

# UNDERSTANDING THREATS AGAINST AFRO-DESCENDANT WOMEN HUMAN RIGHTS DEFENDERS: RE-ENVISIONING SECURITY

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## ABSTRACT

Colombia has the highest rate of assassinations of human rights defenders in Latin America, and women defending Afro-descendant and Indigenous territories are particularly at risk. Threatened Afro-descendant women defenders observe that the wave of violence against them, including femicide and rape, is designed to silence them, control their territories, and intimidate their communities. They can be at risk in all spaces of their lives, not only for defending their territories but also for stepping out of stereotypical gender roles. When asked what would ensure better safety, many Afro-Colombian women human rights defenders assert that protection must start with the Government respecting their collective territorial rights as recognized under Colombian law. The problems they identify speak not only to an ineffective state response to threats, but also to a misdiagnosis of the dangers that they face to begin with. In that context, this article details the post-Peace Accord risks and dangers that Afro-Colombian women human rights defenders and their communities face, the historical context for that risk, and the

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deficiencies they identify in the Government's approach to threats against them. While the Government can point to programming intended to meet its constitutional requirement to protect human rights defenders, its approach frames human rights defenders as individual subjects distinct from their political context and the threats to their lives as an anomaly. Having diagnosed threats to Afro-descendant women human rights defenders as exceptional, non-political, and individualized, as opposed to common, political, and directed against them as members of collectives, the state approach suppresses self-protection models that could draw on and strengthen communities' internal knowledge, abilities, and autonomy. Through an analysis of the state's misdiagnosis and inadequate response, the article encourages international and local human rights advocates to keep collective territorial rights and a gender focus at the center of efforts to protect Afro-descendant women human rights defenders.

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## INTRODUCTION

In early January 2020, “Marisela” and “Carmen,”<sup>1</sup> two Afro-descendant women in Colombia who face death threats for their advocacy on behalf of women’s rights and collective territorial rights, revealed in interviews that they had recently rejected their state-provided security schemes.<sup>2</sup> Colombia has the highest rate of assassinations of human rights defenders in Latin America, and women defending Afro-descendant and Indigenous territories are particularly at risk.<sup>3</sup> Marisela and Carmen do not seek martyrdom and are keenly aware of the risks they face. After some months, however, each had come to believe that their protection schemes, instead of providing them security, actually increased the risk to their lives. They joined many other Afro-Colombian and women human rights defenders who say the Government’s protection policies and measures are inadequate and endanger their lives.<sup>4</sup>

The Colombian Government takes its international image seriously.<sup>5</sup> It regularly sends representatives to participate in dialogues regarding its adherence to human rights obligations before the United Nations (U.N.) Human Rights Council and other U.N.

1. Names are changed to protect identities.

2. Interview with “Carmen,” (Jan. 7, 2020) (on file with authors); Interview with “Marisela,” (Jan. 9, 2020) (on file with authors).

3. Special Rapporteur on the Situation of Human Rights Defenders, *Rep. on his Visit to Colombia*, ¶¶ 20, 36, 70, U.N. Doc A/HRC/43/51/Add.1 (Dec. 26, 2019) [hereinafter *2019 Rep. of the Special Rapporteur*].

4. Interview with “Carmen,” *supra* note 2; Interview with “Marisela,” *supra* note 2; *2019 Report of the Special Rapporteur*, *supra* note 3, at ¶ 58; *El Derecho a Defender Derechos: Representantes de movimientos sociales y organizaciones de DDHH presentamos tutela para exigir protección de nuestros líderes sociales* [*The Right to Defend Rights: Social Movement and DDHH Organizational Leaders Present Guardianship to Demand Protection for Our Social Leaders*], DEJUSTICIA (Dec. 10, 2019), <https://www.dejusticia.org/el-derecho-a-defender-derechos-representantes-de-movimientos-sociales-y-organizaciones-de-ddhh-presentamos-tutela-para-exigir-proteccion-de-nuestros-lideres-sociales> [<https://perma.cc/M57A-YW9M>] [hereinafter *El Derecho a Defender Derechos*] (describing a legal action brought to force the Colombian Government to demand greater protections for human rights defenders).

5. See René Urueña, *La crisis del “club de caballeros”: una reconsideración del respeto al derecho internacional como característica de la política exterior colombiana* [*The Crisis of “Gentlemen’s Clubs:” A Reconsideration of Respect for International Law as a Characteristic of Colombian Foreign Policy*], in *NUEVOS ENFOQUES PARA EL ESTUDIO DE LAS RELACIONES INTERNACIONALES DE COLOMBIA* [NEW FOCUSES FOR THE STUDY OF COLOMBIA’S INTERNATIONAL RELATIONS] 65, 68 (Arlene B. Tickner & Sebastian Bitar eds., 2017).

human rights treaty bodies.<sup>6</sup> In these settings, and before other international human rights monitors, the Government highlights programming and funding outlays that evince a substantial commitment to addressing violence against human rights defenders.<sup>7</sup> Yet, as Carmen points out, “the rates of assassinations, of threats, of confinements, of displacement, have increased.”<sup>8</sup> She and Marisela, along with other Afro-descendant advocates and organizations, critique the Government’s protection measures for, among other deficiencies, failing to countenance their communities’ collective protection needs and Afro-descendant women’s contexts specifically.<sup>9</sup> The Government has not met its obligations under the Peace Accord, they note, to support and consult with Afro-descendant authorities and their communities’ autonomous self-protection institutions, in particular their official collective civil self-protection entity, the

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6. See, e.g., *Colombia presentó el Informe Periódico del Estado colombiano de la Convención para la Eliminación de la Discriminación Racial de Naciones Unidas* [Colombia Presented its Country Periodic Report on the International Convention on the Elimination of All Forms of Racial Discrimination to the United Nations], MISIÓN PERMANENTE DE COLOMBIA ANTE LAS NACIONES UNIDAS EN GINEBRA [PERMANENT MISSION OF COLOMBIA TO THE UNITED NATIONS IN GENEVA] (Nov. 28, 2019), <https://ginebra-onu.mision.gov.co/newsroom/news/2019-11-28/6086> [<https://perma.cc/MYV4-XVQM>] (highlighting Colombia’s presentation of periodic report regarding the International Convention for the Elimination of All Forms of Racial Discrimination); *Colombia sustenta el sexto informe sobre la aplicación del Pacto de Derechos Económicos, Sociales y Culturales* [Colombia Supports its Sixth Report on the Application of the International Covenant on Economic, Social and Cultural Rights], MISIÓN PERMANENTE DE COLOMBIA ANTE LAS NACIONES UNIDAS EN GINEBRA [PERMANENT MISSION OF COLOMBIA TO THE UNITED NATIONS IN GENEVA] (Sept. 19, 2017), <https://ginebra-onu.mision.gov.co/newsroom/news/2017-09-19/5685> [<https://perma.cc/KMD7-AKD2>] (announcing a presentation by Colombia to the U.N. Committee on Economic, Social, and Cultural Rights in compliance with the International Covenant on Economic, Social and Cultural Rights).

7. See, e.g., Comm. on the Elimination of Racial Discrimination, Combined Seventeenth to Nineteenth Periodic Reports Submitted by Colombia Under Article 9 of the Convention, ¶¶ 135, 252–73, U.N. Doc. CERD/C/COL/17-19 (Nov. 14, 2018) (detailing national plans for the protection of human rights defenders). “In 2017, the National Protection Unit had a total of 3,580 registered human rights defenders and civic leaders subject to protection and 3,665 with protection measures. The annual amount invested in protection exceeds 350 billion pesos.” *Id.* ¶ 257.

8. Interview with “Carmen,” *supra* note 2.

9. *Id.*; Interview with “Marisela,” *supra* note 2; *2019 Rep. of the Special Rapporteur*, *supra* note 3, ¶ 58 (recounting deficiencies in official governmental protection schemes, particularly concerning Afro-Colombian communities); *El Derecho a Defender Derechos* [The Right to Defend Rights], *supra* note 4 (reporting that a majority of murdered human rights defenders were part of peasant, indigenous, Afro-descendant, environmental and/or community organizations).

*Guardia Cimarrona*.<sup>10</sup> When asked what changes would ensure better protection, many Afro-Colombian women human rights defenders assert that protection must start with the Government respecting their collective territorial rights as recognized under Colombian law.<sup>11</sup>

The problems they identify speak not only to an ineffective state response to threats against Afro-Colombian women human rights defenders, but also to a misdiagnosis of the dangers that they face to begin with. Colombia's approach to protecting human rights defenders frames them as individual subjects distinct from their political context and frames the threats to their lives as anomalies. The misdiagnoses of dangers fall roughly along the following axes:

1. **Exceptional Versus Unexceptional:** The dangers and threats to Afro-descendant women human rights defenders are an anomaly, rather than inherent to their context.
2. **Non-Political Versus Political:** Threats to Afro-descendant women human rights defenders are

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10. Acuerdo Final Para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera, Fuerzas Armadas Revolucionarias de Colombia [Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace, The Revolutionary Armed Forces of Colombia], FARC-EP & Gobierno de Colombia, §§ 2.1.2.2 (c), 3.4, 5.2.2, 6.2.3, 6.3.4 (Nov. 24, 2016), [https://peacemaker.un.org/sites/peacemaker.un.org/files/Colombia%20Nuevo%20Acuerdo%20Final%2024%20Nov%202016\\_0.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/Colombia%20Nuevo%20Acuerdo%20Final%2024%20Nov%202016_0.pdf) [<https://perma.cc/5YWG-NVJ4>] [hereinafter *Acuerdo Final*] (listing the particular security and protection obligations under the Peace Accord regarding human rights defenders); *La fatal deuda con las Guardias Indígena y Cimarrona del norte del Cauca* [*The Fatal Debt with the Indigenous and Cimarrona Guardians from Northern Cauca*], VERDAD ABIERTA (Aug. 15, 2019), <https://verdadabierta.com/la-fatal-deuda-con-las-guardias-indigena-y-cimarrona-del-norte-de-cauca/> [<https://perma.cc/RW9W-LCRM>] (chronicling difficulties of human rights defenders have faced when trying to gain support for the *Guardia Cimarrona*); 2019 Rep. of the Special Rapporteur, *supra* note 3, at ¶ 58 (“The National Protection Unit does not recognize indigenous, Maroon and campesino guards as forms of self-protection.”).

11. “*La mejor manera de tener seguridad es que se respeten los territorios*” [*The Best Way to Gain Security is by Respecting Territories*], VERDAD ABIERTA (June 9, 2019), <https://verdadabierta.com/la-mejor-manera-seguridad-se-respeten-los-territorios> [<https://perma.cc/Y9L9-ADB8>] (quoting a community organizer who identifies recognition of territorial rights as the best form of security); J.M. Kirby, *Facing Wrongful Detention and Threats, Afro-Colombian Women Call for Justice*, TRUTHOUT (Mar. 17, 2019), <https://truthout.org/articles/facing-wrongful-detention-and-threats-afro-colombian-women-call-for-justice/> [<https://perma.cc/NYF7-TLC9>] (describing many of the challenges facing women human rights defenders advocating for their territorial rights). These concerns were echoed by both Carmen and Marisela. Interview with “Carmen,” *supra* note 2; Interview with “Marisela,” *supra* note 2.

disconnected from the overarching political struggle they are waging on behalf of racial and gender justice, collective territorial rights, and self-determination in the face of a large-scale extra-activist development model.

**3. Individual Versus Collective:** Afro-descendant women human rights defenders are themselves atypical, because they are targeted for their individual actions rather than for their membership in a group. They are targeted simply for existing in traditional territories, protecting the environment, defying gender norms, and attempting to claim collective rights.

Having diagnosed threats to Afro-descendant women human rights defenders as exceptional, non-political, and directed against them as individuals, as opposed to common, political, and directed against them as members of collectives, the state approach suppresses community self-protection models that could draw on and strengthen communities' internal knowledge, abilities, and autonomy. The means for this is the application of state-led security, also characterized along three axes:

**1. External Versus Internal:** Security is imposed by outside state entities, rather than in consultation with community leaders.

**2. Uniform Versus Diverse:** Security solutions are uniform and fail to account for geographical and social distinctions.

**3. Militarized Versus Social:** Security relies on control of force in the hands of state armed actors, instead of augmenting and supporting communities' social protection mechanisms.

This article investigates the tensions between these various approaches in diagnosing threats and to providing security and protection for human rights defenders. It begins with a description of the post-Peace Accord risks and dangers that Afro-Colombian women human rights defenders and their communities face, the historical context for that risk, and the deficiencies they identify in the Government's approach to threats against them. The next part examines the three axes along which we assert the Government's approach misdiagnoses these threats, setting the stage for an inadequate response, described in Part III.

## I. AFRO-COLOMBIAN WOMEN HUMAN RIGHTS DEFENDERS AND HISTORICAL CONTEXT

In late 2016, Colombia's government and the Revolutionary Armed Forces of Colombia (FARC) signed a peace accord that ended decades of conflict and committed the Government to protecting human rights defenders and social leaders,<sup>12</sup> long a target of violence.<sup>13</sup> Specifically, the Agreement promised, in its standard legalese:

[S]ecurity guarantees, and [to] fight against the organizations, and criminal behavior, [that are] responsible for homicides and massacres, attacks on human rights defenders, social movements or political movements, or that threaten, or attempt to do so, those involved in implementing the agreements and building peace, including criminal organizations that have been named as the successors to paramilitarism and their support networks.<sup>14</sup>

Thus far, however, while overall homicides have decreased after passage of the Agreement, assassinations of human rights defenders have increased.<sup>15</sup> As of mid-May 2020, civil society

12. *Acuerdo Final*, *supra* note 10, at §§ 2.1.2.2, 3.4, 5.2.2, 6.2.3.

