Business and human rights defenders in Colombia

URGENT PROTECTION NEEDED FOR PEOPLE PROTECTING LAND, TERRITORY AND THE ENVIRONMENT

2020 – 2021 UPDATE
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Foreword

Mary Lawlor, UN Special Rapporteur on the situation of human rights defenders

Human rights defenders (HRDs) are essential in any society, but especially so in those affected by conflict, where they monitor and document human rights violations, pursue accountability and work to see international standards respected. In every region of the world their work comes with serious risks, which are only heightened by the presence of conflict, which brings new challenges that demand coordinated international support for defenders. During an era of increasing geopolitical tensions, I welcome this briefing, which shows - with data from Colombia - how companies can have an impact on HRDs in a conflict setting, and what kind of measures they need to put in place to respect their rights.

As the UN Guiding Principles on Business and Human Rights underscore, businesses have a responsibility to respect human rights, which places an obligation upon them to avoid infringing on the human rights of others through acts or omissions. This includes the right to defend and promote human rights and the rights of human rights defenders. However, the scale of business-linked attacks on HRDs and other rights violations linked to corporate activity makes it clear most businesses have not put the Guiding Principles into practice. Businesses cannot operate in isolation from the social contexts in which they carry out their activities, yet this is what many seem to desire to do. Many seem to believe that if they are creating employment – whatever the conditions – the impact on the social fabric is not their responsibility.

In the specific context of Colombia, this 'head in the sand' approach is demonstrably untenable, given the risks faced by HRDs who highlight human rights violations caused or exacerbated by business activities. As my predecessor in this mandate underlined, for years Colombia has been one of the most dangerous countries in the world for HRDs working in the context of business. The chance for businesses to stand alongside civil society and HRDs in promoting peace and reconciliation following the 2016 Peace Accords was missed as a result of companies failing to properly engage in truth, justice and reconciliation efforts; and HRDs have subsequently been threatened, attacked, and killed in an environment of near impunity.

What can business do in this and other conflict and post-conflict settings? At a minimum, they should ensure their practices, services, policies and products are not being used to legitimise or carry out abuses against those peacefully defending their rights. The most effective way to identify and address human rights risks is for business to carry out human rights due diligence, which should take the views of HRDs into account; establish ongoing communication channels with them; and leave the door open to longer-term cooperation as risks to rights change over time. Most often it will be HRDs who sound the warning signals for much greater business (and human rights) risks coming down the line. As the UN Working Group on business and human rights’ report made clear, companies need to undertake heightened due diligence and conflict analysis when operating in conflict-affected areas, as the risk of gross human rights abuses is higher. This includes harm to HRDs. Likewise, states have heightened obligations toward HRDs in such contexts, including in relation to business, security forces and other non-state actors.

Beyond that, there are compelling and interlinked moral, pragmatic and business reasons to condemn the use of excessive force and the criminalisation by state authorities of HRDs. It is self-evident most businesses do better in contexts not riven by social conflict. By expressing respect for international human rights standards, including the right to defend rights, while also criticising excesses, businesses can help contribute to the establishment of a regulatory system that benefits them and the country’s citizens. Doing business in any conflict or post-conflict affected area has multiple challenges: regarding HRDs as allies rather than enemies is a positive way to address these.
Executive summary

Colombia is one of the most unequal countries in Latin America and one of the most dangerous countries for HRDs. Decades of internal armed conflict, violence related to organised crime, and dominance of land-intensive and extractive industries (such as mining, oil, gas, coal and fracking projects) in Colombia’s economy have created a climate of systemic intimidation of social leaders, unionists and activists.

The work of HRDs and local civil society is vital to addressing human rights and environmental risks and harms associated with these industries. Since 2015, Business & Human Rights Resource Centre (the Resource Centre) has collected data on attacks against HRDs raising concerns about the human rights impacts of business operations, including in Colombia. Our 2020 report on Colombia, which analysed attacks recorded between 2015 and 2019, demonstrated the concerted and sometimes deadly attacks faced by HRDs who seek to prevent or expose abuse by business. Between 2016 and 2021, OHCHR documented the killings of more than 400 HRDs in Colombia, the highest number of any country in Latin America during that period. This includes HRDs raising concerns about harmful business impacts, as well as those engaged in other types of human rights and peacebuilding work. The former UN Special Rapporteur on the situation of human rights defenders, Michel Forst, shared his concerns about the involvement of companies in attacks against HRDs in Colombia in a report to the Human Rights Council.

