

## THEY KNEW : DID THEY GIVE THE ORDER?

### **They knew: Did they give the order? From violation of the principle of distinction to barbarism**

#### **EXECUTIVE OVERVIEW**

The report “They Knew: Did They Give the Order?” submitted to the Chamber for the Recognition of Responsibility, Determination of Facts and Conduct -SRVR- of the Special Jurisdiction for Peace -JEP- by 10 human rights organizations: Association for Alternative Social Promotion -MINGA-, Socio-Legal Collective Orlando Fals Borda, Colombian Commission of Jurists -CCJ-, Inter-Church Justice and Peace Commission (Comisión Intereclesial de Justicia y Paz), Coordination Colombia Europe United States (Coordinación Colombia Europa Estados Unidos), Lawyers Collective Corporation “José Alvear Restrepo” -CAJAR-, Committee for Solidarity with Political Prisoners Foundation -CSPP-, Liberty Legal Corporation (Corporación Jurídica Libertad), Legal Corporation Yira Castro y Humanidad Vigente Legal Corporation; **focuses on analyzing the alleged responsibility in the practice of extrajudicial executions in different territories of the country**, of those who, during the years **2006 to 2008**, exercised the command of the Armed Forces and the National Army, as well as of public officials who held high state positions and, as documented, had early knowledge of such practice.

The period of the report was prioritized in response to the high number of executions recorded in these three years. As is well known, after an exercise of contrasting the versions of the witnesses, files and/or reports of the Prosecutor's Office, the Attorney General's Office, the Accusatory Criminal System, the Observatory of Memory and Conflict of the National Center of Historical Memory, as well as the Coordination Colombia Europe United States (CCEEU) -where the organizations that present this report converge-; the JEP found that in the period from 2002 to 2008 at least 6,402 people were presented in the country as guerrillas killed in combat although they were not. Of these, between 2006 and 2008, 2,401 extrajudicial executions were committed in only 10 of the 32 departments where this type of crime has been recorded: Antioquia: 721, Meta: 223, Caquetá: 205, César: 168, Norte de Santander: 204, Tolima: 202, Huila: 225, Casanare: 163, La Guajira: 133 and Cauca: 158.

This report documents the knowledge that the military high command and civilians who held high positions within the institutionality had about the increase in the practice of extrajudicial executions from its early stages, and compiles documents that prove that there were formal complaints of these serious violations at least since 2004, as well as at least 42 meetings, trades and working committees in which officials of the Vice Presidency of the Republic participated or were aware of, the Presidential Program for Human Rights, the Ombudsman's Office, the Human Rights Directorate of the Attorney General's Office, the Ministry of Defense, the Ministry of the Interior, the Directorate of Military Criminal Justice, the General Inspectorate of the Military Forces, the General Inspectorate of the Army, the Army Command, Division Commanders, among other entities that officiated or received official letters, or participated in these meetings where the issue of the commission and increase of this criminal practice was discussed.

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In this regard, the report concludes that *"for [the criminal practice] of extrajudicial executions to have occurred at the national level for several years required that the entire system of controls, regulations, investigations failed together throughout the national territory and during the entire time of the practice, despite the existence of knowledge [of the practice]"*.

Likewise, in the report, for the purposes of which the generic term **provisions** was adopted to refer to the Directives, Circulars, orders, etc., located in the 26 main notebooks and some of the annexed notebooks that make up the criminal investigation file <sup>1</sup>followed by the Third Delegate Prosecutor's Office before the CSJ against General (r) Mario Montoya Uribe, where 52 provisions were identified that are considered to be of high or medium interest for the issue of Extrajudicial Executions; The existence of a criminal plan prior to the period under study and its extension between 2006 and 2008 to all the Divisions of the National Army is evidenced, accompanied **by a hate speech**<sup>2</sup>, giving orders and involving the civilian population, public officials and a significant number of major, minor and tactical units, in a plan that was executed in a staggered manner, and that had the support of officials who held high positions within the military institution and who contributed effectively to camouflage serious human rights violations in the "legality" of their actions.

In relation to these hate speeches, the report compiles expressions and uses of language in the different spheres of the military and public officials, headed by the President of the Republic at the time, which sought to divide society in two: those who supported the Democratic Security policy and those who did not support it as the enemies to be eliminated, encouraging serious violations of human rights, international humanitarian law and the militarization of civilian life, among other phenomena of State violence. An example of this is in the voluntary version given by a non-commissioned officer before the Jep and taken up in the report, in which he states: "...in all the Army's trajectory, but since the formation of the military school within the different courses, they instilled in us this hatred of the guerrillas, they instilled in us the way to defend the country. There were no judicial guarantees, we saw that they would capture a person and after 3 or 4 days they would take them out and let them go free, psychologically they instilled in us this hatred like chants of 'go up, go up, guerrilla, I'm waiting for you at the top, or I want to bathe in a pool full of guerrilla blood, I'll take out your eyes, I'll eat you guerrilla, I'll kill you and I'll drink your blood' ".

