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HUMAN RIGHTS UPDATE

November - December 2020

PBI's quarterly human rights update calls attention to critical security situations affecting the persons, organisations and communities, accompanied by Peace Brigades International (PBI), whose work in the defence of human rights results in threats to their personal safety and to the work itself. This publication is of limited distribution and cannot be reproduced without prior authorisation.

Bogotá, 18 December 2020

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SPECIAL MENTION: TUTELA (WRIT OF PROTECTION OF CONSTITUTIONAL RIGHTS) ATTACKS THE PEACE COMMUNITY OF SAN JOSÉ DE APARTADÓ'S FREEDOM OF EXPRESSION

On 21 August, the Constitutional Court issued ruling T-324/20, ratifying a tutela presented by Colonel Carlos Alberto Padilla Cepeda, commander of the 17th Brigade of the National Army, against the Peace Community of San José de Apartadó.¹ **The tutela alleged a violation of the 17th Brigade's rights to honor and good name** based on complaints that appear in Peace Community communications on social media, which alleged a tie between army members and paramilitaries.² Regardless of the fact that the Constitutional Court ruling recognizes the Peace Community's right to freedom of expression, in the end it ratified the ruling from the 2nd Court (Jueza 2^a Promiscua) of Apartadó in favor of the 17th Brigade.

The ruling does not require a rectification of the communications as it considers that the Community mistrust in the 17th Brigade is understandable given **past ties between State Security Forces and illegal groups that have been recognized by judicial rulings, however, it does limit the possibility of publishing this type of communications in the future.**³ Last year, **the Supreme Court convicted several members of this same Brigade for their responsibility in the 21 February 2005 massacre of six Peace Community members**, including three minors, an action that was carried out together with members of the AUC paramilitary structure.³

It is of great concern that the **17th Brigade has used a tutela to silence and limit the Peace Community's right to freedom of expression** in the face of multiple risks due to the presence of armed actors in their territory. Over 24 national human rights organizations, including CCAJAR and the Commis-

sion of Justice and Peace, have expressed their concern in a public communication,⁵ and a letter sent to the Constitutional Court Justices by Father Javier Giraldo,⁶ a historic supporter of the Peace Community of San José de Apartadó, emphasizing the risks that the ruling generates for the community.

COVID-19'S IMPACT ON DEFENDING THE ENVIRONMENT

2020 has been a year marked by the COVID-19 pandemic. Human rights defenders have faced the virus' socioeconomic implications in their communities, while limitations on freedom of movement and participation in social protests have left them even more vulnerable to threats. **In turn, attempts have been made to use the health crisis to weaken the right to prior consultation.** A governmental directive was issued in March, favoring companies by giving preference to virtual consultations, disregarding the fact that most of the rural population does not have internet access and that this limits their participation in approving or rejecting industrial, mining, and extractive projects that would affect them.⁷

2020 has been the most violent year in Colombia since the Peace Agreement's 2016 signature. When commemorating the 4th anniversary of this historic moment, civil society could only express its concern due to government slowness and breaches in the Agreement's implementation. In November, Defendamos la Paz (Let's Defend Peace), a platform made up by a broad coalition of diverse and representative sectors of Colombian society, sent a letter to the UN Security Council highlighting the lack of guarantees for those involved in implementation in the regions and the lack of Agreement implementation.⁸ The first point on comprehensive rural reform – which is crucial for Afro-descendant and indigenous populations – has the lowest implementation rates, with only 4% of the components complete and 33% that have not initiated implementation, according to a Kroc Institute report at the end of 2019.⁹

This year has also been marked by an increase in massacres, which are ongoing in regions with a presence of illegal armed actors and an absence of State civil institutions. This is in parallel to the murder of human rights defenders and community leaders, an increase in the criminal prosecution of environmental defenders, and ongoing threats, attacks, and accusations.¹⁰ **In 2019, Colombia topped the international list with the highest number of murdered environmental defenders.** This is according to a study from the British NGO, Global Witness,¹¹ which reported that of 212 land and environmental defenders murdered around the world, **64 were murdered in Colombia, including 10 women defenders.**¹² **Colombia is the second country in Latin America, after Brazil, for social-environmental conflicts, with 129 cases according to the Environmental Justice Atlas.**¹³ In a 15 December press release, the United Nations High Commissioner for Human Rights, Michelle Bachelet, condemned the increase of violence carried out by armed actors against Colombia's rural population. In 2020 UN Human Rights has documented 66 massacres that led to the murder of 255 individuals. Bachelet called on the Colombian State to take more effective measures to protect the population –which also suffers environmental impacts from the extractive industry– against the growing wave of violence.¹⁴

