lack of implementation by the State of commitments made to them in 2009:⁴⁴ These were: to create a Peasant Farmer Reserve Zone (Zona de Reserva Campesina – ZRC), institute an illicit crop substitution programme and implement a Strategic Plan for Sustainable Development with social investment funding from the Agricultural Ministry.⁴⁵ The lack of implementation of these commitments resulted in a worsening of the humanitarian crisis in the region.

The initial response to the protesters was one of stigmatisation by various high level government officials. For example, the Minister of Defence Pinzon suggested the campesinos had been infiltrated by the FARC and that they had used explosives and guns against the

³⁸ ABColombia interview with CIJ, November 2014.

³⁹ For further information see: ABColombia, Caught in the Crossfire: Colombia's Indigenous Peoples, October 2010.

⁴⁰ Rosa Emilia Salamanca, Keynote Remarks UN General Assembly: "Ensuring Stable and Peaceful Societies", 24 April 2014.

⁴¹ CINEP/ Programa por la Paz, Aportes a los Diálogos de paz, December 2012, page 9.

⁴² CINEP, Cien Dias, Escuchar en medio del ruido: Movilización social en Colombia durante el primer gobierno de Santos, 2014.

⁴³ Comunicado Tercer Encuentro de la Delegación de las Víctimas con la Mesa de Conversaciones de la Habana, 2 October 2014: "Venimos a este encuentro para exigirles una paz con verdad, justicia, reparación y garantías de no repetición, para lograr un país donde se garantice y se proteja la existencia digna de todos sus habitantes en condiciones de justicia social..."

⁴⁴ Luis Carlos Perez lawyers, Presentación Asociación Campesina del Catatumbo (ASCAMCAT), to the Session of the Inter American Commission of Human Rights, Washington 31 October 2013. Commitments were made during a Roundtable for dialogue on Agrarian Issues (Mesa de Interlocución Agraria - MIA).

⁴⁵ Luis Carlos Perez lawyers, Presentación Asociación Campesina del Catatumbo (ASCAMCAT), to the Session of the Inter American Commission of Human Rights, Washington 31 October 2013.

⁴⁶ El Tiempo, Mindefensa califica de 'payasada' el apoyo que Farc ofrece a protestas, 22 July 2013: 'han infiltrado estas actividades y volvió a denunciar lo que él considera que ha sido el uso de explosivos y de armas contra la Fuerza Pública... tras manifestaciones como el paro minero también está infiltrada la guerrilla o las 'bacrim'.

security forces. He went on to say that the mining strike had also been infiltrated by the FARC guerrilla or BACRIM.⁴⁶ The comments made by the Minister of Defence could only serve to inflame the situation and give the wrong message to the security forces. NGOs testifying at the Inter-American Commission on Human Rights (IACHR) hearing on 'Social Protest in Colombia' made a similar point: 'we consider these defamations, which associate protesters with the insurgency, to be very serious, because they portray us as a military target'.⁴⁷ The UN Office of the United Nations High Commissioner for Human Rights (OHCHR) monitoring mission to Catatumbo stated that the campesinos had valid complaints with relation to the guarantee of their rights: 'It is important to listen to them and not to stigmatise them'.⁴⁸

The State deployed the anti-riot police (*Escuadrón Móvil Antidisturbios – ESMAD*) to Catatumbo. The protesters were policed using repressive measures: according to the UN, all the indications were that 'the security forces exercised an excessive use of force against demonstrators'.⁴⁹ There were four deaths and many hundreds of people injured, including some of the security forces, during the Catatumbo protest. The UN-OHCHR monitoring mission reported that the bullets that killed the protesting farmers were the high velocity kind, used by the security forces.⁵⁰ The Catatumbo strike raised crucial issues about policing and highlights the need for training and issues of police reforms, which will need to be incorporated into the peace building process.