13. For years prior to the signing of the peace accord, human rights defenders in Colombia faced high rates of threats and assassinations, often attributed to fallout from the decades-long armed conflict between the FARC and government. PATRICK BALL, CÉSAR RODRIGUEZ & VALENTINA ROZO, DEJUSTICIA & HUMAN RIGHTS DATA ANALYSIS GROUP, ASESINATOS DE LÍDERES SOCIALES EN COLOMBIA EN 2016–2017: UNA ESTIMACIÓN DEL UNIVERSO [THE ASSASSINATIONS OF SOCIAL LEADERS IN COLOMBIA IN 2016–2017: AN ESTIMATE OF THE UNIVERSE] 1 (2018), <https://www.dejusticia.org/wp-content/uploads/2018/09/Asesinatos-de-l%C3%ADderes-sociales-en-Colombia-en-2016-2017-una-estimaci3n-del-universo.pdf> [https://perma.cc/KW67-7J2J]; COLECTIVO DE ABOGADOS JOSÉ ALVEAR RESTREPO, DEFENDER LA VIDA [JOSÉ ALVEAR RESTREPO COLLECTIVE OF ATTORNEYS DEFENDING LIFE] 10–13 (2018), [https://www.colectivodeabogados.org/IMG/pdf/cajar\\_informe\\_presentacion.pdf](https://www.colectivodeabogados.org/IMG/pdf/cajar_informe_presentacion.pdf) [https://perma.cc/BH6W-TV9E]; INDEPAZ, ET AL., PANORAMA DE VIOLACIONES AL DERECHO A LA VIDA, LIBERTAD E INTEGRIDAD DE LÍDERES SOCIALES Y DEFENSORES DE DERECHOS HUMANOS EN 2016 Y PRIMER SEMESTRE DE 2017 [PANORAMA OF VIOLATIONS TO THE RIGHTS TO LIFE, LIBERTY AND INTEGRITY OF SOCIAL LEADERS AND HUMAN RIGHTS DEFENDERS IN 2016 AND THE FIRST SIX MONTHS OF 2017] 5–8 (2017), [https://www.coljuristas.org/documentos/libros\\_e\\_informes/panorama\\_de\\_violaciones\\_a\\_lideres\\_y\\_defensores\\_2016-2017.pdf](https://www.coljuristas.org/documentos/libros_e_informes/panorama_de_violaciones_a_lideres_y_defensores_2016-2017.pdf) [https://perma.cc/JA6W-YK4W].

14. *Acuerdo Final*, *supra* note 10, at § 3.4 (translation by authors).

15. CAMILO AMADOR BONILLA STUCK ET AL., COMISIÓN COLOMBIANA DE JURISTAS, ¿CUÁLES SON LOS PATRONES? ASESINATO DE LÍDERES SOCIALES EN EL POST ACUERDO [WHAT ARE THE PATTERNS? THE ASSASSINATION OF SOCIAL LEADERS POST-ACCORD] 17–18 (2018), [https://www.coljuristas.org/centro\\_de\\_](https://www.coljuristas.org/centro_de_)

organizations had reported that 103 social leaders and human rights defenders and eight close relatives of defenders were killed this year alone.<sup>16</sup> Colombia's Public Advocate, or *Defensoría del Pueblo*, reported that 555 human rights defenders were killed between January 1, 2016 and the end of October 2019.<sup>17</sup>

Using different criteria, the U.N. High Commissioner for Human Rights has published slightly lower counts, but nonetheless qualifies the rate of assassinations as “staggering.”<sup>18</sup> It found that at least 107 human rights defenders were killed in 2019 and that those advocating on behalf of Indigenous and Afro-descendant communities were among the most targeted. It also reported that killings of women defenders rose by almost 50% between 2018 and 2019.<sup>19</sup> Substantial numbers of assassinated women defenders' bodies show signs of torture, mutilation, and sexual violence.<sup>20</sup> By any measure, human rights defenders and social leaders, particularly Afro-descendant and Indigenous advocates, confront an extremely high level of risk to their lives and to the lives of their loved ones in post-Peace Accord Colombia.

What do these risks and threats stem from, and why are Afro-descendant women human rights defenders targeted for violence? While a full recounting of colonialism, enslavement, and their legacies in Colombia is outside the scope of this article, some history is helpful for understanding the collective territorial struggles in which Afro-descendant women play key roles and the threats they face. Colombia's Afro-descendant population is largely descended from kidnapped and enslaved Africans, brought in chains to the port of Cartagena.<sup>21</sup>

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documentacion/documento.php?id\_doc=636 [https://perma.cc/KX5J-YQ4A]  
[hereinafter *¿Cuáles son los patrones?*].

16. *Líderes Sociales y Defensores de Derechos Humanos Asesinados en 2020* [Social Leaders and Human Rights Defenders Assassinated in 2020], INDEPAZ, <http://www.indepaz.org.co/paz-al-liderazgo-social/> [https://perma.cc/CDG9-3M5M] (updated continually, last visited May 18, 2020).

17. Jenny Rocio Angarita, *En cuatro años han sido asesinados 555 líderes sociales, dice la defensoría* [In Five Years 555 Social Leaders have been Assassinated, the Ombudsman Says], LAFM (Jan. 14, 2020), <https://www.lafm.com.co/colombia/en-cuatro-anos-han-sido-asesinados-555-lideres-sociales-dice-la-defensoria> [https://perma.cc/6KMF-BJ8K].

18. Press Release, U.N. High Comm'r for Human Rights, Colombia: Human Rights Activists Killings (Jan. 14, 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25461> [https://perma.cc/6FNC-HBHG].

19. *Id.*

20. STUCK ET AL., *supra* note 15, at 19.

21. See ARTURO RODRÍGUEZ-BOBB, EXCLUSIÓN E INTEGRACIÓN DEL SUJETO NEGRO EN CARTAGENA DE INDIAS EN PERSPECTIVA HISTÓRICA [EXCLUSION AND INTEGRATION OF BLACK SUBJECTS IN CARTAGENA FROM A HISTORICAL

Extreme physical and psychological torture and torment characterized the slave trade and slavery throughout the Americas, including in present-day Colombia.<sup>22</sup> The white supremacy underlying slavery was reflected in law, with enduring impact on Colombian society.<sup>23</sup> Enslaved Afro-descendant women suffered rape and sexual abuse, alongside other atrocities, and racist stereotypes of Black women as hyper-sexual and sexually available to nearly anyone persist in Colombia.<sup>24</sup> Following decades of debate and upheaval in the wake of Colombia's independence, it was in 1852 that "abolition was realized only after recalcitrant slave owners were defeated through force of

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PERSPECTIVE] 102–04 (2002) (chronicling the introduction of African slaves to Cartagena); Miguel Angel, *La esclavitud de indígenas y negras en la Época colonial* [*The Enslavement of Indigenous and Black Persons During the Colonial Period*], SEMANA (Mar. 29, 2012), <https://www.semana.com/opinion/expertos/articulo/la-esclavitud-de-indigenas-negros-en-la-epoca-colonial/324348> [<https://perma.cc/Z7KR-HVJ2>] (outlining the history of slavery in Colombia); Peter Wade, *Defining Blackness in Colombia*, 95 J. SOCIÉTÉ AMÉRICANISTES 165, 167 (2009) (noting that communities mainly descended from African slaves were already identifiably present in the region by 1850s).

22. Crude torture technologies were used to terrify enslaved Afro-descendants, and historical accounts of Colombian slaveholder barbarities include their cutting off enslaved peoples' ears and noses, and whipping them to death. SERGIO ANTONIO MOSQUERA MOSQUERA, LA TRATA NEGRERA Y LA ESCLAVIZACIÓN: UNA PERSPECTIVA HISTÓRICO-PSICOLÓGICA [THE SLAVE TRADE AND SLAVERY: A HISTORICAL-PSYCHOLOGICAL PERSPECTIVE] 41–83, 147–91 (2017).

23. *Id.* at 180–89, 197–220, 243–91; Ana Marcos, *Why are People in Colombia Talking About This News Anchor's Hairstyle?* EL PAÍS (Melissa Kitson trans, May 7, 2018), [https://english.elpais.com/elpais/2018/05/04/inenglish/1525435145\\_578339.html](https://english.elpais.com/elpais/2018/05/04/inenglish/1525435145_578339.html) [<https://perma.cc/CJ2J-DJ3H>] (exploring the continuing stigma surrounding identifiably "black" features in modern Colombian beauty standards); see generally María Eugenia Cháves, *Color, inferioridad, y Esclavización: la invención de la diferencia en los discursos de la colonialidad temprana* [*Color, Inferiority, and Enslavement: The Creation of Difference in Early Colonial Discourse*], in AFRO-REPARACIONES: MEMORIAS DE LA ESCLAVITUD Y JUSTICIA REPARATIVA PARA NEGROS [AFRO-REPARATIONS: MEMORIES OF SLAVERY AND REPARATIVE JUSTICE FOR BLACKS], AFROCOLOMBIANOS Y RAIZALES 73 (2007), <https://repositorio.unal.edu.co/bitstream/handle/unal/2862/02CAPI01.pdf> [<https://perma.cc/7QSV-X74M>] (examining the historical and enduring impact of this anti-Black racism).

24. Marly Daiana Jimenez Lasso, *Los Estereotipos de la sexualidad de la mujer negra latinoamericana* [Stereotypes of Sexuality of Latin American Black Women] 5–7 (Oct. 2014) (Monograph, Universidad de San Buenaventura), [http://45.5.172.45/bitstream/10819/6812/1/Estereotipos\\_Sexualidad\\_Mujer\\_Negra\\_Jimenez\\_2014.pdf](http://45.5.172.45/bitstream/10819/6812/1/Estereotipos_Sexualidad_Mujer_Negra_Jimenez_2014.pdf) [<https://perma.cc/4JJG-S3ZF>].

arms.”<sup>25</sup> Afro-descendants who escaped slavery, and those who were freed, fled to and settled throughout Colombia’s Pacific region, forming *palenques*, or free settlements, many of which served as bases of resistance to enslavement.<sup>26</sup> These communities, drawing on aspects of African cultures, developed distinct cultural practices and were in significant part isolated from mainstream Colombian society.<sup>27</sup>

Following slavery’s abolition, Afro-descendant communities endured state abandonment, lack of infrastructure, and poverty—conditions that continue to this day—and a lack of recognition of any form of collective or territorial rights.<sup>28</sup> Seizing on the creation of a constituent assembly to develop a new constitution in 1991, Afro-

25. Russell Lohse, *Reconciling Freedom with the Rights of Property: Slave Emancipation in Colombia, 1821–1852, with Special Reference to La Plata*, 86 J. NEGRO HIST. 203, 203 (2001).

26. KIRAN ASHER, BLACK AND GREEN: AFRO-COLOMBIANS, DEVELOPMENT, AND NATURE IN THE PACIFIC LOWLANDS 204 n. 3 (2009).

27. *Id.* at 34.

28. Corey Shouse Tourino, *Fed by Any Means Necessary: Omnivorous Negritude and the Transitional Semiotics of Afro-Colombian Blackness in the Work of Liliana Angulo*, 4 HISPANIC ISSUES ON LINE 228, 231 (2009) (“In contrast to Colombia’s indigenous groups, Afro-Colombians were never given reservations or communal lands, nor have they had an institutional role in national culture.”); CÉSAR RODRÍGUEZ GARAVITO ET AL., EL DERECHO A NO SER DISCRIMINADO: PRIMER INFORME SOBRE DISCRIMINACIÓN RACIAL Y DERECHOS DE LA POBLACIÓN AFROCOLOMBIANA [THE RIGHT TO BE FREE FROM DISCRIMINATION: FIRST REPORT ON RACIAL DISCRIMINATION AND THE RIGHTS OF THE AFROCOLOMBIAN POPULATION] 7–8, 29–32 (2008), [http://www.odracial.org/files/r2\\_actividades\\_recursos/269.pdf](http://www.odracial.org/files/r2_actividades_recursos/269.pdf) [<https://perma.cc/A4KT-BTS2>] (explaining that Afro-Colombians are one of the largest displaced groups in the world and outlining various state failures on their behalf); Jaime Alves, *Abandonment, Civil Life and Black Rage in Colombia’s Port City of Buenaventura*, OPENDEMOCRACY (May 26, 2017), <https://www.opendemocracy.net/democraciaabierta/jaime-alves/abandonment-civil-life-and-black-rage-in-colombia-s-port-city-of-buena> [<https://perma.cc/WSQ4-FJR4>] (arguing that structural racism in the port city of Buenaventura effectively “denies to the black population basic citizenship rights”); Camilo Alzate, *El ‘desarrollo’ se impone de espaldas al Pacífico* [‘Development’ is Imposed with its Back to the Pacific], COLOM. PLURAL (Mar. 8, 2019), <https://colombiaplural.com/el-desarrollo-se-impone-de-espaldas-al-pacifico/> [<https://perma.cc/7MVB-HEEZ>] (criticizing development plans for the Pacific coast of Colombia that ignore and exclude those communities actually present in the region, including Afro-Colombian communities); David Leonardo Carranza Muñoz, *Guardia Cimarrona, entre la pandemia y la violencia sin fin* [Cimarron Guardians, Between the Pandemic and Unending Violence], EL ESPECTADOR (May 5, 2020), <https://www.elespectador.com/coronavirus/guardia-cimarrona-entre-la-pandemia-y-la-violencia-sin-fin-articulo-918066> [<https://perma.cc/QVF4-3NCR>] (describing how the local communities have been particularly impacted by the coronavirus pandemic due to a comparative lack of investment in healthcare infrastructure).