58 attacks recorded against HRDs working on business-related issues in 2020 – 2021

Oil, gas & coal was the most dangerous sector for HRDs

1/2

of attacks targeted environmental rights defenders
This report examines attacks from 2020-2021 in order to provide an update on the situation of HRDs focused on business in Colombia. Human rights defenders raising concerns about business continue to experience threats, violence and even murder to silence their criticism of irresponsible company practice. Between January 2020 and December 2021 we recorded **58 new attacks** against HRDs raising concerns about business. While this may appear to indicate a drop-off in annual attacks since our 2020 briefing, the situation of human rights defenders remains highly dangerous – in 2021 in particular, a high number of attacks took place which were related to national protests in Colombia, but many of these attacks do not have the clear business link necessary for inclusion under our database methodology.

The most dangerous sectors for HRDs continue to be coal, oil and gas, agribusiness, and mining, including mineral extraction for the transition to clean energy. While direct corporate responsibility for attacks against HRDs can be difficult to verify, the UNWG has made clear that businesses need to undertake heightened due diligence when operating in conflict-affected contexts or situations where there is risk of conflict occurring, due to a higher risk of gross human rights abuses in these contexts. This includes harms to HRDs. Likewise, states have heightened obligations to HRDs in such contexts.

Ongoing attacks against HRDs who raise concerns about business indicate a failure on the part of companies operating in Colombia to undertake heightened human rights due diligence and a lack of genuine commitments and actions by the Colombian Government to honour the 2016 Peace Accords and fulfil its obligations to protect and guarantee internationally recognised rights.

**Recommendations**

- Companies and investors should meet international standards for **heightened human rights due diligence** in conflict-affected regions to ensure they do not contribute to underlying drivers of conflict or triggers for violence. They should implement **zero tolerance policies for attacks** and engage in effective, ongoing consultation with HRDs, respect the full rights of indigenous and Afro-descendant communities and ensure access to remedy when harm occurs.

- The Colombian Government should pass and implement laws to mandate that companies carry out **human rights and environmental due diligence**, alongside legislation to enshrine the protection of HRDs in their work to promote respect for human rights in business investments, operations and supply chains, as well as to hold companies to account for harms.
Scope & scale of attacks

Context

The persistence of internal armed conflict since the signing of the Peace Accords in 2016, including ongoing violence by armed groups, organised crime in areas with extractive projects and widespread impunity for attacks, has created a climate of systemic intimidation and violence against people who raise concerns about business activities. According to the UN Office of the High Commissioner for Human Rights (OHCHR), more than 400 HRDs have been killed in Colombia since 2016, and civil society groups have documented an even higher number.

In addition, people in Colombia, including HRDs, experienced increased challenges during the Covid-19 pandemic, during which the government did not follow the UN Secretary General's recommendation for a unilateral ceasefire in the internal armed conflict. In 2020, the Colombian economy contracted by nearly seven percentage points, and poverty increased from 35.7% in 2019 to 42.5%. Human rights defenders experienced unjustified dismissals (a violation of labour rights according to the ILO), ongoing violations of land and territorial rights, and violence including targeted killings, attacks and injuries, intimidation and threats. The pandemic has also made protective accompaniment more difficult, contributing to heightened risks for some HRDs.

This research builds upon our briefing published in 2020, providing an update on the situation of HRDs focused on business in Colombia between January 2020 and December 2021. It reveals an ongoing pattern of attacks, identifying at least 58 new attacks against HRDs raising concerns about business during this period, contributing to a total of 239 recorded since 2015. As this tracking is based on publicly available information and links to business can be difficult to identify, many attacks go unreported and the problem is significantly more severe than these figures indicate.

This total also does not account for the high level of violence by state forces against protestors during the National Strike between April and May 2021, as demonstrations were against the policies and actions of President Ivan Duque's government and not specifically focused on business, meaning they are not included in the scope of our analysis. Nonetheless, it is worth noting that during this time the government passed a Presidential Decree criminalising roadblocks and violently cracked down on protests. Between 28 April and 31 July, the UN Human Rights Office in Colombia received 63 allegations of deaths in the context of the protests.
According to OHCHR, numerous instances of unnecessary or disproportionate use of force by police officers took place to disperse peaceful protests and blockades, along with inappropriate and indiscriminate use of less-lethal weapons in violation of international standards. Abuses also included sexual violence against women by police.

