



## Global Britain and South America Inquiry

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# WRITTEN EVIDENCE SUBMITTED BY THE COLOMBIAN CARAVANA UK LAWYERS GROUP

### Executive summary

- Despite the signing of a peace agreement between the FARC-EP and the Colombian State and its ongoing implementation, the enduring presence of unlawful armed groups, the increased risks faced by human rights lawyers and defenders, and the inability of the State to address such problems through a diverse political strategy that might facilitate the transition to peace pose a serious obstacle to the realisation of the basic principles that underpin respect for human rights and the Rule of Law in Colombia.
- A Comprehensive System for Truth, Justice, Reparation and Non-Repetition is being activated within the framework of the peace process, however, access to justice and the full implementation of transitional justice measures in Colombia are riddled with practical and technical obstacles.
- Human rights lawyers and defenders continue to face high levels of risk to their lives, livelihoods, and those of their families. The State is unable to provide adequate protection and safety measures to ensure that legal professionals (whether civil servants, members of the judiciary, or independent legal practitioners) in Colombia are able carry out their work without undue interference, harassment, stigmatisation, threat, or attack.
- Therefore, the UK Government must demand that the Colombian Government ensure that international standards for human rights and Rule of Law are fully respected and such protections where relevant are strengthened, by supporting accountability efforts in the country and the fundamental role of the legal profession in this respect.

### Introduction

1. The Colombian Caravana is a UK-based charity that aims to promote access to justice and protection of human rights in Colombia through the strengthening of the Rule of Law, and in collaboration with Colombian human rights lawyers and defenders who are at risk. We have been organising biennial international delegations of legal professionals to Colombia since 2008 and we returned from our most recent visit in September 2018.
2. We welcome the opportunity to contribute to this inquiry to highlight challenges that Colombia is currently facing related to the peace process and respect for the Rule of Law and human rights.
3. Based on our relationships with human right lawyers in Colombia, we assert the peace agreement should be fully implemented and that domestic accountability efforts should be sustained and backed by the international community, and hence by the UK Government.

### The Peace Process

4. At the end of November 2016, after four years of peace talks in Havana, the Colombian government and the largest guerrilla group in the country, the Revolutionary Armed Forces of Colombia (*Fuerzas Armadas Revolucionarias de Colombia-Ejercito Popular*), hereafter



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referred to as the FARC) signed the Peace Accord that put an end to over half a century of internal conflict between the state and the FARC which left nearly nine million victims.<sup>1</sup> The agreement came into fruition under the Presidency of Juan Manuel Santos Calderón, and led to the demobilisation and disarmament of the FARC. The United Nations' (UN) monitoring of demobilisation was crucial – two UN missions were set up to verify the ceasefire, the reintegration of former FARC fighters and implementation safety guarantees.

5. The Peace Accord is as an opportunity to build a long-lasting sustainable peace in Colombia, but its implementation is riddled with obstacles of various natures. It is of utmost importance that the agreements reached in Havana are implemented, that victims can exercise their rights to truth, justice and reparations, and that all parties to the agreement provide assurances of non-repetition.
6. The demobilisation of the FARC has led to a power vacuum in a number of areas previously under their control. A lack of effective State presence (beyond simply further armed actors), has left these often isolated areas susceptible to the incursion of neo-paramilitary groups, criminal organisations and other revolutionary armed groups such as the National Liberation Army (ELN).<sup>2</sup>
7. Further, many of these areas see activities such as illegal mining and illegal crop cultivation, It must be noted that many of the rural population in these areas continue to be heavily affected by the continuing conflict and violence, and that there is very limited infrastructure or state presence (e.g. for basic healthcare, education, safe transport) that could create possibility for sustainable livelihoods
8. During our recent delegation to Colombia, the Caravana met with different victims of forced displacement who had not been able to return to their land due to the enduring presence of the same actors that displaced them in their territory, which poses their lives and safety at risk. Many victims of displacement lived positive and sustainable lives working their lands, but due to violence have had no other choice but to move to cities where they are not able to apply their land management and cultivation skills, thus they now live in poverty, with many of them living in extreme poverty.<sup>3</sup>
9. Levels of violence against human rights lawyers, social leaders, and human rights defenders have consistently increased since the signing of the Peace Accord, and impunity for crimes against them remains widespread. There is evidence of widespread failure by State bodies to act with due diligence in relation to the State's duty to investigate and prosecute all forms of intimidation, harassment and attacks against these individuals, so as to provide an effective remedy to lawyers, leaders and defenders who have been victimised due to their work. Without the active involvement of legal professionals and community leaders in the transitional justice process and the search for truth, the peace process is at risk. In addition, threats, harassment and stigmatisation by public officials against professionals – including lawyers within the Special Jurisdiction for Peace – and their families continue to pose an impediment to their work<sup>4</sup>.