The attacks are not only physical: **environmental defenders are victims of arbitrary criminal prosecution, threats, harassment, and accusations due to their work as defenders in the territory,**¹⁵ **in addition to being victims of forced displacement.** Access to land has been a historic cause of Colombia's armed conflict. On 3 December, Rutas del Conflicto, with support from the Committee in Solidarity with Political Prisoners (CSPP, in Spanish) and others, delivered a documentary series to the Truth Commission and JEP, which tells the story of land grabbing in Colombia: "A model has been established in Colombia which has turned the territories of peasant and ethnic communities, victims of the armed conflict, into extensive areas for large-scale agro-industrial, forest, oil, mining, and infrastructure projects."¹⁶

The worrisome increase in attacks against environmental defenders is **amid a context of conflict to control the use and exploitation of resources in regions with important biodiversity.** Most of these areas are the ancestral territories of indigenous and Afro-descendant peoples, communities that demand their right to be consulted, protected, and to exercise their right over land use. Colombia has yet to ratify the Escazú Agreement, and continues postponing Congressional debates on this issue,¹⁷ plac-

ing economic interests in front of the defense of life and a protection of the environment. This document highlights four cases that we accompany, directly and indirectly, which reflect these concerning trends.

DEFENSE OF THE TERRITORY AND MALICIOUS CRIMINAL PROSECUTION IN CASANARE

In the emblematic case from San Luis de Palenque, a municipality in the department of Casanare, eight environmental defenders¹⁸ were detained and charged in November of 2018 for actions against a hydrocarbon megaproject operated by the Canadian company Frontera Energy.

Since the end of 2000, the Community Action Councils (JAC, in Spanish) in municipalities of Casanare **affected by Frontera Energy's hydrocarbon megaproject "Cubiro Exploratory Block" began to report environmental impacts and pollution due to the company's presence.** In 2017 and 2018, the population organized several peaceful protests to demand their rights. In response, in 2018, **the company filed a complaint with the National Prosecutor General's Office, while at the same time promoting a smear campaign against the efforts of human rights and environmental defenders, causing a rupture of the social fabric among the affected communities.** The eight accused individuals, spokespeople in the process to demand their rights, were recognized by the community for their work in the defense of human rights and for their social leadership, nevertheless the local authorities accused them of being "criminals."¹⁹ On 27 November 2018, there was an operation to arrest the eight leaders, executed by 200 members of the Army and the National Police. The arrest occurred during United Nations Special Rapporteur on the situation of human rights defenders, Michel Forst's visit to Colombia.

That is when the judicial process began for the crimes of criminal conspiracy –the eight were accused of being an "organized criminal group" as they are members of the same family– and of committing acts of violence against public employees and obstructing roads, among other charges.²⁰ This meant that the eight leaders faced preventive arrest, some at prison facilities and others under house arrest, for almost two years.

In 2017 the company changed its corporate name, due to bankruptcy, however, under the name Pacific Rubiales it faced multiple investigations and criminal complaints for ties to diverse human rights violations and the malicious criminal prosecution of environmental defenders.²¹ It is very concerning that just days before the operation was carried out to arrest the leaders, Frontera Energy signed an agreement with the Army's 16th Brigade, the Police Revolving Fund, and the Prosecutor General's Office. Through this agreement the Army acquired the commitment to provide special protection for the multinational's areas of interest.²²

In 2019, the Committee in Solidarity with Political Prisoners (CSPP) and the Social Corporation for Community Advisory and Training Services (COSPACC), both are organizations accompanied by PBI Colombia, presented the case of the San Luis de Palenque defenders' arrest to the United Nations Working Group on Arbitrary Detentions. Additionally, the case was included in Special Rapporteur Michel Forst's report to the United Nations Human Rights Council in Geneva, highlighting the leaders' criminalization.²³ The San Luis de Palenque case was also included in a report presented to an Inter-American Commission on Human Rights (IACHR) hearing on the malicious criminal prosecution of environmental defenders.²⁴

In August and September 2020, **the accused individuals were finally released when a Supervisory Judge in Preliminary Proceedings (Juez de Control de Garantías) of Yopal ordered the arrest warrants' termination.**²⁵ This is a major achievement and a relief for those involved, as it recognizes that they do not represent a danger to society and will not obstruct justice. Nevertheless, the process against the eight leaders and environmental defenders

continues, and there is concern about the possibility of procedural fraud, accusations against them, and other challenges.