UN Human Rights Council resolution 25/38, which was co-sponsored by Colombia, recognised that peaceful protests can make a positive contribution to the development and strengthening of democracy. One campesino leader stated '...we believe we must develop our own agenda (for a sustainable peace), our own proposals, that's what counts for us, to be able to speak freely in a country at peace'.⁵¹

The Citizen Security Act (*Ley Cuidadana de Seguridad*, Law 1453) was passed in Colombia in June 2011. A couple of clauses in the law (Articles 44 and 45) relate to social protest and make it a criminal offence to 'obstruct public roads affecting public order'. The Articles go on to define this in more detail, saying it is a criminal offence to permanently or temporarily obstruct the roads and infrastructure and cause a danger to human life, public health, food security, environment or obstruct the right to work of those not participating in the protest.⁵² It provides for a sentence of between 24 and 48 months and/or a significant fine. NGOs have expressed concerns that this violates the right to freedom of expression and assembly and could lead to people being criminalised for attending social protest marches.⁵³ In March 2014, Colombia co-sponsored UN Resolution 25/38 which expressed 'concern at the increasing criminalisation, in all parts of the world, of individuals and groups organizing or taking part in peaceful protests'. The UN emphasises that it is 'the primary responsibility of States... to promote and protect human rights, including rights that enabled civil society to operate, in particular fundamental freedoms, such as the freedoms of peaceful assembly, association, opinion and expression'.⁵⁴ It is therefore worrying that the Citizen Security Act contains clauses that could increase the criminalisation of social protest. Furthermore, the Ministry of Defence has also introduced a Bill (Law 091 of 2013)⁵⁵

which proposes the penalty of between three and five years in prison for the crime of obstruction of public roads under Article 353A. This law could have a chilling effect of silencing dissenters to government policy and restricting legitimate peaceful social protest and violating the right to freedom of expression and assembly.⁵⁶

A major disabling factor for those working on extractives, land restitution and victims' rights is the violence that they experience. The number of killings of human rights defenders has escalated year-on-year. The killings, serious injuries, threats and criminalisation of social protest restrict the possibilities for democratic engagement. The continuing operation of the military, economic and political structures of the paramilitaries and the lack of a ceasefire means that the Rule of Law fails to operate to protect the civilian population. There are also continued attacks on the civilian population on the part of the guerrilla. The strengthening of participative democracy and ensuring respect for human rights are two key ingredients needed to create enabling spaces for civil society.

International intervention to create enabling spaces for dialogue

The UK Embassy in Colombia has taken a variety of actions which have helped to increase the security of human rights defenders, for example by observing the trial of David Ravelo Crespo, a human rights defender criminalised for his work. The UK Embassy in Bogotá published an article on a 'Defender of the Month' as a way of supporting threatened defenders and presenting their work to a wider audience. The monitoring of emblematic cases by the UK Embassy, such as the case of Curvaradó mentioned earlier in this report, has been an important element in increasing protection and the political costs of killing defenders working on land rights. The Embassy have also raised a variety of cases of violence against defenders and against CSOs, and have accompanied organisations like CIJP to meetings with the National Protection Unit and the Attorney General's Office. These actions have resulted in additional protection measures being awarded to CIJP and the communities they accompany.

Cases of violence against communities have also been raised with the Colombian Government through the G24 human rights group (a group of embassies promoting human rights in Colombia). The UK Embassy have also participated in EU observation missions organised to visit certain projects, the most recent being a visit to the Humanitarian Space in Buenaventura. These actions help to reduce or suspend some of the factors that have a disabling effect on the work of defenders.

The intervention of the UN Verification Mission in Catatumbo during the protests helped to create a space for dialogue between the protesters and the Colombian Government. This action was supported by calls for dialogue from the international community, including the UK Embassy: '(the) difficult situation in Catatumbo needs to be resolved through dialogue and addressing social and economic challenges in the region'.⁵⁷ The level of concern also reached the UK parliament and questions were raised about the

⁴⁷ IACHR Hearing: Social Protest in Colombia, 31 October 2013.

⁴⁸ UN Office High Commissioner for Human Rights, Press Release: Oficina de la ONU para los Derechos Humanos espera que se llegue a acuerdos que garanticen los derechos humanos de la población del Catatumbo, Bogotá, 10 July 2013.

⁴⁹ Ibid

⁵⁰ Ibid

⁵¹ Ricardo Herrera, Coordinador Nacional Agrario. Original in Spanish: "...debemos desarrollar nuestra propia agenda, nuestras propias propuestas, y eso es lo que vale para nosotros, para poder hablar en un país en paz".