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<sup>1</sup> <https://www.unidadvictimas.gov.co/es/registro-unico-de-victimas-ruv/37394>

<sup>2</sup> <http://www.hchr.org.co/documentoseinformes/informes/altocomisionado/informe-anual-2017.pdf>

<sup>3</sup> <http://www.oidhaco.org/uploaded/content/article/1522593901.pdf>

<sup>4</sup> <http://www.colombiancaravana.org.uk/wp-content/uploads/2017/10/Colombian-Caravana-Individual-Submission-to-the-UPR-of-Colombia-Oct-2017.pdf>



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### The Special Jurisdiction for Peace and the Truth Commission

10. The Special Jurisdiction for Peace (JEP) is the transitional justice component of the Comprehensive System for Truth, Justice, Reparation and Non-Repitition, created under point 5 of the Peace Accord.
11. The JEP's mandate includes the administration of transitional justice for crimes committed in the context of the armed conflict until 1 December 2016. The JEP has jurisdiction over the "most serious and representative crimes."<sup>5</sup> This includes crimes committed by those directly and indirectly involved in the armed conflict, in the context and by reason of the same. Human rights lawyers with whom the Caravana spoke during its recent visit to Colombia (Sept 2018) mentioned the challenges posed by the establishment of the exclusive jurisdiction of the JEP: cases that were in the last stages of the ordinary judicial process have been transferred to the special jurisdiction with the result that they had to be re-initiated ex novo.<sup>6</sup> There are concerns that such transfer of jurisdiction may result in continued impunity for crimes which were at the point of being accounted for, which thus could restrict access to justice for victims rather than strengthen it.
12. Another key component of the Comprehensive System is the Truth Commission. The goals of the Commission are to contribute to the elucidation of events during the conflict, to promote and contribute to the recognition of victims and enhance peaceful coexistence in affected territories. The Commission is therefore charged with investigating and declaring serious human rights violations and infringements of International Humanitarian Law that took place during the conflict.
13. Despite the importance of the JEP and the Truth Commission to guarantee the rights of the victims to truth, justice and reparations, and measures of non-repetition, new legislation enacted after the Peace Accord modifies their foundational agreement in the Peace Accord posing new risks, some of which are summarised below:
  - i. Lawyers and judges in the JEP and their families have faced threats due to their involvement in the proceedings.<sup>7</sup>
  - ii. Domestic legislation that was passed after the signing of the Peace Accord restricts the definition of command responsibility for members of the public forces to "effective control of respective conduct of the subordinate" contrary to, for example, Article 28 of the Rome Statute, to which Colombia is a State party, which requires the commander to exercise "effective control of the forces under responsibility."<sup>8</sup>
  - iii. The wording of the Peace Accord clearly introduces a prioritisation criterion for the prosecution of the "most serious and representative" crimes; it is unclear whether non-prioritised cases, that is those falling out of the category of "most serious and representative cases," will be abandoned.<sup>9</sup>

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<sup>5</sup> <https://www.jep.gov.co/Paginas/JEP/Jurisdiccion-Especial-para-la-Paz.aspx>

<sup>6</sup> This means that the cases will have to be tried again before the JEP, initiating the judicial process from the beginning.