**Sectors and company involvement**

The business sectors linked to attacks against HRDs in Colombia recorded during this period were oil, gas and coal (23 cases); agribusiness (including banana, sugar and palm) (10); mining (9); private security (5); transport companies (5); hydropower and other sources of renewable energy (4); tourism (1); and water companies (1). The majority of attacks were against land and environmental defenders (42 cases).
As in other Latin American countries, attacks against those who oppose or question a business project are perpetrated by a variety of actors, including security firms contracted by companies, armed forces, local authorities, or other public officials who support projects they say in are the “national interest” despite community opposition. Attacks are also sometimes carried out by community members in support of controversial projects, or workers who believe their jobs or economic benefits will be threatened by those who raise complaints.1

Our research shows most attacks are connected to paramilitary groups, followed by organised criminal groups. These groups carry out attacks in retaliation for resistance to business operations supported by paramilitary groups which are sometimes allegedly acting on behalf of private companies. This is emblematic of situations faced by HRDs in other conflict and post-conflict settings. As former UN Special Rapporteur on the situation of human rights defenders Michel Forst stated:

Human rights defenders are at the forefront in documenting, exposing and opposing civilian casualties and wider violations of international law resulting from the operations of armed groups, military and paramilitary forces, intelligence services and civilian authorities working in collusion with private corporations. Their fact-finding and public advocacy work keeps human rights, international humanitarian law and other relevant standards of international law on the agenda, while political considerations may downplay attention to these as matters of urgency. Their work is critical in unveiling the often-wide spectrum of underlying violations driving or aggravated by conflict.”

Case study

Extractive activities in the Magdalena Medio region have been promoted by the Colombian Government for years due to the area’s location and diversity of natural and mineral resources. Human rights defenders working to protect their land, territory and resources have consistently raised concerns about alleged lack of consultation with affected communities. In 2020, three public officials, a representative to the Chamber of Deputies and 14 environmental defenders were threatened in a pamphlet signed by the “Black Eagles” paramilitary group. The defenders, from Barrancabermeja, Puerto Wilches, Cimitarra and Sabana de Torres, had been fighting fracking projects in their region and denouncing the negative environmental impacts of oil projects, as well as irregularities in public contracting. The pamphlet threatened they would be declared military targets and killed if they did not leave the territory within 24 hours.

1 Generally accused of being “anti-development” (see: Uncalculated Risks).
Available information on companies’ involvement in attacks shows the same companies continue to be linked to attacks against HRDs in Colombia year after year. Some of the largest and most well-established companies in the extractive sector are repeatedly linked to violence in their operations, underscoring the need for these companies to conduct stronger conflict analysis and engage in heightened human rights and environmental due diligence to prevent harm.

Case study

Robinson Arley Mejía Alonso, member of Comité Ambiental Campesino de Cajamarca y Anaime and youth collective Colectivo Socioambiental Juvenil de Cajamarca, is a land and environmental defender in the department of Tolima who has raised concerns about risks and harms associated with mining projects, including La Colosa mining project, owned and operated by AngloGold Ashanti.

In September 2021, following a post on his Twitter account about the company’s alleged failure to respect a popular consultation in Cajamarca, AngloGold Ashanti Colombia posted messages calling the accusation “fake news” and allegedly stigmatising Mr Mejía Alonso on its Twitter account. The UN Special Rapporteur on the situation of human rights defenders and the UN Special Rapporteur on human rights and the environment contacted the Colombian and South African governments, as well as the company in Colombia and South Africa, expressing deep concern for the security of HRDs in Tolima and the increased risk posed to Mejía Alonso by the company’s comments. The company denied the allegation in a response to the Resource Centre.
Types of attack

The most common type of attack during this period was death threats (22), typically coming from unidentified armed men, via HRDs’ mobile phones or by pamphlets distributed among the population, often signed by different armed paramilitary groups or apparent guerrilla dissidents. The second most common type of attack was broader intimidation and threats (18), particularly in relation to concerns raised about oil, gas and coal projects. Fourteen people were killed after receiving threats; one person was seriously injured, and one was kidnapped, showing a worrying pattern of escalation from threats to physical violence.

In addition, two HRDs experienced arbitrary detention for raising concerns about environmental and human rights harms related to agribusiness projects, one female land defender was injured, and the father of a HRD was kidnapped.