THE EMBERA PEOPLES OF JIGUAMIANDÓ DEFEND THEIR ANCESTRAL TERRITORY

The Bajo Atrato region **is emblematic in relation to dispossession, strong company control, and serious environmental impacts.**²⁶ The banana, lumber, palm oil, and mining industries have been investigated and, in some cases, tried for collaboration with paramilitary groups.²⁷ Today, economic and extractive interests continue to pressure for an appropriation of the region's ethnic territories. In response, the communities continue to resist in their territories, amid constant attacks.

In 2009, the communities of Jiguamiandó organized in resistance, in particular the So Bia Drua Humanitarian and Environmental Reservation (or CAMERUJ),²⁸ which was favored in a Constitutional Court ruling that suspended the Muriel Mining Corporation's mining activities that had started on the Jaikatuma sacred mountain.²⁹ **Nevertheless, mining companies continue to show interest in the Chocó section of the Bajo Atrato. Three transnational companies hold valid mining titles in the Bajo Atrato, with a total of 20,000 hectares:** Muriel Mining Corporation, Anglogold Ashanti, and Exploraciones de Chocó.³⁰ In August of last year, JyP reported that a representative, apparently from Muriel Mining Corporation, met with the communities from the Reservation to inform them that the company had permission to begin mining activities and pressured them, inviting the communities to leave their land.³¹

In this context, which prioritizes resource extraction over the protection of land, common resources, and territories that are protected due to their cultural value, those who oppose these extraction projects face constant threats. Since July, **12 Reservation leaders are threatened by the paramilitary group that controls the area, the Gaitanista Self-defense Forces of Colombia (AGC, in Spanish),** due to community support for the eradication of 150 hectares of illicit use crops in their territory. For several months, the leaders Argemiro Bailarín and Luis Singui have been receiving serious direct threats due to their opposition to AGC control.³²

In the Curbaradó and Jiguamiandó river basins, **October saw a propaganda campaign from the AGC with graffiti and pamphlets.**³³ **This act of intimidation, as well as the forced meetings,**³⁴ **check points,**³⁵ **and followings**³⁶ suffered by the communities show the increasing social control that is being exercised by this group, born out of the paramilitary structure in the region, without any real advances in its dismantling.³⁷

The presence of illegal armed actors puts at risk the life of land defenders who oppose exploitation, deforestation, and illegal crops. Meanwhile, the CAMERUJ indigenous reservation continues calling on the Colombian Government to assume United Nations Security Council Resolution 2352 to define a global ceasefire, so that they can remain in their territories and continue defending the land and life itself.³⁸

JANI SILVA, THREATENED FOR DEFENDING THE RIGHT TO A HEALTHY ENVIRONMENT

Putumayo is a doorway to the Colombian Amazon. It is a department historically hard hit by the armed conflict's violence and disputes between the different armed actors **that seek to control natural resources and drug trafficking routes through the area.** It is a territory with singular ecosystems and important biodiversity, but this is being threatened by oil operations: which first began in 1942, carried out by Texaco Petroleum Company.³⁹

Amid this scenario, a peasant resistance movement was born and in 2000 it achieved the creation of the La Perla Amazónica Peasant Reserve Zone (ZRC/ZRCPA, in Spanish), with the aim of protecting the communities affected by oil operations and attacks from illegal armed actors. **Leader Jani Silva, who is currently president of the Association for Comprehensive Sustainable Development Perla Amazónica (ADISPA or Asociación de Desarrollo Integral Sostenible Perla Amazónica in Spanish) that represents the ZRCPA, has received repeated threats as she continues to demand the right of her community to live in a healthy environment,** for reporting water and soil pollution, and for flagging the non-fulfillment of agreements that would purportedly stop the company's expansion in the ZRC.