<sup>7</sup> <http://www.oidhaco.org/uploaded/content/article/1522593901.pdf>

<sup>8</sup> <http://www.colombiancaravana.org.uk/wp-content/uploads/2017/12/9JuneMFTAmicus..pdf>

<sup>9</sup> <http://www.oidhaco.org/uploaded/content/article/1522593901.pdf>



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- iv. The legislation regarding JEP's procedures was amended following a proposal of the *Centro Democrático* party, in June 2018. Recently elected President Iván Duque is a member of The *Centro Democrático*.
  - o One amendment concerned a limitation of the JEP's competence in cases where the defendant's extradition has been requested.<sup>10</sup> In these cases, the JEP first needs to be able determine the date when the alleged crime was committed to assess whether it is the competent institution. The JEP has exclusive competence only when the crime was committed before 1 December 2016, but not for any allegations of subsequent crimes. However, the JEP will be precluded from gathering evidence to assert whether an allegation falls into the time period for which it is competent or not.<sup>11</sup>
  - o A second amendment to the JEP's procedural rules granted preferential treatment to members of the armed, security and police forces. Military officers of the State will enjoy a "special and differential" procedure, which includes trial by a special chamber within the JEP with newly appointed magistrates. These changes have caused the suspension of many trials, while the applicable process is determined.<sup>12</sup>
- v. A similar attempt was made to limit the institutional powers of the mechanisms provided for in the Accord by congress members of *Centro Democrático* who introduced a proposal seeking to limit the Truth Commission's power to access confidential material.<sup>13</sup> Although the proposal was withdrawn in October 2018, it shows the willingness of political actors to hamper the work of the Comprehensive System for Truth, Justice, Reparation and Non-Repetition.

### Human rights defenders and legal professionals

14. Since the signing of the Peace Accord, attacks against lawyers and human rights defenders (HRDs) have escalated and society has become further polarised, leading to increasing stigmatisation of legal professionals. Colombia's State Ombudsman has stated that one HRD is killed every three days. State-provided protection measures are often inadequate to protect human rights lawyers at risk, making it increasingly difficult for them to work with their clients. Colombia is one of the most dangerous countries in the world for human rights lawyers and human rights defenders.
15. During our recent delegation, human rights lawyers mentioned that there has been a change of pattern in the attacks perpetrated against them and social leaders. While previously threats used to precede any attempts on the physical integrity and life of targeted lawyers, social leaders or human rights defenders, the past two years has seen murders carried out without prior warning.
16. The National Protection Unit provides protection schemes to human rights defenders and lawyers at risk. However, we have received numerous reports of the inadequacy and shortcomings of the protection measures provided to protect their lives. The measures included in the schemes do not consider the context in which the lawyers work, for example,

<sup>10</sup> <http://www.colombiancaravana.org.uk/wp-content/uploads/2018/06/Peace-Accords-May-2018-Eng.pdf>

<sup>11</sup> <https://colombia2020.elespectador.com/jep/los-cambios-la-jep-que-paso-el-congreso>

<sup>12</sup> <https://colombia2020.elespectador.com/jep/los-cambios-la-jep-que-paso-el-congreso>

<sup>13</sup> <http://www.wradio.com.co/noticias/actualidad/retiran-proyecto-que-restringia-a-comision-de-la-verdad-acceder-a-informacion-privilegiada/20181023/nota/3815618.aspx>



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by providing a mobile phone and a bulletproof vest to defenders that work in areas where there is no phone reception, or in a climate in which wearing a bulletproof jacket is simply not sustainable. Also, concerns have been raised with regards to the bodyguards assigned to protect them, as there are allegations that some individuals may act as bodyguards in order to carry out surveillance of the work of lawyers and human rights defenders, thus putting them at further risk.

17. Lawyers and defenders often complain that these protection measures are underpinned by a military approach to personal safety and security, while they report that the main problem is one of political culture. Rather than heavy protection schemes, this requires a change in the public narrative and perception of human rights defenders by the ceasing of the stigmatisation of lawyers and human rights defenders by, in particular, public officials, military actors and politicians or representatives of State institutions.
18. High profile individuals are implicated in this dangerous culture of stigmatisation. Former President of Colombia and current senator Álvaro Uribe Vélez, accused lawyer Daniel Prado Albarracín of being a member of a guerrilla group in a public video.<sup>14</sup> Mr Prado, a lawyer with the Colombian NGO Inter-Church Commission for Justice and Peace, represents a number of victims in the emblematic case of *Los Doce Apóstoles* (Twelve Apostles). In this case, Santiago Uribe Vélez, the brother Álvaro Uribe Vélez, has been accused of co-founding a paramilitary group called “Twelve Apostles” and allegedly responsible for a number of crimes against humanity in Antioquia.
19. Concerns are frequently raised that the militarised political doctrine which considers all those who take opposing positions to the government as “internal enemies” feeds a cycle of impunity, lack of access to justice, and poses a challenge to effective Rule of Law. Plurality of opinions and debate is a key factor to bring about sustainable peace to the country.