Translated with [www.DeepL.com/Translator](http://www.DeepL.com/Translator) (free version) Thus, the report includes nearly 50 public statements made by the then president Álvaro Uribe Vélez, where the discourse of hatred and stigmatization that characterized the Democratic Security

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<sup>1</sup> Although this file deals with information from 1996 to 2010, a period of time longer than the one indicated as the subject of this report, it was necessary to include it in the analysis because it deals with provisions that preceded the practice, as well as others that would have been intended to mitigate it.

<sup>2</sup> The United Nations considers hate speech to be any form of communication in speech, writing or behavior that is an attack or uses derogatory or discriminatory language in relation to a person or group on the basis of who they are or, in other words, on the basis of their religion, ethnicity, nationality, race, color, descent, gender or other identifying factor. In many cases, hate speech is rooted in or generates bigotry and hatred and, in certain contexts, can be demeaning and divisive.

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Policy is evident, with statements such as: *"Every time a security policy appears in Colombia to defeat terrorism, when the terrorists begin to feel weak, they immediately send their spokespersons to talk about human rights. Many of these criticisms have been taken from the Farc's web page. They have no shame or limitations. They publish books in Europe on rumors and slander. They know that their only weapon is slander that hypocritically hides behind human rights"*<sup>3</sup>. documents how the practice of extrajudicial executions was underpinned by the Democratic Security Policy and its consolidation, which through the discourse of hate propagated the 'moral anesthesia' in the Colombian population and especially in public officials and military forces, which allowed the reinforcement by subordinates of their willingness to commit the crime, which effectively contributed to the realization of the criminal plan by the perpetrators, and the demonstration of tangible operational results, albeit fraudulently and illegally.

From the analysis of the information contained in the proceedings carried out by the Ordinary Jurisdiction and also from some voluntary statements made before the Special Jurisdiction for Peace, the report concludes that the practice of extrajudicial executions was not the result of the actions of a few, who at the time were identified as "bad apples"; on the contrary, it is clear that there was a **Systematic Criminal Policy of the State** that authorized the commission of these serious human rights violations, their systematization and subsequent cover-up.

In addition to the information, analysis and conclusions presented in the report, the human rights organizations request that in its opening, the SRVR call the following persons to testify voluntarily or to be summoned as witnesses, so that, after the cross-checking exercise, it may determine under its jurisdiction to investigate and prosecute those most responsible for this criminal act, and for those who do not have jurisdiction, it may order the respective copies to be submitted to the ordinary jurisdiction:

1. Alvaro Uribe Velez- Former President of the Republic.
2. Juan Manuel Santos Calderón - Former Defense Minister.
3. Camilo Ospina Bernal -Former Defense Minister.
4. Sergio Jaramillo Caro -Former Defense Vice-Minister.
5. General Fredy Padilla de Leon - Former Commander of the Military Forces.
6. General Mario Montoya Uribe - Former Commander of the National Army.
7. General Oscar González Peña - Former Commander Seventh Division.
8. Mayor General Carlos Lemus Pedraza - Former Army Inspector General.
9. Mayor general Carlos Orlando Quiroga Ferreira - Former Army Inspector General.
10. Coronel Roberto Pico Hernández - Former Commander of the Pedro Nel Ospina Battalion.

In addition, it is expected that the Special Jurisdiction for Peace will take into account that the prosecution and criminal punishment of all those responsible for crimes of

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<sup>3</sup> Remarks by President Álvaro Uribe Vélez at the recognition of the armed forces at the José María Córdoba military cadet school (August 15, 2002).

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extrajudicial executions constitutes an international obligation of the State, which binds its judicial organs. Failure to comply with this obligation translates into impunity on the part of those who fail to comply with it. The judicial organs have in the international instruments ratified by the State provisions that bind them beyond those of domestic law that contradict them and promote impunity or enshrine the immunity of those implicated in the most serious crimes against human rights. In this regard, the Inter-American Court of Human Rights defines impunity as "the failure to investigate, prosecute, capture, try and convict those responsible for violations of the rights protected by the Convention".<sup>4</sup>

Given also the condition of crimes against humanity, which due to their massive and generalized nature acquired the infamous practice of "false positives" or deaths fraudulently presented as combat casualties, these crimes cannot, under any pretext, cease to be investigated, nor can those primarily responsible in the command structure of the State, cease to be prosecuted and punished, and nothing can oppose this, Neither the statute of limitations, nor pardon, nor self-granted immunities, nor any form of amnesty or pseudo-amnesty that pretends to leave out their obligation to be accountable, to appear before justice and to assume the responsibilities that fall to them according to their place in the command structure under whose direction the policies that led to the perpetration of these crimes were promoted.

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<sup>4</sup> Inter-American Court of Human Rights. Judgment of November 26, 2013, Case of Osorio Rivera and Family Members v. Peru, Series C No. 274, para. 178. See also: Judgment of March 8, 1998, Case of the "White Panel" (Paniagua Morales et al.) v. Guatemala, Series C No. 37, para. 173; and Judgment of September 26, 2006, Case of Almonacid Arellano et al. v. Chile, Series C No. 154, para. 111.