Due to these threats, **she was displaced from her farm in Bajo Cuembi in the ZRC and she now lives in the municipality of Puerto Asís. The displacement, as well as the threats, were presented to the Inter-American Commission on Human Rights (IACHR)** with support from the Commission of Justice and Peace (JyP) and the IACHR granted precautionary measures to Jani Silva and two other ADISPA leaders in January 2018.⁴⁰ Nevertheless, **her condition as a displaced person was not recognized by the Colombian State.** She was notified of this by the Prosecutor General's Office in August of this year.⁴¹

Amid the COVID-19 pandemic, there have been continued reports of harassment and threats. **In May 2020, when Semana magazine revealed the details on illegal intelligence operations carried out by the Army, Jani Silva was on the list of defenders who are victims of wiretapping and profiling.**⁴² She knows that behind these threats is her fight to defend their rights and the right of the peasant communities "to live in a healthy environment," opposing a multinational's economic interests: "We began denouncing environmental issues related to the oil company and the threats began."⁴³ A few months later, **in July, a plan to murder the leader was uncovered⁴⁴ and due to her high risk situation during the second half of this year, her case has been highlighted in an Amnesty International campaign.**⁴⁵ In spite of the complaints and the requests for protection and guarantees so that she can return to her territory, there has been no state response. In spite of her high risk level, on 25 November she was notified by mail of the National Protection Unit's (UNP, in Spanish) decision to pull the material protection measures that had been previously granted to the leader,⁴⁶ an action that further limits her work to defend the environment.

MULTIPLE THREATS AGAINST ENVIRONMENTAL DEFENDERS IN THE MAGDALENA MEDIO REGION

Between 3 and 4 November 2020, **the lives of 18 environmental defenders were threatened by means of a pamphlet⁴⁷ from the Magdalena Medio Bloc of the Águilas Negras in Puerto Wilches and Barrancabermeja.** The leaders were given 24 hours to leave the area. In September, these same people were threatened using a pasquinade⁴⁸ that appeared in Campo Capote, Santander. A week later, in October, environmentalist Luis González suffered an attempted murder with live ammunition.⁴⁹ The threatened environmental leaders' political and legal accompaniment was taken on by the Regional Corporation for the Defence of Human Rights (CREDHOS), an organization accompanied by PBI.⁵⁰

The threats are against recognized leaders in the Magdalena Medio region, due to their environmental work and the complaints they have filed because of the extractive industry's impacts and incidents of corruption. The Magdalena Medio region is mainly rural, and very rich in raw materials, minerals, such as gold and coal and, in particular, oil.

Currently, **hydrocarbon production is generating major challenges in Colombia⁵¹ as its reserves become depleted.** To reactivate the sector, preparations are underway to regulate and implement the exploitation of non-conventional deposits known as fracking. In 2014, then President Juan Manuel Santos, approved the use of this technique, nevertheless, in 2018 the Council of State ruled to suspend fracking in Colombia⁵² and only pilot projects will be carried out to determine its environmental impacts and viability. The regulation was defined in February of this year by means of Decree 328⁵³ on Comprehensive Research Pilot Projects (or PPII in Spanish).

In September 2020 the process began to select the companies and to grant contracts, this process will conclude this year and pilots will begin in January 2021. The first pilot plan will be carried out in the Magdalena Medio region.⁵⁴ ECOPETROL, in alliance with ExxonMobil, ConocoPhillips, PAREX, and the mining company Drummond, expressed their interest since, according to the agreement from the National Hydrocarbons Agency (ANH, in Spanish), they will be allowed to execute two projects, each with a maximum of two wells, in the Magdalena Medio area (VMM) and Cesar Ranchería (CR). These companies have some of the nine valid contracts that were previously signed with the ANH for fracking exploration.⁵⁵

Environmentalists have indicated that fracking will cause serious social and environmental problems in Santander and Cesar, based on experiences in other regions of the world, where

it has caused illnesses, damage to ecosystems, and a pollution of water sources.⁵⁶ “It is not viable for the communities,” stated environmentalist Óscar Sampayo in February 2019, who is one of the leaders threatened in the Águilas Negras pamphlet.

In this context, environmental organizations in the Magdalena Medio denounced that since 2018 environmental and human rights defenders have received various threats in their territories.⁵⁷ In August the human rights organization CREDHOS reported a criminal plan against the organization. The plan appears to have been ordered by a company to silence complaints filed by CREDHOS on the serious environmental impacts in the Magdalena Medio.⁵⁸

Also, environmentalist Yesid Blanco, who was also mentioned in the pamphlet, is a recognized pediatrician, and who investigated the presence of mercury in the Ciénaga de San Silvestre. He has received threats since 2016 due to his work and his only option was to leave the country in 2019 after discovering that, allegedly, two hitmen had been hired to kill him.⁵⁹

The recent threats exemplify the armed conflict’s intensification in the region, which CREDHOS documented in its report “El silencio armado: Pactos y disputas en el Magdalena Medio.”⁶⁰ Also, the threats occur at a time when civil society will participate in decision-making processes on issues that will affect the interests of extractive companies with important operations in the region, such as the fracking pilot projects (PPII), the land use plan (POT, in Spanish) for the next 12 years in relation to public policies, and environmental zoning for environmentally protected areas.