Colombian organizations mobilized to ensure recognition of their collective cultural and territorial rights, ultimately achieving inclusion of Transitory Article 55, or AT 55, in Colombia's 1991 Constitution.<sup>29</sup> AT 55 recognized Afro-descendant cultural identity, called for promotion of Black communities' socioeconomic development, and required the drafting of a law within two years to grant Afro-descendant communities collective title to their traditional territories.<sup>30</sup> Securing passage of that law, Law 70 of 1993, required further Afro-descendant civil society mobilization and activism and represented a landmark success in legislative advancement for Black collective rights.<sup>31</sup> In addition to collective territorial titling, Law 70— together with International Labour Organization (ILO) Convention 169, which Colombia ratified in 1991,<sup>32</sup> Constitutional Court decisions,<sup>33</sup> and other protections<sup>34</sup>—established a legal framework requiring free, prior, and informed consultation with Afro-descendant communities regarding development or resource extraction that will impact their territories.<sup>35</sup> In 2016, Afro-descendant and Indigenous

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29. ASHER, *supra* note 26, at 40–47.

30. *Id.* at 47.

31. *Id.* at 2–5, 47–50.

32. *Ratifications for Colombia*, INT'L LABOUR ORG., [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::P11200\\_COUNTRY\\_ID:102595](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::P11200_COUNTRY_ID:102595) [<https://perma.cc/J5WK-62Y8>].

33. Corte Constitucional [C.C.] [Constitutional Court], Mar. 18, 2009, Judgment C-175/09, (Colom.), <http://www.corteconstitucional.gov.co/relatoria/2009/C-175-09.htm> [<https://perma.cc/7UDU-QYPV>] (stating that effective free, prior and informed consultation must ensure Afro-descendant and Indigenous communities' full participation when development projects are being planned that affect their territories); Corte Constitucional [C.C.] [Constitutional Court], Aug. 4, 2014, Judgment T-576/14, (Colom.), ¶¶ 5.29, 5.30, <http://www.corteconstitucional.gov.co/relatoria/2014/t-576-14.htm> [<https://perma.cc/5CC8-XBUQ>] (stating that possession of formal land titles is not a requirement for Afro-Colombians and their communities to demand their rights as Peoples, including their right to free, prior and informed consent).

34. *See, e.g.*, Comm. on Economic, Social and Cultural Rights, Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights, Colombia, ¶ 9 U.N. Doc. E/C.12/COL/CO/5, (June 7, 2010) (condemning Colombia's violations of Afro-descendant and Indigenous communities' rights to free, prior and informed consent).

35. ILO 169 incorporates an inclusive interpretation of "indigenous and tribal peoples" which applies the term "tribal" to certain Afro-descendant Peoples. INT'L LABOUR ORG., HANDBOOK FOR ILO TRIPARTITE CONSTITUENTS: UNDERSTANDING THE INDIGENOUS AND TRIBAL PEOPLES CONVENTION, 1989 (NO. 169), at 2 (2013), [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/publication/wcms\\_205225.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_205225.pdf) [<https://perma.cc/QKL2-PPPG>].

advocacy led to inclusion of an “Ethnic Chapter” in the peace accord between the Government and the FARC, designed to uphold Indigenous and Afro-descendant collective rights in peace implementation, including the right to prior consultation, with a clarified right to cultural objection.<sup>36</sup>

While the right to prior consultation has impacted a number of recent laws and led to court decisions that halt some harmful industrial projects, collective territorial protections still lack full, meaningful implementation, as manifested by the Government’s failure to abide by the Ethnic Chapter.<sup>37</sup> State-imposed, bureaucratic hurdles to Law 70’s implementation have meant, for example, that there are at least 271 Afro-descendant collective titling claims that have yet to be recognized,<sup>38</sup> and state-granted mining titles significantly overlap with vast swathes of Indigenous and Afro-descendant territories.<sup>39</sup> The state’s failure to comply with the law has coincided with Colombia’s internal armed conflict, fueled largely by

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ILO Convention No. 169 upholds the rights of Indigenous and Afro-descendant communities to free, prior, and informed consultation. International Labour Organization, Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 6, 7, 15, June 27, 1989, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C169](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169) [<https://perma.cc/K3SK-6WF5>].

36. Manuel Góngora-Mera, *The Ethnic Chapter of the 2016 Colombian Peace Agreement and the Afro-Descendants’ Right to Prior Consultation: A Story of Unfulfilled Promises*, 23 INT’L. J. HUM. RTS. 938, 945–950 (2019) (detailing how the inclusion of the Ethnic Chapter came to pass and the particulars of its guarantees, including the right to prior consultation); *Court Halts Colombia’s Biggest Copper Mining Venture*, LATIN AM. HERALD TRIB. (Mar. 25, 2010), <http://www.laht.com/article.asp?CategoryId=12393&ArticleId=354359> [<https://perma.cc/EUT2-XYJH>] (reporting how a mining operation was halted for failure to consult with local indigenous and Afro-Colombian communities).

37. Góngora-Mera, *supra* note 36, at 943, 951–53.

38. Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia, Inter-Am. Comm’n H.R., Rep. No. 49/13, OEA/SER.L/V/II, ¶ 660 (Dec. 31, 2013), <http://www.oas.org/en/iachr/reports/pdfs/Colombia-Truth-Justice-Reparation.pdf> [<https://perma.cc/EXG5-3LFT>]; OBSERVATORIO DE TERRITORIOS ÉTNICOS Y CAMPESINOS, DERECHOS TERRITORIALES DE LAS COMUNIDADES NEGRAS: SISTEMA DE INFORMACIÓN SOBRE LA VULNERABILIDAD DE LOS TERRITORIOS SIN TITULACIÓN COLECTIVA [OBSERVATIONS ON ETHNIC AND PEASANT TERRITORIES, THE TERRITORIAL RIGHTS OF BLACK COMMUNITIES: INFORMATION SYSTEM ON THE VULNERABILITY OF TERRITORIES WITHOUT COLLECTIVE LAND TITLES] 11 (2017), <http://etnoterritorios.org/index.shtml?apc=c-xx-1-&x=1299> [<https://perma.cc/DE8Q-U2QW>].

39. Viviane Weitzner, *‘Nosotros Somos Estado’: Contested Legalities in Decision-Making About Extractives Affecting Ancestral Territories in Colombia*, 38 THIRD WORLD Q. 1198, 1199 (2017).

struggles for territorial control, in which forced displacement served as the foundation for concentration of land into fewer and fewer hands.<sup>40</sup> Afro-descendant communities have suffered violent dispossession of their territories at the hands of armed actors, including paramilitaries and Colombian state forces, to make way for palm oil plantations, mining, and other large-scale industrial development.<sup>41</sup> Those who organize and advocate on behalf of the environmental sustainability of and collective claims to Afro-descendant territories have long risked targeted violence; that violence continues today with overwhelming impunity.<sup>42</sup>

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40. DARIO FAJARDO M., ESTUDIO SOBRE LOS ORÍGENES DEL CONFLICTO SOCIAL ARMADO, RAZONES PARA SU PERSISTENCIA Y SUS EFECTOS MÁS PROFUNDOS EN LA SOCIEDAD COLOMBIANA [STUDY ON THE ORIGINS OF SOCIAL ARMED CONFLICT, REASONS FOR ITS PERSISTENCE AND ITS PROFOUND IMPACT ON COLOMBIAN SOCIETY] 6–7 (2015), <https://www.corteidh.or.cr/tablas/r33442.pdf> [<https://perma.cc/PCV6-AC3B>].

41. Nixon Arboleda Montaña, *La palma africana en el pacífico colombiano* [*African Palm in the Colombian Pacific*], 27 LUNA AZUL 113, 114, 118–119 (2008) (noting that the Afro-descendant communities of Juguamiandó and Curvaradó were forced by military and paramilitary violence to leave their lands so that the areas could be occupied by the Urapalma company for palm oil development, and discussing further similar situations); Press Release, Amnesty Int'l, Colombia: National Development Plan Threatens to Deny the Right to Development to Land Restitution Victims of the Armed Conflict and Allow Mining Firms to Operate on Illegally Acquired Lands (July 17, 2015), <https://www.amnestyusa.org/press-releases/colombia-national-development-plan-threatens-to-deny-the-right-to-land-restitution-to-victims-of-the-armed-conflict-and-allow-mining-firms-to-operate-on-illegally-acquired-lands/> [<https://perma.cc/2UZA-ESXC>] (decrying attempts to legitimize illegal theft, for the purposes of “development,” of indigenous and Afro-Colombian lands during the armed conflict).

42. Press Briefing, U.N. High Comm'r for Refugees, UNHCR Concern at Increasing Murders of Local Leaders in Colombia (Nov. 17, 2017), <http://www.unhcr.org/en-us/news/briefing/2017/11/5a0eb9214/unhcr-concern-increasing-murders-local-leaders-colombia.html> [<https://perma.cc/Z7RD-758U>] (summarizing remarks by a UNHCR spokesperson, “noting an increase in murders of and threats against human rights defenders and community leaders in the Pacific Coast region of Colombia”); Human Rights Council, Annual Rep. of the U.N. High Comm'r for Human Rights on the Situation of Human Rights in Colombia, ¶¶ 8–9, U.N. Doc. A/HRC/37/3/Add.3 (Mar. 2, 2018) [hereinafter *HCHR Annual Report 2018*] (expressing alarm over the increasing number of killings of human rights defenders, particularly among women, community, indigenous, peasant, union, and Afro-Colombian leaders); María Camila Jiménez Nicholls & Luisa Fernanda Uribe Larrota, *La amenaza del desarrollo en el Norte del Cauca* [*The Threat of Development in Northern Cauca*], EL ESPECTADOR (Aug. 24, 2019), <https://www.elespectador.com/colombia2020/opinion/la-amenaza-del-desarrollo-en-el-norte-del-cauca-columna-877675> [<https://perma.cc/PEF7-M2BK>] (describing a grenade attack upon Afro-descendant leaders); INDEPAZ, ET AL., *supra* note 13, at 5

Despite being enshrined in legislation and upheld by Constitutional Court decisions, collective rights are never a given, and Afro-descendant communities must actively struggle to assert those rights in the face of the Government's unceasing drive for capitalist mega-development. As Marisela noted, the protections Afro-descendants have gained "are a result of mobilization, by communities, by organizations. But these processes lack guarantees."<sup>43</sup> She also pointed to institutional bad faith as one of the barriers to full implementation of prior consultation.<sup>44</sup> Being forced to defend the right to prior consultation, rather than having the state automatically uphold it as it should under law, exposes advocates to risk.<sup>45</sup> Marisela described the "double effort" Afro-descendant advocates confront, first to make the Ministry of Interior play its prescribed role in prior consultation processes, and then to confront the multinational corporation or business that seeks to operate in their territories.<sup>46</sup> Even during negotiations leading to Law 70, state officials seeking to defend their own development agenda opposed Afro-descendant ethnic claims to territory, unsuccessfully attempting to frame the new law as a means to distribute property rights that would, as Black activists argued, fit within its extra-activist development agenda.<sup>47</sup> The Government has since demonstrated a pattern of introducing and re-introducing legislative proposals on behalf of mining and other similar interests, aimed at undermining Afro-descendant collective territorial rights and circumventing prior consultation.<sup>48</sup> Some high-level Colombian government officials have publicly condemned prior consultation, framing Indigenous and Afro-descendant self-governance rights as obstacles to large-scale industrial agriculture and mining.<sup>49</sup> This framing echoes that of paramilitaries, who text death threats to Afro-descendant activists who stand against destructive mining practices, demanding they leave their territory "for opposing

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(stating that despite decades of governmental obligations to protect human rights defenders, the violence against them has continued unabated); *2019 Rep. of the Special Rapporteur*, *supra* note 3, at ¶¶ 25–26 (noting a near complete impunity for the murderers of human rights defenders and how this state of affairs invites more and ongoing violence).

43. Interview with "Marisela," *supra* note 2.

44. *Id.*

45. See *2019 Report of the Special Rapporteur*, *supra* note 3, at ¶ 37.

46. Interview with "Marisela," *supra* note 2.

47. ASHER, *supra* note 26, at 4, 49.

48. Press Release, Amnesty Int'l, *supra* note 41; *2019 Report of the Special Rapporteur*, *supra* note 3, at ¶ 40.

49. *HCHR Annual Report 2018*, *supra* note 42, at ¶ 49.

development.”<sup>50</sup> For Francia Marquez, a prominent Afro-Colombian woman environmental leader, behind the state’s failure to uphold collective rights is the fact that “it still sees Indigenous and Black people as slaves or descendants of slaves that are inferior, not worthy of those rights.”<sup>51</sup>

In the face of these obstacles, Afro-descendant women are playing prominent roles in peacebuilding and in defending collective territory and human rights. Francia Marquez won the Goldman Environmental Prize for South and Central America in 2018, for example, the culmination of a multi-year struggle to eliminate harmful commercial and illegal mining—a struggle during which Afro-descendant women from Norte del Cauca marched on foot to Bogotá to protest the poisoning of their territories.<sup>52</sup> In the post-Peace Accord context, however, Afro-descendant territories are among the most impacted by the continued violence that is in significant part a result of the Government’s failure to fully implement the Peace Accord, including its security guarantees.<sup>53</sup> Despite foreseeing that armed actors would fill the power vacuum left by the demobilized FARC, the Government has both failed to ensure a holistic state presence in areas already long abandoned by the state and to adequately consult with Afro-descendant authorities in furtherance of local collective self-protection measures, as required under the Accord.<sup>54</sup> Various armed actors use threats, forced displacement, assassinations, and sexual violence to terrify populations in these regions and assert control over

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50. Nicholls & Larrota, *supra* note 42 (translation by authors).