⁵² Proyecto de Ley 091 de 2013 Cámara, Ley de Seguridad Ciudadana, 11 September 2013.

⁵³ IACHR Hearing: Social Protest in Colombia, 31 October 2013.

⁵⁴ Summary of the Human Rights Council panel discussion on the importance of the promotion and protection of civil society space. Report of the Office of the United Nations High Commissioner for Human Rights, 26 June 2014, page 13.

⁵⁵ Proyecto de Ley 091 de 2013 Cámara, Ley de Seguridad Ciudadana, 11 September 2013.

⁵⁶ IACHR Hearing: Social Protest in Colombia, 31 October 2013.

⁵⁷ Twitter, 26 June 2013, emphasis added. <https://twitter.com/LindsayCAppleby/status/350067196204032000>

stigmatisation of protestors.⁵⁸ Several questions were also raised by Irish parliamentarians asking the Tánaiste and Minister for Foreign Affairs and Trade to make representations to the Colombian authorities and to raise the matter at the UN Human Rights Council: 'the military response to the peaceful protest of small farmers in north-eastern Colombia has resulted in the deaths of four persons to date and hundreds wounded'.⁵⁹ This level of international support helped to create an enabling environment for the promotion of dialogue between the government and the protestors.

Various Governments made important recommendations to Colombia during the UN Universal Periodic Review in April 2013, including the UK and Irish Governments. They recommended that Colombia should increase efforts to investigate and prosecute those responsible for threats and violence against human rights defenders, trade unionists, community leaders and journalists. The Irish Government made a further recommendation for the protection of women victims of forced displacement and to increase measures to prevent sexual violence, including ensuring that perpetrators of the crime are investigated and punished.

The tripartite model for helping to maintain enabling spaces for civil society works effectively in Colombia. This consists of dialogue between the Colombian Government and Civil Society Organisations in the presence of the UN and international representatives from the diplomatic community who monitor and observe the process.

Business, Human rights and participative democracy

In 2011 the UK and Colombia brought out a joint human rights statement in which important commitments were made on human rights and the security of human rights defenders. In addition, the UK and Colombia made commitments to ensure that the UN Guiding Principles on Business and Human Rights were implemented. The UK has been a staunch supporter of the development of business and human rights guidelines at the UN. They were also the first government to develop an Action Plan 'Good for Business', in line with the UN Guiding Principles on Business and Human Rights. In this Action Plan, the UK made significant commitments to regulate its economic activity in order to promote human rights, and it states unequivocally 'that agreements facilitating investment overseas by UK or EU companies ... do not undermine the host country's ability to either meet its international human rights obligations...'. When the Coalition Government entered office in 2010 they stated that human rights would not be downgraded to business.

According to the Comptroller General's Report, a major issue that threatens the possibility of victims recovering their land is the exclusionary nature of the Colombian Government's policies on trade and development. These policies are focussed on promoting 'mega-projects', which is likely to consolidate the land grabs and further consolidate and worsen land concentration and dispossession rather than offer a solution to the underlying problem.⁶⁰ Colombia has entered into a plethora of free trade agreements and investment treaties. These have been at the root of the protests in Colombia in 2013. Two of these are with the UK: a Bi-lateral Investment Treaty (BIT) and the multilateral EU Association Agreement with Colombia and Peru.

The UK ratifying a Bi-lateral Investment Treaty (BIT) with Colombia contradicts their policies on business and human rights, as set out in their 'Good for Business' Action Plan. This is because the agreement is vaguely written and could obstruct the Colombian Government

from regulating in favour of human rights due to the excessive protections the BIT offers to British investors in Colombia. There are clear arguments to suggest that BITs are dangerous for human rights protection, especially when they are implemented during an internal conflict or when a country is in transition from a conflict. In addition, where there has been a poor human rights record the reparation to the victims may be hampered by disproportionate investor protection. The very prospect of claims being filed against the Government for human rights improvements could create a 'regulatory chill' and – in this case – hold Colombia back from regulating in the public interest for fear of litigation.