PETITIONS

BASED ON THE PRIOR, PBI REQUESTS THAT THE INTERNATIONAL COMMUNITY:

- Urge the Colombian State **to fulfill its responsibility in the prevention and protection of activists and human rights, peace, and environmental defenders and ensure the right to prior, free, and informed consultations with ethnic populations;** for that reason it is essential to advance in the comprehensive implementation of the measures established in the 2016 Peace Agreement that generate “guarantees” for the right to defend human rights, in addition to point 1 of the Agreement on rural reform.
- Demand that the Colombia State **advance in a true dismantling of the groups that have arisen out of the paramilitary structure and clarifying potential ties with extractive companies;** for that reason it is a priority that the National Commission on Security Guarantees (CNGS, in Spanish) and the Special Investigation Unit (UEI, in Spanish) of the National Prosecutor General’s Office demonstrate advances and results in the investigation and prosecution of material and intellectual authors, as the only true guarantee of non-repetition.
- **Call for a ratification of the Escazú Agreement** in Colombia as an example of political will to acknowledge and protect those who defend the environment, today the most vulnerable collective.
- Urge the Colombian Government to maximize its **political and financial support for the mechanisms of the Comprehensive System for Truth, Justice, Reparation, and Non-Repetition (SIVJNR, in Spanish); also, urge the SIVJNR to advance in its respective mandates to ensure victims’ rights,** a central focus of the Peace Agreement, and for Truth, Justice, Reparation, and Guarantees of Non-Repetition. In relation to the aforementioned cases, investigative advances are a priority in the context of JEP case 004, on the Urabá region, as well as ensuring guarantees for victims and their representatives who have gone before the System’s different mechanisms and who today face serious risks.
- Urge the Colombian State to implement the measures included in Supreme Court Ruling STC7641-2020⁶¹ from 22 September 2020 on the regulation of social protests **to ensure a full respect for the rights to freedom of expression and peaceful protest** and avoid future cases of police abuse, arbitrary detentions, and stigmatization.

ALSO, PBI RESPECTFULLY REQUESTS THAT THE INTERNATIONAL COMMUNITY:

- Monitor the cases and **demonstrate its concern for the aforementioned leaders** in dialogue spaces with the Colombian State. And, encourage the **National Protection Unit to grant the necessary measures that were agreed upon** with beneficiaries. Also, **monitor -and attend possible hearings- in the cases of criminalized defenders and environmental leaders**, promoting a full and permanent respect for due process and judicial independence.
- Advance in **the definition of international due diligence standards for companies**, that ensure genuine and transparent monitoring mechanisms and potential repercussions in the case of human rights violations. For this, it is essential that affected individuals and communities have access to dialogue, complaint, and redress mechanisms.
- **Strengthen state and multilateral mechanisms and directives** on human rights defenders (such as the EU Guidelines) and monitor the Colombian State's fulfillment of ratified treaties and commitments assumed in international scenarios, such as the UN Human Rights Council and the OEA's Inter-American Human Rights System.

PBI appreciates your continued support for our work to protect human rights defenders and displaced communities.
PBI Colombia



Footnote

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- 7 El Espectador: [Indígenas rechazan consultas previas virtuales impulsados por el gobierno en medio de pandemia](#), 15 April 2020
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- 23 OHCHR: [Report of the Special Rapporteur on the situation of human rights defenders](#), 26 December 2019
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- 25 Martha Cifuentes Noticias : [Líderes sociales de San Luis de Palenque, Casanare, serán libres, pese a la Fiscalía, Frontera Energy y Ecopetrol](#), 16 September 2020
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- 35 JyP: [Plan de asesinatos de líderes Emberá de CAMERUJ por parte de paramilitares](#), 31 October 2020
- 36 JyP: [AGC en retenes realizan seguimiento a líderes indígenas amenazados e integrantes de J&P](#), 10 November 2020
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- 48 Semana Sostenible: [Defensores ambientales del Magdalena Medio denuncian amenazas](#), 1 October 2020.
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