51. Weitzner, *supra* note 39, at 1203.

52. *Francia Marquez: 2018 Goldman Prize Recipient South and Central America*, GOLDMAN ENVTL. PRIZE, <https://www.goldmanprize.org/recipient/francia-marquez/> [<https://perma.cc/9WJG-CPY5>]; Weitzner, *supra* note 39, at 1201–02 (describing the march to Bogota).

53. See KROC INST. FOR INT’L PEACE STUDIES, ESTADO EFECTIVO DE IMPLEMENTACIÓN DEL ACUERDO DE PAZ DE COLOMBIA 2 AÑOS DE IMPLEMENTACIÓN [THE EFFECTIVE STATUS OF THE IMPLEMENTATION OF THE PEACE ACCORD IN COLOMBIA 2 YEARS AFTER IMPLEMENTATION] 188–194 (2019), [https://kroc.nd.edu/assets/321729/190523\\_informe\\_3\\_final\\_final.pdf](https://kroc.nd.edu/assets/321729/190523_informe_3_final_final.pdf) [<https://perma.cc/83YA-8GGV>].

54. *Id.* at 193 (noting that the regions hardest hit by violence in the wake of the accord are those which have historically been left defenseless by the Government); *La fatal deuda con las Guardias Indígena y Cimarrona del norte del Cauca* [*The Fatal Debt with the Indigenous and Cimarrona Guardians from Northern Cauca*], *supra* note 10 (noting the Government’s ongoing failure to implement its commitment to strengthening local self-protection systems); *Acuerdo Final*, *supra* note 10, at §§ 2.1.2.2 (c), 3.4, 5.2.2, 6.2.3, 6.3.4 (outlining the Government’s obligations under the accord).

resources, including illegal mining and logging, as well as narco-trafficking routes.<sup>55</sup> Corporate and state actors are also responsible for violence against human rights defenders, and the state has actively criminalized Afro-descendant women activists.<sup>56</sup>

Threatened Afro-descendant women defenders observe that the wave of violence against them, including femicide and rape, is designed to silence them, control their territories, and intimidate their communities.<sup>57</sup> This legacy of violence in Black territories, in combination with crippling social and economic exclusion, has disproportionately impacted Afro-descendant women and can impact their status in their own communities.<sup>58</sup> Afro-descendant women leaders can be at risk in all spaces of their lives, not only for defending their territories but also for stepping out of stereotypical gender roles, something they can accomplish simply by asserting their rights, including their right to be free from gender violence.<sup>59</sup> Too often, gender violence against Afro-descendant women is dismissed and ignored, and as Marisela, who accompanies survivors of gender violence, recounts, the systems in place to address it are so inadequate as to be all but designed to delay justice and leave survivors at risk.<sup>60</sup> As Afro-

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55. KROC INST. FOR INT'L PEACE STUDIES, *supra* note 53, at 193; Muñoz, *supra* note 28.

56. 2019 *Rep. of the Special Rapporteur*, *supra* note 3, at ¶¶ 30, 63, 69, 73; Kirby, *supra* note 11.

57. Duncan Tucker, *Afro-Colombian Women are Risking Their Lives to Defend Their Communities*, AMNESTY INT'L (Jan. 9, 2020), <https://www.amnesty.org/en/latest/news/2020/01/afro-colombian-women-risking-lives-defend-communities/> [https://perma.cc/RMD4-KTRL].

58. PROYECTO MUJERES AFRODESCENDIENTES DEFENSORAS DE DERECHOS HUMANOS, PROCESO DE COMUNIDADES NEGRAS (PCN), DERROTAR LA INVISIBILIDAD: UN RETO PARA LAS MUJERES AFRODESCENDIENTES EN COLOMBIA [DEFEATING INVISIBILITY: A CHALLENGE FOR AFRODESCENDANT WOMEN IN COLOMBIA] 7–11, 13–15 (2012), <http://afrocolombians.org/pdfs/DerrotarlaInvisibilidad.pdf> [https://perma.cc/79S3-ZQGG].

59. Beatriz Valdés Correa, *Feminicidios en Buenaventura: el control criminal sobre los cuerpos de las mujeres* [Femicide in Buenaventura: Criminal Control Over the Bodies of Women], EL ESPECTADOR (Mar. 8, 2019), <https://colombia2020.elespectador.com/territorio/feminicidios-en-buenaventura-el-control-criminal-sobre-los-cuerpos-de-las-mujeres> [https://perma.cc/63VA-EMJ8]. In 2010, an Afro-Colombian woman leader was forced to flee her home after militants abducted and raped her for speaking out against sexual violence. Lucy Ash, *Raped for Speaking Out Against Rape*, BBC NEWS (Aug. 18, 2016), <http://www.bbc.com/news/magazine-37107399> [https://perma.cc/D9SE-4EVK]; 2019 *Report of the Special Rapporteur*, *supra* note 3, at ¶ 45.

60. Interview with “Marisela,” *supra* note 2; HUMAN RTS. WATCH, WORLD REPORT: COLOMBIA EVENTS OF 2019 (2020), <https://www.hrw.org/world->

descendant women advocates affirmed in a conference on Afro-descendant women's rights in late 2019, women who accompany gender violence survivors face both risk and stigma in their own communities.<sup>61</sup> This implies that measures to increase security in Afro-descendant communities, including for women human rights defenders, must account for and address gender-based violence and other forms of gender discrimination.

#### A. Colombian Human Rights Defender Protection Movements and State Response

The 1990s saw an estimated hundreds of human rights defenders threatened and dozens killed in Colombia, often targeted by paramilitaries with the backing of the military.<sup>62</sup> A movement solidified domestically and internationally around protecting activists, and in the wake of the 1997 killing of high-profile human rights defenders Mario Calderón and Elsa Alvarado, the Committee for the Protection of Defenders emerged in Colombia.<sup>63</sup> To “avoid more deaths, exile or social process fragmentation,” the Colombian organization *Somos Defensores* (We Are Defenders), formed in 1999 with international support; the organization is a key source for systematized data on threats and other violence against human rights defenders, and conducts policy advocacy and direct accompaniment for threatened defenders, among other activities.<sup>64</sup> That same year, the U.N. General

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report/2020/country-chapters/colombia [https://perma.cc/2DJH-ERW7]; U.N. High Comm'r for Human Rights, *Report on the Situation of Human Rights in Colombia*, ¶ 76, U.N. Doc. A/HRC/43/3/Add.3 (May 8, 2020) [hereinafter *HCHR Annual Report 2020*]; Jenny Rocio Angarita, *Revolcón en Comisarias de Familia: proyecto reformaría horarios y funcionamiento* [A Demonstration in the Commissioner's Office for Families: Project Would Reform Schedule and Function], RCN RADIO (Mar. 2, 2020), <https://www.rcnradio.com/judicial/revolcon-en-comisarias-de-familia-proyecto-reformaria-horarios-y-funcionamiento> [https://perma.cc/KB7H-JXTY].

61. Two Afro-descendant Women Advocates, Conference Remarks at Cali, Colombia (Feb. 24, 2019) (names withheld for safety).

62. WINIFRED TATE, COUNTING THE DEAD: THE CULTURE AND POLITICS OF HUMAN RIGHTS ACTIVISM IN COLOMBIA 154–56 (2007).

63. *Id.* at 155–56, 160–61 (detailing the murders of Calderón and Alvarado and placing them in context of the ongoing violence at the time); Sandra Carvalho et al., *Protection Policies for Human Rights Defenders*, 13 SUR, no. 23, 2016, at 175, 177 (noting the creation of the committee in response to the murders).

64. Carvalho et al., *supra* note 63, at 177–78 (explaining the context in which *Somos Defensores* arose); *¿Quiénes Somos?* [Who Are We?], PROGRAMA SOMOS DEFENSORES, <https://somosdefensores.org/quienes-somos-1/> [https://perma.cc/5B6U-WT9K] (describing the history, activities, and goals of the group).

Assembly approved the text for what is commonly called the Declaration on Human Rights Defenders.<sup>65</sup>

Civil society mobilization and international pressure led to government initiatives to protect human rights defenders, most notably creation in 2009 of Colombia's Roundtable on Guarantees for Human Rights Defenders, a space of direct dialogue with the Government regarding policies and protections for human rights defenders, and its National Protection Unit (UNP) in 2011.<sup>66</sup> An assemblage of protection schemes formerly operating under various government entities, the UNP is part of the Ministry of Interior and was intended to provide security measures to threatened judicial actors, human rights defenders, journalists, and other vulnerable populations.<sup>67</sup> Its current mission is to evaluate risks and threats, to provide collective and individual protection measures for these populations, and to do so with a differential focus that accounts for territory, ethnicity and gender.<sup>68</sup>

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65. G.A. Res. 53/144, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Mar. 8, 1999); *Declaration on Human Rights Defenders*, U.N. OFFICE OF THE HIGH COMM'R ON HUMAN RIGHTS, <https://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx> [<https://perma.cc/E5EK-4LEV>] (summarizing the goals and key provisions of the Declaration); LUIS ENRIQUE EGUREN, PROTECTION INTERNATIONAL, THE TIME IS NOW FOR EFFECTIVE PUBLIC POLICIES TO PROTECT THE RIGHT TO DEFEND HUMAN RIGHTS 14 (2017), [https://www.protectioninternational.org/sites/default/files/20180620\\_The%20time%20is%20NOW.pdf](https://www.protectioninternational.org/sites/default/files/20180620_The%20time%20is%20NOW.pdf) [<https://perma.cc/A6H9-9YUP>] (describing the passage of the Declaration and its implementation).

66. Carvalho et al., *supra* note 63, at 177–78; Press Release, Consejería Presidencial para los derechos humanos [Presidential Office for Human Rights], Mesa Nacional de Garantías para Defensores de Derechos Humanos, Líderes Sociales y Comunales se reúne este lunes [National Round Table on Guarantees for Human Rights Defenders, Social and Communal Leaders Will Meet on Monday] (Oct. 20, 2014), <http://www.derechoshumanos.gov.co/Prensa/2014/Paginas/Mesa-Nacional-de-Garantias-para-Defensores-de-Derechos-Humanos-Lideres-Sociales-y-Comunales-lunes.aspx> [<https://perma.cc/E5VR-DM3S>].

67. *Se crea Unidad Nacional de Protección a cargo del Ministerio del Interior* [National Protection Unit Created Under the Ministry of the Interior], EL UNIVERSAL (Nov. 2, 2011), <https://www.eluniversal.com.co/colombia/se-crea-unidad-nacional-de-proteccion-cargo-del-ministerio-del-interior-51426-BSEU132056> [<https://perma.cc/V4VQ-KAKL>].

68. *¿Quiénes Somos?* [Who Are We?], UNIDAD NACIONAL DE PROTECCIÓN, <https://www.unp.gov.co/la-unp/quienes-somos> [<https://perma.cc/AP2N-GE64>].

The UNP's security escorts have provided protection services to many, at times at risk to their own lives and physical wellbeing.<sup>69</sup> Yet the entity is plagued by corruption, lacks adequate resources to meet the protection demand, can be extremely slow to respond to defenders seeking help in the face of threats, and may suffer an internal network of employees who collaborate with attackers.<sup>70</sup> The UNP has also miscategorized the level of risk of many who have sought its protection and failed to adequately extend protection to relatives of human rights defenders who are at risk due to their association with advocates.<sup>71</sup> It too often emerges that a human rights defender unsuccessfully sought adequate protection from the UNP in the face of mounting threats prior to being killed.<sup>72</sup> Also concerning is that the UNP's typical protection measures can be inadequate or fail to account

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69. See, e.g., "Fue un mensaje para mí": Leyner Palacios sobre asesinato de escolta de la UNP ["It Was a Message for Me": Leyner Palacios on the Assassination of UNP Bodyguard], EL PAIS (Mar. 5, 2020), <https://www.elpais.com.co/cal/leyner-palacios-afirma-que-asesinato-de-escolta-de-la-unp-fue-un-mensaje-para-el.html> [<https://perma.cc/8RGJ-V2ZE>] (discussing the murder of a UNP bodyguard as means of sending a message to the human rights defender he was defending); *Clan del Golfo está detrás del crimen de escoltas de la UNP* [*Clan del Golfo is Behind Crimes Against UNP Bodyguards*], VANGUARDIA (Nov. 14, 2019), <https://www.vanguardia.com/colombia/clan-del-golfo-esta-detras-del-crimen-de-escoltas-de-la-unp-AB1663398> [<https://perma.cc/49XS-EXVK>] (reporting the murders of two UNP bodyguards); *Ataque contra Francia Márquez y otros líderes sociales en Colombia deja dos heridos* [*Attack Against Francia Márquez and Other Social Leaders in Colombia Leaves Two Injured*], DEUTSCHE WELLE (May 5, 2019), <https://p.dw.com/p/3HwOr> [<https://perma.cc/A7XW-AYMA>] (reporting that two UNP bodyguards were injured during an attack on a community leader).

70. ¿Cuáles son los patrones? [*What Are the Patterns?*], *supra* note 15, at 109, 212–13 (reporting how bureaucratic delays of up to six months have resulted in victims being murdered before receiving requested protection); *Las grietas de la UNP ponen en peligro a los colombianos* [*The Cracks in the UNP Puts Colombians in Danger*], ANÁLISIS URBANO (Apr. 24, 2019), <https://analisisurbano.org/las-grietas-de-la-unp-ponen-en-peligro-a-los-colombianos/39965> [<https://perma.cc/ZLX6-58NR>] (discussing various forms of corruption and problematic implementations endemic to the UNP, including allegations that members of the UNP potentially collaborate with outside actors).