### Conclusions

20. The Peace Accord represented an important step forward in the construction peace, but it continues to face several challenges that must be addressed if peace in Colombia is to be stable and sustainable. It is paramount that efforts are taken to ensure the independence of the judicial process from external pressures and interests seeking to perpetuate the current situation of widespread impunity. individuals who are involved in the Comprehensive System for Truth, Justice, Reparation and Non-Repetition are subject to continued threats and its institutional components, such as the JEP, are the target of political attacks. This situation endangers the process of accountability and the rights of millions of victims to truth, justice and reparations.
21. It is equally paramount to protect human rights lawyers and human rights defenders, who represent a fundamental building block for justice and accountability. The current trend that has seen episodes of murder, harassment, threats and political stigmatisation increase since the Peace Agreement must be reversed. In particular, the “internal enemy” rhetoric used by individuals within State institutions to demonise the legal profession must cease. The portrayal

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<sup>14</sup> <https://www.elespectador.com/noticias/judicial/defensa-de-victimas-de-los-12-apostoles-solicitara-medi-articulo-625292>



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of the members of the legal profession who seek justice on behalf of victims as a hindrance to economic prosperity overlooks that in the protection of human rights and strengthening of Rule of Law, conditions can be cultivated which allow for increased prosperity and social progress.

### Recommendations

22. In light of our analysis, we therefore recommend:

- i. That the UK government and the FCO highlight the crucial role of human right lawyers and human rights defenders for the achievement of a long-lasting, sustainable peace, and their need to be protected from any interference in their work or risk to their life;
- ii. That the UK government and FCO urge Colombian authorities to publicly and frequently recognise that plurality and debate are integral to democracy and peaceful transition, and call on the Colombian State to take more concrete action to eradicate stigmatisation and the "internal enemy" doctrine from within the military and other State institutions, to foster an environment that ensures the non-repetition of attacks against lawyers and human rights defenders;
- iii. That the UK government and FCO monitor closely judicial and legislative developments in the country, (e.g. through trial observation, particularly of emblematic cases, and meeting with members of the legal profession, particularly those involved in cases of human rights), so as to provide support and bolster the independence, transparency and effectiveness of the judicial processes, and contribute to put an end to the current paradigm of impunity;
- iv. That the UK government and FCO monitor the implementation of the Peace Accord between the Colombian State and the FARC, and keep abreast of changes to processes and progress made, or challenges identified in relation to the Comprehensive System for Truth, Justice, Reparation and Non-Repetition so that the transitional justice process can continue as intended and that a peaceful transition might be achieved;
- v. That the UK Government demand the correct enforcement of all judgments and compliance with International Humanitarian Law and relevant international standards, including judgements and rulings by regional mechanisms;
- vi. That the UK government and FCO ensure human rights defenders, access to justice, and Rule of Law remain areas of priority in their relationship with the Colombian State and with regards to their setting of resourcing, policy and work plan priorities;
- vii. That the UK government and FCO recognise in their bilateral relationship with the Colombian State and in developing their priorities that successful economic development, achievement of sustainable development, and social progress can only be achieved with political plurality, implementation of the Peace Accord, and respect for fundamental rights and Rule of Law;
- viii. That the UK government and FCO consider how they may adopt the content and spirit of the EU Guidelines on Human Rights Defenders into their priorities, particularly through the work of the British Embassy to Colombia and its development activities and focus of work;
- ix. That the UK government and FCO work actively to encourage UK businesses operating in Colombia to follow the Ruggie Principles on Business and Human Rights, and that clear statements are made that these principles are used as standards which UK companies or affiliates are expected to meet as a matter of course.