Case Study 6: Suspending mining concessions on indigenous land

Magistrates have started to encounter mining concessions on territory belonging to victims of the conflict in Colombia. One such case is that of the indigenous Emberá Katío resguardo in Alto Andágueda, Chocó. The magistrate in the Land Restitution Tribunal ruled in favour of protecting the territorial rights of 50,000 hectares for over 7,000 Emberá Katío. These had been granted by the State to multinational corporations. The Court order included suspending the mining concessions granted in their territory (resguardo); this included to British registered Anglo-Gold Ashanti, and to halt the issuing of any further concessions requested by other companies, including the British registered company AngloAmerican. The magistrate also ordered that in the future the Emberá Katío's fundamental rights to free prior and informed consent in their territory must be upheld. In this case, the territory belonging to the Emberá Katío had a multitude of concessions requested and granted which amounted over 80 per cent of their territory.

Colombia has a very poor human rights record. Despite an ongoing conflict, the country has introduced transitional justice and land restitution policies. The country needs to be able to regulate in favour of the civilian population if it is to be able to bring about peace. Having its hands tied in terms of making changes in policies and its regulatory framework will not help to obtain a sustainable peace with social justice. Instead of promoting policy changes to improve human rights, this BIT could obstruct Colombia's ability to promote policies that achieve improvements in human rights. The UK Government has stated that it will not downgrade human rights to business. It is therefore essential to implement human rights monitoring of the UK-Colombia BIT in order to ensure that human rights impacts are monitored and mitigated and that it does not close down the space for participative democracy for some of the most marginalised groups in Colombia.



Victims organisations talking with local authorities in San Onofre, Sucre

⁵⁸ Catatumbo raised by Rob Flello MP in House of Commons Debate, 24 June 2013.

⁵⁹ Written Question, Department of Foreign Affairs and Trade, Human Rights Issues, 9 July 2013.

⁶⁰ Contraloría General de la República, Informe de Actuación Especial (ACES): Instituto Colombiano de Desarrollo Rural – INCODER 'Actuación Especial Sobre la Acumulación Irregular de Predios Baldíos en la Altillanura Colombiana', Page 229.

Recommendations

Recommendations to the UK Government:

- Implement an annual monitoring mechanism that examines the impacts on human rights, land restitution and the peace agreement (if one is agreed) of the UK-Colombia Bi-lateral Investment Treaty. The results should be recorded in the FCO Annual Human Rights Report. In this way both human rights and business commitments are brought together in one monitoring mechanism.
- Ensure that the UK Embassy continues to monitor specific emblematic cases on land rights and as part of the G24 and EU they encourage joint observational visits to emblematic cases, regions and organisations.

Recommendations to the Colombian Government:

- Instigate a reform of the Police Force and ensure that police units which have acted in collusion with paramilitaries and occupiers of 'bad faith' are replaced and prosecuted in order that the Rule of Law is able to function in rural areas.
- Ensure that occupiers of 'bad faith' are evicted and prosecuted in order to help create a more secure environment for land restitution claimants.
- Strengthen the capacity of the Human Rights Unit in the Attorney General's Office to move forward on the investigation and prosecution of those responsible for crimes against human rights defenders, including land restitution leaders and claimants.
- Improve the capacity of the National Protection Unit to respond immediately to requests for risk analysis and rapid delivery of allocated protection measures that incorporate a gender/ differentiated approach.

Recommendations to the European Union:

- Ensure it continues to fund CSOs/NGOs working on justice, democracy and human rights and support their participation in the construction of peace.
- Encourage Colombia to uphold constitutional and international commitments to guarantee the right of civil society to fulfil its functions and influence policy and governance from a critical standpoint.
- Ensure the safety and protection of human rights defenders working on land issues by fully implementing the European Guidelines on human rights defenders.

ABColumbia is a group of leading UK and Irish organisations with programmes in Colombia. We work on questions of human rights, development and forced displacement. ABColumbia's members are CAFOD, Christian Aid (UK and Ireland), Oxfam GB, SCIAF, and Trócaire. Amnesty International and Peace Brigades International are observer members. ABColumbia develops the collective advocacy work of members. Our members work with around 100 partner organisations in Colombia, most of them with little access to decision-making forums nationally or internationally.

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