71. ¿Cuáles son los patrones?, *supra* note 15, at 109, 212–13 (giving examples of delays in protection and misclassification of defenders, including some who were ultimately killed, as low risk); *La fatal deuda con las Guardias Indígena y Cimarrona del norte del Cauca* [*The Fatal Debt with the Indigenous and Cimarrona Guardians from Northern Cauca*], *supra* note 10 (discussing how UNP bodyguards will protect individual leaders, but not their close family members, despite the latter being obvious targets).

72. ¿Cuáles son los patrones? [*What Are the Patterns?*], *supra* note 15, at 212–13.

for defenders' territorial contexts, particularly those in rural regions.<sup>73</sup> Moreover, its measures fail to address the causes of violence against human rights defenders, responding instead to individual attacks isolated from defenders' contexts. This reflects a refusal to implement collective protection measures as well as a misdiagnosis of the risks faced by Afro-descendant women human rights defenders.<sup>74</sup>

## II. MISDIAGNOSING THREATS: NARRATIVES UNDERLYING PROTECTION FOR AFRO-COLOMBIAN WOMEN HUMAN RIGHTS DEFENDERS

While people of African descent continue to be targets of widespread violence and displacement by armed groups, the Government has not directly coordinated with Afro-descendant authorities regarding how to collaborate with their collective security and self-protection measures. Thus, even though Afro-Colombian leaders are covered by Decree 660 of 2018,<sup>75</sup> a policy that at least formally tries to cover their security needs, the reality is that they do not feel protected by the state.

Violence against human rights defenders in Colombia, and Afro-Colombian women activists in particular, poses a difficult problem. The public policy devised to tackle such violence often builds on assumptions that are not reflective of reality and, in some instances, perpetuate the very prejudices that exacerbate the violence that the policy seeks to prevent. On the one hand, problems emerge simply from the inherent distrust between public institutions and human rights

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73. *El Derecho a Defender Derechos [The Right to Defend Rights]*, *supra* note 4 (describing a suit for protection brought on the basis of these inadequacies); KROC INST. FOR INT'L PEACE STUDIES, *supra* note 53, at 189 (noting that local communities view the UNP as designed for urban contexts and poorly suited to helping rural territories).

74. *El Derecho a Defender Derechos [The Right to Defend Rights]*, *supra* note 4 (arguing that one of the primary reasons the number of attacks has not decreased is that the Government responds only to the individual attacks in isolation, rather than responding to the underlying causes of the attacks); *¿Cuáles son los patrones? [What Are the Patterns?]*, *supra* note 15, at 213–14 (concluding that one of the primary failures of the UNP is its decision not to implement collective protection measures, despite their legal availability).

75. Decree 660 of 2018 establishes a comprehensive security and protection program for communities and organizations in the territories. D. 660/18, Apr. 17, 2018, Diario Oficial [D.O.] (Colom.), <http://www.suin-juriscol.gov.co/viewDocument.asp?id=30034958> [<https://perma.cc/AZR6-VDNW>].

defenders.<sup>76</sup> On the other hand, some of that distrust may be well-founded; it is well known that much of the violence against activists in Colombia has been led, or at least encouraged, by the state.<sup>77</sup> There is therefore deep and long-lasting distrust of any governmental intervention to protect activists.

In that context of distrust, the Colombian Constitutional Court has played a crucial role in establishing standards that would give transparency and accountability to the Government's protection of human rights defenders.<sup>78</sup> In this active role, the Court has set detailed standards for a governmental policy of protection, and in a way, has played a dual institutional role. First, it has been somewhat successful in neutralizing the deep mistrust in the Government. Because the Court is an independent public institution, it is perceived as less politically suspect and therefore a more likely ally for human rights defenders in the struggle for protection. Second, it has been successful in reversing the bureaucratic inertia of security institutions in Colombia, which often see themselves locked in sterile institutional

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76. See generally Luis E. Eguren, *El enano con pies de barro: la protección internacional de los defensores de derechos humanos en estos tiempos. El caso de Colombia* [*The Dwarf with Clay Feet: The International Protection of Human Rights Defenders in These Times. The Case in Colombia*], 3 *IBEROAMERICANA*, no. 12, 2003, at 184 (examining changing perceptions in the Colombian human rights space in the wake of the War on Terror).

77. See PROCURADURÍA GENERAL DE LA NACIÓN, *VIOLENCIA SISTEMÁTICA CONTRA DEFENSORES DE DERECHOS TERRITORIALES EN COLOMBIA* [SYSTEMIC VIOLENCE AGAINST TERRITORIAL RIGHTS DEFENDERS IN COLOMBIA] 16 (2018), [https://www.procuraduria.gov.co/portal/media/file/180710\\_Violencia%20sistematica-contra%20defensores-derechos-territoriales.pdf](https://www.procuraduria.gov.co/portal/media/file/180710_Violencia%20sistematica-contra%20defensores-derechos-territoriales.pdf) [<https://perma.cc/F7FJ-WUQQ>] (recognizing that the patterns of violence against local communities can be traced to sources both inside and outside state control); CRISTIAN RAÚL DELGADO BOLAÑOS, *FACTORES QUE EVIDENCIAN SISTEMATICIDAD EN EL ASESINATO DE LÍDERES/AS SOCIALES Y DEFENSORES/AS DE DERECHOS HUMANOS EN COLOMBIA* [FACTORS THAT DEMONSTRATE SYSTEMIC ASSASSINATION OF SOCIAL LEADERS AND HUMAN RIGHTS DEFENDERS IN COLOMBIA] 6 (2017), <http://www.indepaz.org.co/wp-content/uploads/2017/12/Factores-que-evidencian-sistematicidad-en-el-asesinato-de-l%C3%ADderes-sociales-y-defensores-de-Derechos-Humanos-en-Colombia.pdf> [<https://perma.cc/775X-RVEP>] (identifying sixteen instances of deadly violence against human rights defenders or leaders where the state was either partially or completely responsible).

78. Nathalia Sandoval Rojas, *La movilización social en tiempos de la Constitución: feministas, indígenas y víctimas de crímenes de Estado ante la Corte Constitucional colombiana* [*Social Mobilizations in Times of the Constitution: Feminists, Indigenous People and Victims of Crimes of State before the Colombian Constitutional Court*], *COLOM. INTERNACIONAL* 191, 213 (2013).

feuds that hinder their ability to provide protection for human rights defenders.<sup>79</sup>

The Constitutional Court's intervention, therefore, has been directed toward creating spaces in which human rights defenders may see their security interests represented and pressuring the Government to effectively follow up with such spaces. Thus, the Court has emphasized that protection of human rights defenders is part of the general framework of transitional governance and democratic building in the country.<sup>80</sup> As such, the Court has championed a "differential" approach to the protection of activists.<sup>81</sup> This approach was first proposed by the Constitutional Court in the context of its ambitious case law regarding the internally displaced population in Colombia.<sup>82</sup> The Court stated:

[O]ne of the prominent flaws in public policy on comprehensive care for the displaced population is the

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79. See generally CÉSAR A. RODRÍGUEZ GARAVITO & DIANA RODRÍGUEZ-FRANCO, RADICAL DEPRIVATION ON TRIAL: THE IMPACT OF JUDICIAL ACTIVISM ON SOCIOECONOMIC RIGHTS IN THE GLOBAL SOUTH 21–23 (2015) (describing the "unlocking effect" Constitutional Court rulings have on bureaucracies).

80. See, e.g., Corte Constitucional [C.C.] [Constitutional Court], Aug. 20, 2003, Judgment T-719/03, (Colom.), <https://www.corteconstitucional.gov.co/relatoria/2003/T-719-03.htm> [<https://perma.cc/DR9V-SCY2>] (outlining the transitional process by which armed actors may commit to peace, demobilize, and reintegrate); Corte Constitucional [C.C.] [Constitutional Court], Oct. 8, 2004, Judgment T-976/04, (Colom.), <https://www.corteconstitucional.gov.co/relatoria/2004/T-976-04.htm> [<https://perma.cc/6Y3H-9UGY>] (describing the State's obligation to prevent harm to fundamental rights such as life and personal integrity and identifying the conceptual tools the state should use for particularized risk assessment); Corte Constitucional [C.C.] [Constitutional Court], May 11, 2010, Judgment T-339/10, (Colom.), <https://www.corteconstitucional.gov.co/relatoria/2010/T-339-10.htm> [<https://perma.cc/SB5T-B2MA>] (identifying the duty to grant special protection measures to those under threat as constitutional, rather than one arising from a Peace Agreement, and affirming that such a duty can only be terminated when the relevant threat has ended).

81. See generally Sebastián Rubiano Galvis, *¿Mas allá de los escoltas y los chamanes? Enfoque diferencial y protección de líderes indígenas en medio del conflicto armado* [*Beyond Bodyguards and Shamans? A Differential Approach and the Protection of Indigenous Leaders in the Midst of Armed Conflict*], 31 REV. DERECHO PÚBLICO–UNIV. LOS ANDES, JULY–DEC. 2013, at 1 (analyzing the implementation of a differential ethnic approach for protecting Indigenous leaders).

82. See generally René Uruña, *Internally Displaced Population in Colombia: A Case Study on the Domestic Aspects of Indicators as Technologies of Global Governance*, in GOVERNANCE BY INDICATORS: GLOBAL POWER THROUGH QUANTIFICATION AND RANKINGS 249, 249–80 (Benedict Kingsbury et al. eds., 2012) (recounting the role played by the Court regarding the handling of internally displaced persons).

tendency to establish general and uniform treatment for the entire population in a situation of displacement, perceiving this population as a homogeneous group of people, yet ignoring the differential attention due to certain groups of individuals that, because of their special condition of vulnerability, are considered from the constitutional framework as subjects of special protection.<sup>83</sup>

For the Court, the Government's policy for protecting human rights activists should reflect this same "differential approach." The activities of human rights activists are dependent on their own respective identities and context, and protection of those activities should take into consideration such a context. Thus, the Court has ordered specific forms of protection for, among others, leaders of Indigenous Peoples,<sup>84</sup> internally displaced people,<sup>85</sup> and Afro-descendants.<sup>86</sup>

This approach, however, has been slow to penetrate the effective design and implementation of policy.<sup>87</sup> The UNP's work with regards to Afro-Colombian human rights defenders often pivots on the

83. Corte Constitucional [C.C.] [Constitutional Court], Dec. 10, 2010, Auto 382/10, ¶ 9 (Colom.), <https://www.corteconstitucional.gov.co/relatoria/autos/2010/A382-10.htm> [<https://perma.cc/HW2N-KE5P>] (translation by authors).

84. Corte Constitucional [C.C.] [Constitutional Court], Jan 26, 2009, Auto 004/09, (Colom.), <https://www.corteconstitucional.gov.co/relatoria/autos/2009/a004-09.htm> [<https://perma.cc/XJA6-CMQ3>].

85. Corte Constitucional [C.C.] [Constitutional Court], Aug 13, 2007, Auto 200/07, (Colom.), <https://www.corteconstitucional.gov.co/Relatoria/autos/2007/A200-07.htm> [<https://perma.cc/KY53-P4A9>].

86. Corte Constitucional [C.C.] [Constitutional Court], Jan. 26, 2009, Auto 005/09, (Colom.), <https://www.corteconstitucional.gov.co/Relatoria/autos/2009/A005-09.htm> [<https://perma.cc/6WPS-J8MT>].

87. María Flórez, *Amenazan a tres líderes afro, y las autoridades no actúan* [Three Afro Leaders Have Been Threatened, and the Authorities Do Not Act], ¡PACIFISTA! (Mar. 24, 2017), <https://pacifista.tv/notas/amenazan-a-tres-lideres-afro-y-las-autoridades-no-actuan/> [<https://perma.cc/Y9HC-5MTB>] (describing UNP leadership dismissal of criticism regarding its classification of displaced Afro-Colombian leaders facing potential assassination as having ordinary risk profiles); Jefferson Montaña Palacio, "Nadie garantiza la vida de los defensores de derechos humanos": presidente de Afrodes, EL ESPECTADOR (Aug. 2, 2017), <https://www.elespectador.com/colombia2020/pais/nadie-garantiza-la-vida-de-los-defensores-de-derechos-humanos-presidente-de-afrodes-articulo-855641/> [<https://perma.cc/8TJU-EKD7>] (describing the lengths Afro-Colombian human rights defenders have gone to in an attempt to solicit UNP protection that has still yet to come).

notion that violence against them is exceptional.<sup>88</sup> The key tool is the UNP's risk assessment, a set of criteria according to which it assigns a certain "risk level" to human rights defenders who have suffered attacks.<sup>89</sup> The assessment, by definition, is founded on the notion that human rights activists are only exceptionally exposed to violence.<sup>90</sup> Therefore, when such exposure occurs, governmental intervention is required.

In that context, even for public officials who want to protect human rights defenders, the threats and attacks are framed as a social anomaly. They are disconnected from the historical and current imbalances of political power that make the act of claiming human rights dangerous for Afro-descendant women and their communities.<sup>91</sup> This preconception has at least two effects. First, protection against violence is understood to be a governmental intervention to restore "normalcy." Second, protection is understood as being disconnected from the wider context of victimization in which human rights defenders operate.

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88. For example, Decree 2078 of 2017, which established the Committee for Risk Assessment and Recommendation of Protective Measures for communities, explicitly assumes that protective measures are, in principle, temporary. Thus, Article 1, amending article 2.4.1.5.8 of Decree 1066 of 2015, states that "[t]he comprehensive collective protection measures are temporary and will be maintained as long as the risk persists, in accordance with the monitoring report described in this decree, without prejudice to those that by their nature are intended to be permanent." D. 2078/17, Dec. 7, 2017, Diario Oficial [D.O.] (Colom.) <http://www.suin-juriscol.gov.co/viewDocument.asp?id=30034346> [<https://perma.cc/S6UL-LTJ3>] (translation by authors).