Case study

In December 2020, Adelso José Gallo Tozcano and Teófilo Acuña, two peasant leaders and land and environmental defenders from Nariño, Bolívar and Meta, were arrested. Adelso Gallo has denounced harms related to operations by oil companies Repsol, Oxy and BP in Arauca. Teófilo Acuña was the spokesperson for the Interlocution Commission of Sur Bolívar, Centro and Sur del Cesar. As a peasant farmer engaged in land and territorial defence, including through opposition to AngloGold Ashanti’s mining projects, Acuña had previously been the subject of a strategic lawsuit against public participation (SLAPP) and was acquitted with the recognition that the exercise of his rights and those of his association were stigmatised by members of the security forces. The Resource Centre invited Oxy, BP, Repsol and AngloGold Ashanti to respond to the 2020 arrests. AngloGold Ashanti, Repsol and BP responded; Oxy did not respond. Teófilo Acuña and his colleague Jorge Tafur were killed in February 2022.

HRD ATTACKS BY TYPE

- Death threats: 22
- Intimidation and threats: 18
- Killings: 14
- Arbitrary detention: 1
- Abduction: 1
- Injuries: 1
Location of attacks

While attacks occurred in several parts of the country, the highest number of attacks took place in the department of Santander related to concerns about water in an area which has seen decades of oil extraction. Rural and urban communities in this region are opposing two government-supported fracking projects due to concerns about water quality and harms to their livelihoods.

HRD ATTACKS
BY DEPARTMENT

16 Santander
5 Cundinamarca
5 Magdalena
5 La Guajira
4 Putumayo
4 Valle del Cauca
4 Chocó
3 Caquetá
3 Cesar
2 Cauca
2 Antioquia
2 Meta
1 Córdoba
1 Bolívar
1 Tolima
Company responsibility under the UN Guiding Principles on Business and Human Rights

“Businesses are not neutral actors; their presence is not without impact. Even if business does not take a side in the conflict, the impact of their operations will necessarily influence conflict dynamics.”

UN Working Group on Business and Human Rights

Regardless of whether a company directly perpetrates an attack, it is responsible for respecting the rights of HRDs and mitigating risks they face when raising concerns about the company’s operations, value chains or business relationships. This responsibility is heightened in conflict-affected situations, where business actors should focus on three main steps:

- **Identify** the root causes of tensions and potential triggers, as well as human rights abuses or impacts that may arise due to the conflict, beyond their own business operations.

- **Map** the main actors in the conflict and their motives, capacities and opportunities to inflict violence. Businesses should pay particular attention to HRDs and make sure to differentiate between HRDs and parties to conflict.

- **Highlight and anticipate** the ways in which the company’s own operations, products or services impact upon existing social tensions and relationships between groups involved, and/or create new tensions or conflicts.

While some companies have taken first steps toward addressing risks, such as by publishing policies on HRDs, policies alone are insufficient and generally do not include a conflict-sensitive approach. As the UNWG had noted in the summary of its report to the General Assembly in October 2018, and in its July 2020 report, there is a need to move from declarative policies to practice, especially as companies are not neutral actors when they operate in conflict and post-conflict contexts. The UNWG recommended States “…Consider appropriate sanctions or consequences if a company is found to have caused or contributed to harm to a defender or has failed to actively take steps to prevent harm to a defender once the company is aware of the risk.”

Under the Transitional Justice system, companies are not obliged to submit their testimonies of complicity or direct or indirect participation in human rights abuses, although a group of extractive companies made their own report to the Truth Commission in which they describe their efforts to join government actions to address conflict-related issues. Several Land Tribunals have found companies guilty of land-grabbing in conflict contexts, and accused companies have had to return some of these lands to victims.
Recommendations

The situation of HRDs in Colombia requires urgent attention from the Colombian Government, companies and investors which are directly and indirectly related to allegations of violations of individual and collective rights. Several of the following recommended actions are also applicable in conflict and post-conflict situations beyond Colombia:

**Companies operating in Colombia or with business relationships in Colombia**

- Adopt and implement policy commitments which recognise the valuable role of HRDs, reference specific risks to HRDs, ensure effective engagement and consultation with HRDs at all stages of the due diligence process and commit to zero tolerance for reprisals throughout the company’s operations, supply chains and business relationships.

- Recognise the increased risks in conflict-affected areas, conduct a conflict analysis and engage in heightened human rights and environmental due diligence to prevent and mitigate harm, and to ensure effective access to remedy for those harmed by business activity, in accordance with the UNGPs and the UNWG’s guidance on ensuring respect for HRDs, including conflict-specific recommendations.

- Respect Indigenous and Afro-descendant peoples’ land and forest rights and the right to free, prior and informed consent (FPIC), including their right to define the process by which FPIC is achieved and to withhold consent (more detailed recommendations available here).