89. Decree 4912 of 2011 outlines the organization and risk assessment framework for the UNP. D. 4912/11, Dec. 26, 2011, Diario Oficial [D.O.] (Colom.) <http://www.suin-juriscol.gov.co/viewDocument.asp?id=1553577> [<https://perma.cc/HTS8-FTKT>].

90. See Article 2.4.1.1.2 of Decree 1066 of 2015, which reorganized the powers of Ministry of Interior and defines that "the beneficiaries of the (protection program) shall be any victim, as defined in Article 5 of Law 975 of 2005 (the "Victim's Law"), or witness, who is in a situation of extraordinary or extreme risk that threatens his or her life, integrity, freedom or security. D. 1066/15, May 26, 2015, Diario Oficial [D.O.] (Colom.) <http://www.suin-juriscol.gov.co/viewDocument.asp?id=30019912> [<https://perma.cc/GJ9U-BV6D>].

91. Xinia Bermúdez, *Defendiendo a los Defensores de Colombia en 2019* [*Defending Human Rights Defenders in Colombia in 2019*], CTR. FOR JUSTICE AND INT'L LAW (Mar. 5, 2019), <https://www.cejil.org/es/defendiendo-defensores-colombia-2019> [<https://perma.cc/4R5C-SDQ4>]; *Exigimos una política pública efectiva e integral por quienes defienden los derechos humanos en Colombia*, CTR. FOR JUSTICE AND INT'L LAW (Nov. 14, 2018), <https://www.cejil.org/es/exigimos-una-politica-publica-efectiva-e-integral-quienes-defienden-derechos-humanos-colombia> [<https://perma.cc/NL8X-U976>].

The opposite is true, however. Violence is not disrupting a sense of normalcy; instead, violence forms a continuous background against which Afro-Colombian activism develops.<sup>92</sup> This is not to say that violence is perceived as “normal” by the victims and activists.<sup>93</sup> They are, after all, the first to ask the Government and the international community for protection from violence that should not be considered a “normal” byproduct of being a human rights activist in Colombia, a fact they have struggled to underscore.<sup>94</sup> Yet, there is no expectation that specific governmental intervention against particular threats or attacks will somehow eliminate the violent context in which such attacks emerge. Activists seem aware that violence against them is correlated with structural causes of violence in Colombia.<sup>95</sup> Instead, effective government-provided protection needs to strike a delicate balance between using exceptional measures to prevent specific

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92. For details and figures regarding the structural violence that all human rights defenders in Colombia face, including Afro-Colombians, see the discussion of the human rights claim (“tutela”) in *El Derecho a Defender Derechos [The Right to Defend Rights]*, *supra* note 4.

93. See Leidy Lorena Páez Vaquiro et al., “Nos están matando por defender la vida”: Narrativas de defensores y defensoras de derechos humanos en el marco de la violencia sociopolítica en Colombia [“They Are Killing Us for Defending Our Lives”: The Narratives of Human Rights Defenders in the Context of Sociopolitical Violence in Colombia] (Apr. 24, 2020) (Thesis, Universidad Santo Tomás), <https://repository.usta.edu.co/bitstream/handle/11634/22890/2020leidypaez.pdf> [<https://perma.cc/KRN7-KAY9>].

94. On the movement against the normalization of violence against women human rights defenders in Colombia, see CORPORACIÓN SISMA MUJER Y RED NACIONAL DE MUJERES DEFENSORAS DE DERECHOS HUMANOS, MUJERES DEFENSORAS, LIBRES Y SEGURAS: APORTES A LA VERDAD PARA LA NO REPETICIÓN [SISMA WOMEN CORPORATION AND NATIONAL NETWORK OF WOMEN HUMAN RIGHTS DEFENDERS, WOMEN DEFENDERS, FREE AND SAFE: CONTRIBUTION TO THE TRUTH FOR NON-REPETITION.] 29–31 (2019), <http://www.indepaz.org.co/wp-content/uploads/2019/09/Mujeres-Defensoras-Libres-y-Seguras-Aportes-a-la-Verdad-Informe-a-la-CEV-SISMA-MUJER-ET-AL-18-Junio-2019.pdf> [<https://perma.cc/N8E6-237K>]. For a discussion on how the Colombian government recognizes violence against human rights defenders, but denies its political connotation and systematic nature, see Fabian Andres Díaz Pabón & Ana María Arbelaez Trujillo, “The situation of human rights defenders in Colombia is unsustainable”: UN, OPENDEMOCRACY (Apr. 2, 2020), <https://www.opendemocracy.net/en/democraciaabierta/la-situaci%C3%B3n-de-los-defensores-de-derechos-humanos-en-colombia-es-insostenible-onu-en/> [<https://perma.cc/RP3U-3R6M>].

95. ¿Cuáles son los patrones? [What Are the Patterns?], *supra* note 15, at 62–101.

attacks, while recognizing that such specific interventions are deployed in a context where violence is not exceptional.<sup>96</sup>

However, governmental protection plans fail to strike that balance because they fail to recognize the continuum between particular threats and structural violence.<sup>97</sup> They shift too easily between two extremes: either protection is provided as an exceptional show of strength to match exceptional violence, or it is framed as ineffectual, given the violent context in which it is called to operate.<sup>98</sup> In the end, both extremes fail to provide sustainable security solutions for activists, which increases distrust of any governmental intervention to protect human rights defenders.

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96. *Id.* at 247–48. In particular, the sixth recommendation of the coalition of civil society organizations, led by the Colombian Commission of Jurists, suggests that the Government:

[D]evelop a comprehensive concept for the treatment of the problem (violence against human rights defenders) that adequately combines both the coercive actions needed to address it and the economic measures and social services through which the population of the territories where there is a greater presence of paramilitary and similar groups may find adequate means to carry out productive activities and the satisfaction of their basic needs to the extent that the civil institutions of the rule of law.

(translation by authors).

97. *See, e.g.*, CONSEJERÍA PRESIDENCIAL PARA LOS DERECHOS HUMANOS Y ASUNTOS INTERNACIONALES, INFORME DE HOMICIDIOS CONTRA LÍDERES SOCIALES Y DEFENSORES DE DERECHOS HUMANOS [PRESIDENTIAL OFFICE FOR HUMAN RIGHTS AND INTERNATIONAL MATTERS] 2010–2019 (2019), [http://www.derechoshumanos.gov.co/Prensa/2019/Documents/INFORME%20LDDH%20ACTUALIZADO%2017%20DE%20JULIO\\_V2.pdf](http://www.derechoshumanos.gov.co/Prensa/2019/Documents/INFORME%20LDDH%20ACTUALIZADO%2017%20DE%20JULIO_V2.pdf) [<https://perma.cc/2DK2-5S37>]. This governmental report on violence against human right defenders was widely criticized by civil society organizations for artificially reducing the number of attacks against activists, downplaying the systematic nature of the attacks, and framing many attacks as isolated instances of violence rather than the result of structural socio-economic conditions. For one critique, *see* Rodrigo Uprimny Yepes, *Errores fatales: sobre la supuesta reducción de asesinatos de líderes con Duque* [Fathal Errors: On the Supposed Reduction of Assassinations of Leaders with Duque], LA SILLA VACÍA (Aug. 10, 2019), <https://lasillavacia.com/opinion/errores-fatales-sobre-supuesta-reduccion-asesinatos-lideres-duque-72926> [<https://perma.cc/AV45-CXSD>].

98. *See, e.g.*, *Las exigencias de los líderes sociales al Gobierno en medio de la pandemia* [The Demands of Social Leaders on Governments Amidst the Pandemic], EL ESPECTADOR: COLOMBIA 2020 (May 6, 2020), <https://www.elespectador.com/colombia2020/pais/las-exigencias-de-los-lideres-sociales-al-gobierno-en-medio-de-la-pandemia-articulo-918255> [<https://perma.cc/WSY5-QHU2>] (cataloguing one series of local criticisms and the indirect governmental response).

This challenge is exacerbated by the fact that that protective interventions are not considered part of the wider public policy development in a particular territory. The UNP does not consider itself to be an agency in charge of policy or contextual analysis, but instead essentially sees itself as law enforcement.<sup>99</sup> However, violence against Afro-Colombian human rights activists in Colombia is deeply linked with a struggle for resources.<sup>100</sup> From the moment Afro-descendants initiated free communities, they stood in opposition to a dominant system that relied on exploitation and slavery.<sup>101</sup> Asserting collective territorial rights is a part of daily survival for Afro-descendant communities.<sup>102</sup> Nevertheless, these contextual elements are not part of the risk analysis the UNP performs, despite the Constitutional Court's orders.

Colombian government-provided protection also builds on the idea that human rights activism should be somehow “non-political,” as

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99. See, e.g., Corte Constitucional [C.C.] [Constitutional Court], mayo 15, 2019, Judgment T-199/19, (Colom.) <https://www.corteconstitucional.gov.co/relatoria/2019/T-199-19.htm> [<https://perma.cc/7DS2-9KWN>] (finding that the UNP was responsible for violating a journalist's rights to life and right to security, due to the Unit's failure to consider the specific context of the victim's professional activities; in particular, the Court ordered the Unit to review the risk assessment, and consider the victim's: (i) profile as a journalist; (ii) the content of the information he presented; and (iii) the context of the region in which he worked as a communicator).

100. The connection between violence against Afro-descendants and mining in Colombia is well established. See, e.g., Eduardo Restrepo, *Afrodescendientes y minería: tradicionalidades, conflictos y luchas en el Norte Del Cauca, Colombia* [*Afrodescendants and Mining: Traditionalities, Conflicts and Battles in Northern Cauca, Colombia*], 14 VIBRANT VIRTUAL BRAZ. ANTHROPOL. 255 (2017) (discussing traditional forms of mining in Afro-descendant populations and the conflicts that have arisen from the relatively recent appearance of foreign miners, many of whom are associated with illegal armed groups).

101. MAGUEMATI WABGOU ET AL., MOVIMIENTO SOCIAL AFROCOLOMBIANO, NEGRO, RAIZAL Y PALENQUERO: EL LARGO CAMINO HACIA LA CONSTRUCCIÓN DE ESPACIOS COMUNES Y ALIANZAS ESTRATÉGICAS PARA LA INCIDENCIA POLÍTICA EN COLOMBIA [“THEY ARE KILLING US FOR DEFENDING OUR LIVES”: THE NARRATIVES OF HUMAN RIGHTS DEFENDERS IN THE CONTEXT OF SOCIOPOLITICAL VIOLENCE IN COLOMBIA] 51–60 (2012), <https://jaimearocha.files.wordpress.com/2015/02/movimiento-social-afrocolombiano-negro-raizal-y-palenquero.pdf> [<https://perma.cc/Q3VD-E5Z6>] (tracing the journey of these communities from collectives of runaway slaves to the modern era); ILDEFONSO GUTIÉRREZ AZOPARDO, HISTORIA DEL NEGRO EN COLOMBIA: ¿SUMISIÓN O REBELDÍA? [THE HISTORY OF BLACKS IN COLOMBIA: SUBMISSION OR REBELLION?] 45–60 (1980) (detailing the beginnings of slave revolts in Cartagena and placing them in historical context).

102. See KAREN ENGLE, THE ELUSIVE PROMISE OF INDIGENOUS DEVELOPMENT: RIGHTS, CULTURE, STRATEGY 223–73 (2010).

opposed to the “political” sphere of electoral politics.<sup>103</sup> This contrast is particularly sharp in cases in which Afro-descendant women human rights defenders assert their right to exist in the territory of their formerly enslaved ancestors, free from contamination by large-scale extractive and other mega-projects.<sup>104</sup> Moreover, lack of state investment in education, health, and infrastructure is also a means to deprive communities of the ability to determine and implement a community-led vision of development.<sup>105</sup> In this regard, activism is often perceived as a hindrance to a national development project—too “political,” in the sense that it seeks to question structural choices in Colombian society.<sup>106</sup>

This perception of Afro-Colombian activists resonates with the idealization of the “victim” that has been observed in other transitional contexts, such as South Africa.<sup>107</sup> In Colombia, victims are often

103. See, e.g., Julieta Lemaitre Ripoll, *Diálogo sin debate: la participación en los decretos de la Ley de Víctimas* [*Dialogue without Debate: Participation in the Decrees of the Victims’ Law*], 31 REV. DERECHO PÚBLICO–UNIV. LOS ANDES 1, 1, 22–25 (2013) (describing the contrast between “private” and “public” activism).

104. See Lenyn Johana Córdoba Palacios, *El color también es político: Conflictos y resistencias de las mujeres negras del Norte del Cauca - Colombia* [*Color is Also Political: Conflicts and Resistance of Black Women in Northern Cauca - Colombia*] 47–52 (Aug. 2018) (Thesis, Facultad Latinoamericana de Ciencias Sociales), <https://repositorio.flacsoandes.edu.ec/bitstream/10469/14694/8/TFLACSO-2018LJCP.pdf> [<https://perma.cc/K4CF-Q8GV>]; see generally OBSERVATORIO DE DISCRIMINACIÓN RACIAL, *LA DISPUTA POR LOS RECURSOS NATURALES EN LOS TERRITORIOS AFROCOLOMBIANOS: EL CASO DE BUENOS AIRES Y SUÁREZ (CAUCA) DESDE UNA PERSPECTIVA DE DERECHOS HUMANOS* [THE DISPUTE OVER NATIONAL RESOURCES IN AFROCOLOMBIAN TERRITORIES: THE CASE OF BUENOS AIRES AND SUÁREZ (CAUCA) FROM A HUMAN RIGHTS PERSPECTIVE] 35–42 (2011) (describing Afro-Colombian activism with regards to economic extractivism).

105. See generally Adriana Espinosa Bonilla, *Frames y practicas discursivas entre Estado y poblaciones negras en Colombia: racismo estructural y derechos humanos* [*Frames and Discursive Practices between State and Black Populations in Colombia: Structural Racism and Human Rights*], 78 UNIV. HUMANÍSTICA 307 (2014) (discussing competing visions in Colombian human rights discourse).

106. See, e.g., *Consultas previas y paros: los dolores de cabeza de la industria de minas y energía* [*Prior Consultations and Stoppages: The Headaches of the Mining and Energy Industry*], REVISTA DINERO (Sep. 13, 2017), <http://www.dinero.com/pais/articulo/consultas-previas-y-paros-contra-la-actividad-minera-y-petrolera/249750> [<https://perma.cc/L7NZ-4L6W>] (detailing the openly critical opinions of the Vice-Ministers of Mining and Energy).

107. See, e.g., Tshepo Madlingozi, *Good Victim, Bad Victim: Apartheid’s Beneficiaries, Victims and the Struggle for Social Justice*, in LAW, MEMORY, AND THE LEGACY OF APARTHEID: TEN YEARS AFTER AZAPO V. PRESIDENT OF SOUTH AFRICA 107, 113 (Wessel Le Roux & Karin Van Marle eds., 2007) (criticizing “the view that says that those who do not demand reparations and social justice are

portrayed as entities without agency and in need of external protection; however, when they become active in creating their own narrative and reclaim their rights, they are perceived as “stubborn”<sup>108</sup>—too political to be considered innocent victims.<sup>109</sup> And yet, the strength of Afro-Colombian activism lies precisely in its all-encompassing vision of the challenges their communities face.<sup>110</sup> It is not restricted to discrete areas of activism, but rather expands its aims and puts into question the socio-economic structure that creates violence.<sup>111</sup> Issues of race, gender, class, and access to basic services constantly interact and reinforce one another.<sup>112</sup> Nadia Tapia Navarro has identified this interaction in the Peace Community of San José de Apartadó, which, while not Afro-descendant, has become a prime example of this general dynamic of activism. There, activism “acquired a meaning that exceeded the mere need for security; instead it became a life philosophy where communal living was valued as a principle.”<sup>113</sup>

Human rights activism of this kind can never be “apolitical” in any significant sense. Social leaders must constantly interact with armed groups (dissident guerrillas, paramilitaries, and drug traffickers) who exercise effective control over large parts of certain territories in Colombia.<sup>114</sup> The implicit assumptions and prejudices of the governmental mindset clash with the reality on the ground.

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‘good victims’ and those who do are ‘bad victims’); DON H. FOSTER ET AL., *THE THEATRE OF VIOLENCE: NARRATIVES OF PROTAGONISTS IN THE SOUTH AFRICAN CONFLICT 4* (2005) (detailing the difficult grey area that arises when someone is potentially both victim and perpetrator).

108. See Nadia Tapia Navarro, *A Stubborn Victim of Mass Atrocity: The Peace Community of San José de Apartadó*, 50 J. LEG. PLURALISM UNOFFICIAL L. 188, 189 (2018).

109. Nadia Tapia Navarro, *The Category of Victim “From Below”: The Case of the Movement of Victims of State Crimes (MOVICE) in Colombia*, 20 HUM. RTS. REV. 289, 305 (2019).

110. See Córdoba Palacios, *supra* note 104, at 63–79.

111. See Astrid Ulloa, *Feminismos territoriales en América Latina: defensas de la vida frente a los extractivismos [Territorial feminism in Latin America: The Defense of Life Against Extractivism]*, 45 NÓMADAS 123, 123 (2016).

112. See generally Gerardo Vásquez Arenas, *Paisaje racializado de la violencia en Colombia [The Racialized Landscape of Violence in Colombia]*, 45 NÓMADAS, 189 (2016) (examining “the close relationship between the violence that has occurred in Colombia and the racialized factors that have predominantly shaped the rural areas of Colombia”).

113. Navarro, *supra* note 108, at 203.

114. See CÉSAR AUGSTO RODRÍGUEZ GARAVITO ET AL., *EL DESPLAZAMIENTO AFRO: TIERRA, VIOLENCIA Y DERECHOS DE LAS COMUNIDADES NEGRAS EN COLOMBIA [AFRO DISPLACEMENT: LAND, VIOLENCE AND THE RIGHTS OF BLACK COMMUNITIES IN COLOMBIA]* (2009).

Activism that is too overtly “political” seems to be understood by the Duque administration as somehow less deserving of protection; it is perceived as too connected with traditional politics and even dangerously skirting the limits of legality in certain areas of Colombia.<sup>115</sup> However, the only activism that has any hope of sustainable impact on the ground is precisely that which engages with the structural causes of discrimination, activism that is distinctively “political.”

Sustainable protection for Afro-Colombian women activists can only come from a governmental intervention that builds on the wider social networks on which activists rely for their work.<sup>116</sup> Both perpetrators and victims know that a central strength of civil society activism is its social depth. This is precisely why a key dimension of local activism is to rebuild the social and community fabric that the conflict has systematically destroyed—a central tenet of conflict studies and transitional justice literature since the 1990s.<sup>117</sup> The governmental strategy of protection, however, seems to be oblivious to the importance of these social networks for both activism and security. The UNP must recognize the legitimacy and practical importance of such a network; however, it rarely does so.<sup>118</sup> Not only does it fail to

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115. Most vocal of that opinion is ex-President and now Senator Álvaro Uribe, who has systematically stigmatized human rights defenders in Colombia. See *Defensores de derechos humanos: bajo el estigma del presidente Álvaro Uribe* [Human Rights Defenders: Under the Stigma of President Álvaro Uribe], COLECTIVO DE ABOGADOS JOSÉ ALVEAR RESTREPO (Nov. 2, 2009), <https://www.colectivodeabogados.org/./?Defensores-de-derechos-humanos,1861> [<https://perma.cc/7U5J-HTZ3>]; see also, Sandra Borda Guzmán, *La administración de Álvaro Uribe y su política exterior en materia de derechos humanos: De la negación a la contención estratégica* [The Álvaro Uribe Administration and its Foreign Policy on Human Rights], 25 ANÁLISIS POLÍTICO 111, 129–30 (2012) (recounting Uribe’s accusations that various human rights defenders were politicians in the service of terrorism).

116. Outside Afro-descendant activism, an important example of the connection between social fabric and effective activism is the Municipality of San Carlos, Antioquia. See Juan David Villa Gómez & Alfonso Insuasty Rodríguez, *Entre la participación y la resistencia: reconstrucción del tejido social desde abajo en el municipio de San Carlos: Más allá de la lógica de reparación estatal* [Between Participation and Resistance: Reconstruction of the Social Fabric from Below in the Municipality of San Carlos: Beyond the Logic of State Reparation], 16 EL ÁGORA USB 453 (2016).

117. CARLOS MARTÍN BERISTAIN ET AL., RECONSTRUIR EL TEJIDO SOCIAL: UN ENFOQUE CRÍTICO DE LA AYUDA HUMANITARIA [RECONSTRUCTING THE SOCIAL FABRIC: A CRITICAL APPROACH TO HUMANITARIAN AID] (1999).

118. See *Indígenas y afros, excluidos del nuevo programa de protección para comunidades* [Indigenous and Afros, excluded from the new community protection

recognize the continuum of violence in which activists operate, it also seems to favor an understanding of activism disconnected from the wider context of politics. As a result, Afro-descendant women activists are considered, in principle, as individual actors who need to be protected as individual physical persons, not as part of a wider networks.<sup>119</sup>

An important contrast emerges here between Afro-descendant and Indigenous communities in Colombia.<sup>120</sup> Since the colonial period, Indigenous communities have had an organized unarmed “Indigenous guard” that is mainly responsible for the day-to-day security arrangement in territories recognized as Indigenous.<sup>121</sup> Consequently, one dimension of the differential approach of government-provided security for Indigenous leaders is channeled through the Indigenous guard in the form of funding or training.<sup>122</sup>

While not free from controversy, this institutional arrangement seems to be more familiar for UNP officials, in the sense that there is some level of inter-institutional interaction with the

*program*], VERDAD ABIERTA (Apr. 28, 2018), <https://verdadabierta.com/indigenas-y-afro-excluidos-del-nuevo-programa-de-proteccion-para-comunidades/> [<https://perma.cc/B354-8DVK>].

119. Against this approach, one of the demands women human rights defenders in Colombia make is that violence against them be considered part of systematic discrimination. Thus, the National Network of Women Human Rights Defenders recommended to the Colombia Truth Commission:

Given that the structural conditions of discrimination and violence against women are at the root of the risks that women victims of the conflict and women human rights defenders face in different ways, it is recommended that the Commission carry out local and national campaigns that highlight these patterns of discrimination present in Colombian society, question the normalization of violence against women (inside and outside the conflict) and promote cultural changes aimed at removing obstacles, prejudices and stereotypes based on gender.

CORPORACIÓN SISMA MUJER Y RED NACIONAL DE MUJERES DEFENSORAS DE DERECHOS HUMANOS, *supra* note 93, at 149 (translation by authors).

120. On the differences and similarities between each group’s approach to self-protection after the 2016 Peace Agreement, *see generally* Ana Isabel Rodríguez Iglesias, *Las voces étnicas en el Acuerdo de Paz de Colombia: una resistencia ontológica* [*Ethnic Voices on the Peace Accord in Colombia: Ontological Resistance*], 39 RELACIONES INTERNACIONALES 165 (2018).

121. *See, e.g.*, Anders Rudqvist & Roland Anrup, *Resistencia comunitaria en Colombia. Los cabildos caucanos y su guardia indígena* [*Community Resistance in Colombia. The Cabildos of Cauca and their Indigenous Guard*], 18 PAPEL POLÍTICO 515, 532–35 (2013) (providing background information on the Indigenous guard).

122. Rubiano Galvis, *supra* note 81, at 26–27.

Indigenous guard.<sup>123</sup> These interactions are absent in the case of Afro-Colombian activists.<sup>124</sup> The Government has refused to recognize and support a similar body, the *Guardia Cimarrona* (Maroon Guard), in the case of Afro-descendant communities.<sup>125</sup> Rather than collaborate with Afro-descendant authorities and the *Guardia Cimarrona*, the Government seems to interact with Afro-Colombian leaders as individuals and only exceptionally as a collective.

But there are no inherent reasons for leaving the collective unprotected. There are some precedents in international human rights adjudication which conceive of collective protection. The Inter-American Court of Human Rights (IACtHR), for example, decided to protect a collective of over 500 peasant farmers in the Colombian Urabá region that faced threats, stigmatization, assassinations, and massacres because its members chose to resist displacement and declare themselves neutral in the midst of the country's armed conflict. First, in 2000, the IACtHR ordered provisional protective measures for 189 individuals. Following extreme violence against the community, the Court then ordered the protection of the community as whole.<sup>126</sup> This move protected a collective entity, the "Peace Community of San José de Apartadó" that defines itself as such and hence organizes, mobilizes, and strategizes on that basis.<sup>127</sup>

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123. See, e.g., Press Release, Unidad Nacional de Protección, La UNP le cumple a los pueblos indígenas [*National Protection Unit, the UNP Abides by Indigenous People*] (May 9, 2018), <https://www.unp.gov.co/la-unp-le-cumple-a-los-pueblos-indigenas/> [<https://perma.cc/FK8W-TC5Q>] (describing the UNP's cooperative efforts with various Indigenous communities).

124. See *La fatal deuda con las Guardias Indígena y Cimarrona del norte del Cauca* [*The Fatal Debt with the Indigenous and Cimarrona Guardians from Northern Cauca*], *supra* note 10 (contrasting the Government's approach to each initiative).

125. *Los desafíos de la Guardia Cimarrona* [*The Challenges of the Cimarrona Guardians*], VERDAD ABIERTA (July 14, 2015), <https://verdadabierta.com/los-desafios-de-la-guardia-cimarrona/> [<https://perma.cc/GHJ7-K3LP>].

126. See Matter of the Peace Community of San José de Apartadó, Provisional Measures Regarding Colombia. Order of Court, Inter-Am. Ct. H.R. (Ser. E), § "Considering," ¶ 7 (Nov. 24, 2000) (stating that provisional protective measures were mandatory); Matter of the Communities of Jiguamiandó and Curbaradó, Provisional Measures Regarding Colombia, Order of the Court, Inter-Am. Ct. H.R. (Ser. E), § "Considering," ¶ 8 (Feb. 7, 2006) (finding that the state was obligated to protect the specified communities).

127. For more background on the "comunidades de paz" in Colombia, see generally John Gregory Belalcázar Valencia, *Las comunidades de paz: formas de acción colectiva en resistencia civil al conflicto armado colombiano* [*Peace Communities: Forms of Collective Action in Civil Resistance to the Colombian Armed Conflict*], 7–8 ENTORNO GEOGRÁFICO 196 (2011); Roland Anrup & Janneth

In a way, the UNP has attempted, at least in form, to follow the Inter-American example. It established a particular “track” of protection for collective groups (for example, Indigenous Peoples), and now accepts that collective entities, and not just individuals, can be targeted and thus deserve protection as such.<sup>128</sup> The provided measures of protection, however, again betray an individualistic bias and are hardly discernable from protection provided to individuals who are threatened.<sup>129</sup> Thus, despite the existence of collective protection on paper and the formal possibility of community-strengthened governmental intervention, the reality is that Afro-descendant women human rights defenders are themselves framed as social anomalies rather than as spokespeople for a collective that faces dangers as a whole for simply existing in traditional territories, maintaining traditional interaction with the territory, and attempting to claim rights collectively.