**Investors supporting companies operating in or with business relationships in Colombia**

- In addition to the recommendations above, publish a public human rights policy which recognises the valuable role of HRDs in identifying risks associated with business activities and commits to a zero tolerance approach to attacks against HRDs. Clearly communicate the human rights expectations included in this policy to portfolio companies, including that companies:
  - disclose human rights and environment-related risks;
  - engage in ongoing consultation with communities, workers and HRDs;
  - have policies and processes to respect the rights of Indigenous and Afro-descendant peoples (including land rights and FPIC);
  - respect the rights of HRDs; and
  - ensure effective access to remedy when harm occurs.
Undertake **heightened human rights and environmental due diligence** and review potential investees for any past involvement with retaliation. Avoid investing in companies with this track record.

Use leverage with investee companies which cause, contribute to, or are directly linked to human rights and environmental harms, including attacks on HRDs, so that the company **mitigates negative impacts and provides access to remedy** to those affected.

**Government of Colombia**

Pass and implement **legislation recognising the vital role and additional risks HRDs face**, in promoting human rights, sustainable development and a healthy environment, with commitment to zero tolerance for attacks. This must include legal compliance with the specific rights of Indigenous and Afro-descendant peoples, under Law 21/1991, the UN Declaration on the Rights of Rural Workers and Farmers, the UN Declaration on the Rights of Indigenous Peoples, and other relevant declarations (more detailed recommendations available [here](#)).

Pass national laws to implement the UNGPs, including **binding human rights due diligence legislation** which acknowledges heightened risks in conflict-affected regions, and consult with HRDs at all stages of this process. This legislation should mandate ongoing **safe and effective consultation** with workers, HRDs, community members and others potentially or directly affected by company operations or business relationships, and should be an integral part of climate mitigation and adaptation plans (more detailed recommendations available [here](#)).

Specifically:

- **To the Attorney General’s Office:** Deepen the investigation of attacks on HRDs beyond the identification of the material actors to examine any involvement by companies and cease their support structures. Cease their support and act independently from companies in relation to these complaints, ceasing the actions of their Support Structures (EDA), identified as a mechanism of stigmatisation, prosecution and criminalisation of people opposed to business, private, state or joint projects.

- **To the National Protection Unit of the Ministry of Interior:** Recognise the differences in the needs of HRDs, with respect to their ethnicity, gender, rural versus urban status and other characteristics, and create collective and individual protection measures. Create a comprehensive system focused on the prevention of attacks in coordination with judicial authorities to investigate and enforce the law against those who threaten the life, integrity and personal security of HRDs.
Appendix: Report methodology

The absence of data about attacks against HRDs is a global problem. A 2021 study by the Resource Centre, CINEP/Programa por la Paz, and other member organisations of ALLIED (the Alliance for Land Rights, Indigenous and Environmental Defenders) found widespread deficiencies in government reporting on the issue. Among the 162 governments that have reported on their progress toward the Sustainable Development Goals (SDGs) through submitting Voluntary National Reviews (VNRs), only 6% shared any data on SDG target 16.10, which aims to protect fundamental freedoms and includes an indicator tracking attacks on HRDs. This report shows the majority of documentation of attacks is undertaken by civil society organisations, as well as the OHCHR.

This report, along with our 2020 report, draws upon attacks recorded in our database to highlight the scale and nature of attacks against HRDs raising concerns about business-related harms in Colombia. The Resource Centre includes a case as an attack in the database if:

- Information about the attack was publicly available from at least two sources.
- The name of the defender was publicly available, as well as information about their human rights work, in order to determine whether that person is a defender based on the OHCHR definition.
- Information is available about the type of attack and its link to their human rights work. This includes the method of violence, date, and place.
- Information is available showing that the defender’s work focused on business-related issues.

In addition to the database of attacks tracked by the Resource Centre, this report draws upon a detailed review of analyses by the Inter-American Commission on Human Rights, UN Special Rapporteurs, and information from companies themselves. This includes information provided through the Resource Centre’s Company Response Mechanism (CRM) process, company contributions to UN Special Rapporteur on the situation of human rights defenders’ report presented to the Human Rights Council in March 2021, and information from the National Roundtable of Civil Society Organisations on business and human rights in Colombia.
Business & Human Rights Resource Centre is an international NGO which tracks the human rights impacts of over 10,000 companies in over 180 countries, making information available on our 10-language website.