### III. ANALYSIS OF COLOMBIAN STATE PROTECTION SOLUTIONS

As described above, Colombian state responses to threats against human rights defenders flow primarily through the UNP. While individual escorts have served the cause of defenders’ security to the point of risking their own lives, the UNP as an entity suffers underfunding and corruption, and its overall approach fails to address root causes of threats to defenders or to account for their contexts.<sup>130</sup>

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Español, *Una Comunidad de Paz en conflicto con la soberanía y el aparato judicial del Estado* [A Peace Community in Conflict with the Sovereignty and the Judicial System of the State], 35 DIÁLOGOS SABERES 153 (2011).

128. D. 2078/17, Dec. 7, 2017, Diario Oficial [D.O.] (Colom.) <http://www.suin-juriscol.gov.co/viewDocument.asp?id=30034346> [https://perma.cc/S6UL-LTJ3]. Decree 2078 of 2017 amended Decree 1066 of 2015 and established mechanisms of collective protection for human rights defenders and threatened communities.

129. See generally Andrea Carolina Vargas Laverde, *Hacia una protección integral para los defensores(as) de derechos humanos en Colombia* [Towards Comprehensive Protection of Human Rights Defenders in Colombia], 28 VÍA IURIS 1 (2020) (proposing a comprehensive framework of protections for human rights defenders).

130. *Ataque contra Francia Márquez y otros líderes sociales en Colombia deja dos heridos* [Attack Against Francia Márquez and Other Social Leaders in Colombia Leaves Two Injured], *supra* note 69 (recounting injuries to UNP personnel); *Las grietas de la UNP ponen en peligro a los colombianos* [The Cracks in the UNP Puts Colombians in Danger], *supra* note 70 (describing corruption and poor implementation within the UNP); *El Derecho a Defender Derechos* [The Right to Defend Rights], *supra* note 4 (alleging failures of the UNP protection regime to address the root causes of and contexts for violence against human rights defenders).

Security mechanisms are imposed from outside of local communities rather than being developed in meaningful consultation with Afro-descendant authorities and organizations.<sup>131</sup> This approach presumes that Afro-descendant women and their communities lack knowledge and resources for security that could be amplified and supported; solutions must therefore emerge from the state. The state's diagnosis, detailed above, that the threats are individual, atypical, and non-political, also inherently renders it unnecessary to engage with communities to develop holistic strategies to protect human rights defenders and social leaders.

State-imposed security is further complicated by the fact that the state itself frequently threatens Afro-descendant territories' integrity through failure to administer collective titling and by granting mining concessions without prior consultation, among other adverse acts.<sup>132</sup> Afro-descendant women activists assert that the Government is in fact the primary security threat, given its unwillingness to uphold collective rights in the face of large-scale extraction, its deployment of riot police against Afro-descendant protests, and its criminalization of defenders.<sup>133</sup> It is therefore not surprising that many advocates distrust the state-provided armed escorts, particularly as possible cases of unwarranted surveillance of advocates have emerged.<sup>134</sup> Carmen reported that UNP escorts have

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131. *La fatal deuda con las Guardias Indígena y Cimarrona del norte del Cauca* [The Fatal Debt with the Indigenous and Cimarrona Guardians from Northern Cauca], *supra* note 10.

132. Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia, *supra* note 38, at ¶ 660 (reporting complaints that local Community Council land registrations were being denied, thus effectively denying those communities the right to claim collective title and thus also the right to prior consultation over large development projects); OBSERVATORIO DE TERRITORIOS ÉTNICOS Y CAMPESINOS [OBSERVATIONS ON ETHNIC AND PEASANT TERRITORIES], *supra* note 38, at 11 (cataloguing a number of long outstanding unaddressed collective titling claims); Weitzner, *supra* note 39, at 1199 (describing the “gaping chasm” between the collective title rights that exist on paper and what has been implemented in practice); Stephen Ferry & Elizabeth Ferry, *Mining and the Defense of Afro-Colombian Territory*, 17 REVISTA: HARV. REV. LATIN AM. 18, 18 (2018) (giving an account of one community's struggle against mining encroachment).

133. Two Afro-descendant Women Advocates, *supra* note 61; José David Escobar Moreno, *El caso judicial de la líder social Milena Quiroz* [The court case of social leader Milena Quiroz], EL ESPECTADOR (Aug. 2, 2017), <https://www.elespectador.com/noticias/judicial/el-caso-de-milena-quiros-articulo-706239> [<https://perma.cc/523L-9369>].

134. *Denuncian irregularidades de funcionarios de la UNP* [Irregularities of UNP Officials Denounced], EL ESPECTADOR (June 26, 2019),

been directly involved in some cases of attacks on defenders.<sup>135</sup> Another threatened Afro-descendant human rights defender explained her mistrust, saying:

I cannot go anywhere without the two, armed, male body guards assigned by the UNP to protect me. . . . I know very little about them and their political agenda, while these men know where I live, and can identify my family. They watch my every move . . . . Protection should be given to our entire community, that way I would not need to have individual protective measures and I would feel safer.<sup>136</sup>

Moreover, as discussed earlier, the differential approach developed by the Colombian Constitutional Court remains law for the UNP. Yet Colombian state protection solutions are uniform, rather than tailored to Afro-descendant women's varied contexts. Defenders are not able to consider as diverse a set of possible state-provided security measures as the array of geographical and social contexts in Colombia calls for, including, for example, scenarios in which the UNP would complement local Afro-descendant self-protection mechanisms.<sup>137</sup> In rural areas in particular, lack of communications technology and coverage poses a barrier to security that UNP solutions leave unaddressed.<sup>138</sup> In cases where the UNP provides a bulletproof vest and panic button, defenders have found that the vests draw potentially harmful attention and leave their heads and limbs unprotected, and some report that the response to the panic button is far too slow to be helpful.<sup>139</sup> The UNP's offering for defenders it

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<https://www.elespectador.com/noticias/nacional/antioquia/denuncian-irregularidades-de-funcionarios-de-la-unp-articulo-867882> [https://perma.cc/G4KG-8JC6].

135. Interview with "Carmen," *supra* note 2.

136. PROCESO DE COMUNIDADES NEGRAS (PCN) ET AL., VIOLATIONS OF AFRO-COLOMBIANS' GENDER-BASED HUMAN RIGHTS: A REPORT FOR THE UNITED NATIONS COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN 7 (2019), [https://www.madre.org/sites/default/files/PDFs/Full%20CEDAW%20Colombia%20Final\\_Eng%20Revised.pdf](https://www.madre.org/sites/default/files/PDFs/Full%20CEDAW%20Colombia%20Final_Eng%20Revised.pdf) [https://perma.cc/VVX8-6RSJ].

137. *La fatal deuda con las Guardias Indígena y Cimarrona del norte del Cauca* [The Fatal Debt with the Indigenous and Cimarrona Guardians from Northern Cauca], *supra* note 10.

138. *Id.* (describing the desire and need for simple radios, due to the lack of cell phone service in certain areas). These concerns were echoed by Carmen and Marisela. Interview with "Carmen," *supra* note 2; Interview with "Marisela," *supra* note 2.

139. *Las grietas de la UNP ponen en peligro a los colombianos* [The Cracks in the UNP Puts Colombians in Danger], *supra* note 70.

categorizes as at higher risk—armed escorts and an armored vehicle—while necessary in the absence of better options, can be the wrong fit. Carmen pointed out that in riverine Afro-descendant communities, for example, where people move via boat, an armored vehicle is useless.<sup>140</sup> She and Marisela note that traveling with armed escorts while attempting to carry out human rights organizing poses its own set of difficulties, in part because it attracts armed actor attention.<sup>141</sup> Presuming the purpose of UNP security mechanisms is to create the conditions for defenders to safely carry out their work—a purpose that international human rights monitors emphasize<sup>142</sup>—moving with an armed entourage can be counterproductive as it may deter community engagement and participation.<sup>143</sup> Relocation, another measure, also prevents human rights defenders from carrying out their work as they find themselves exiled from the local community processes in which they were key protagonists.<sup>144</sup>

In addition to being state-imposed and uniform, Colombian security solutions are militarized, rather than social, meaning they rely on control of the use of force in the hands of state armed actors instead of augmenting and supporting communities' social self-protection mechanisms.<sup>145</sup> While threatened defenders undoubtedly need substantial protection, state responses create further militarization of Afro-descendant territories, a phenomenon that has failed to stem mounting violence and has displaced holistic strategies, including fulfilment of the state's obligation to systemically dismantle paramilitary networks.<sup>146</sup> This approach to security also fails to uphold Afro-descendant self-protection models that could both draw on and strengthen their communities' internal knowledge, abilities, and autonomy.

Afro-descendant women and their communities are rich sources for ideas and strategies regarding security in their own territories, and they have the internal political will to implement them. Their solutions range from large-scale and systemic to the immediate

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140. Interview with "Carmen," *supra* note 2.

141. *Id.*; Interview with "Marisela," *supra* note 2.

142. Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), Sixth Rep. on the Situation of Human Rights Defenders, ¶¶ 54–56, U.N. Doc. A/HRC/25/55, (Dec. 23, 2013).

143. Interview with "Carmen," *supra* note 2; Interview with "Marisela," *supra* note 2.

144. Weitzner, *supra* note 39, at 1202–03.

145. STUCK ET AL., *supra* note 15, at 109.

146. *HCHR Annual Report 2020*, *supra* note 60, at ¶¶ 45, 47–49.

and practical. In one riverine community, for example, Afro-descendant leadership have identified a need for a boat and gas to be able to quickly transport community members at risk, as well as a functioning communication system that connects them with support from urban areas in the event armed actors enter their territory.<sup>147</sup> Organized community self-protection protocols and systems have proven key in helping Indigenous, Afro-descendant, and rural communities resist armed actor intrusion in Colombia,<sup>148</sup> and are something Afro-descendant communities have sought to implement or strengthen. They have called on the state to consult and collaborate with Afro-descendant authorities and organizations regarding collective security, and strengthening and recognizing the *Guardia Cimarrona*, as the Government agreed to do under the Peace Accord.<sup>149</sup> Afro-descendant women human rights defenders have also long advocated for well-resourced, culturally sensitive responses to gender-based violence, in the form of prevention, justice, services, and reparations for survivors, as part of holistic self-protection solutions in their territories.<sup>150</sup>

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147. Interview with “Carmen,” *supra* note 2.

148. See ANA ARJONA, REBELOCRACY: SOCIAL ORDER IN THE COLOMBIAN CIVIL WAR 193–201 (2016).

149. *Acuerdo Final*, *supra* note 10, at §§ 2.1.2.2 (c), 3.4, 5.2.2, 6.2.3, 6.3.4; STUCK ET AL., *supra* note 15, at 206 (listing the relevant obligations the Government agreed to in the Peace Accord); *La fatal deuda con las Guardias Indígena y Cimarrona del norte del Cauca* [The Fatal Debt with the Indigenous and Cimarrona Guardians from Northern Cauca], *supra* note 10 (detailing the local campaign to strengthen the *Guardia Cimarrona*); *Indígenas y afros, excluidos del nuevo programa de protección para comunidades* [Indigenous and Afros, excluded from the new community protection program], *supra* note 118 (reporting on the Government’s failure to strengthen, or even consult with, the *Guardia Cimarrona*).

150. PROCESO DE COMUNIDADES NEGRAS (PCN), COLOMBIA—MUJERES AFRODESCENDIENTES: INFORME SOMBRA AL COMITÉ PARA LA ELIMINACIÓN DE LA DISCRIMINACIÓN CONTRA LA MUJER 5 [COLOMBIA—AFRODESCENDANT WOMEN: REPORT SHADOWS THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION] (2013), <http://afrocolombians.com/pdfs/COLOMBIA-InformeSombra-KuagroPCNorg.pdf> [<https://perma.cc/MCA4-WZ7Q>] (describing how the Constitutional Court has recognized a disparity between how governmental institutions and independent activities account for the effects of the relevant issues on Afro-descendant girls and women); PROCESO DE COMUNIDADES NEGRAS (PCN) ET AL. VIOLATIONS OF AFRO-COLOMBIANS’ GENDER-BASED HUMAN RIGHTS: A REPORT FOR THE UNITED NATIONS COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, *supra* note 136, at 9–18 (cataloguing demands for protection and the Government’s failure to protect Afro-Colombian women from gender-based violence, to provide them access to justice, to provide them access to healthcare, or to protect their land rights).

In the long term, for Afro-descendant communities, threat prevention is key.<sup>151</sup> Meaningful prevention would require state willingness to respect Afro-descendant authorities and their communities' self-determination, to actively uphold laws protecting collective rights, and to follow through on its security commitments with respect to women and to Afro-descendant and Indigenous human rights defenders under the Peace Accord. While this means a new systemic approach, change is not impossible, and Afro-descendant women's long history of defending their rights and collective territory has led to significant advances in Colombia. It is important for international and local human rights advocates to keep collective territorial rights and a gender focus at the center of efforts to protect Afro-descendant women human rights defenders. It is this broader view of conditions, and not just new technical innovations in the state's protection mechanisms, that can speak to whether Afro-descendant women human rights defenders are in fact enjoying a safe and supportive environment.

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151. *La fatal deuda con las Guardias Indígena y Cimarrona del norte del Cauca* [The Fatal Debt with the Indigenous and Cimarrona Guardians from Northern Cauca], *supra* note 10.