

THE FALSOS POSITIVOS: VICTIMS OF WAR AND COLOMBIAN POLITICS



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*To my father, as always.
Thanks to Arianna who makes me thoughtlessly.*

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Violations of Humanitarian Law, the meeting with the drug trafficking, the pain, the emotions: witnesses, scandals and uncomfortable truth.

An intense journey in Colombia, the land of contrasts which is always able to fascinate with its magic, the smell of coffee and the colors of its landscapes, and then it leaves you helpless in front of its devastating dark side.

A true story that aims to analyze the events relating to the violations of human rights by examining in particular the phenomenon of falsos positivos, those people who are disappeared by force, killed and then presented as “terrorists” or guerrilla members that died during a clash with the police, but that in reality had nothing to do with the insurgent groups.

A long conflict, which has caused a high number of civilian victims for over fifty years. A story that embraces legal texts, the voices of a crime and indifference.

A circle which has not been closed yet, but through the stories of the families of civilian victims and survivors, wants to show the story of a battle that has concerned every single Colombian family.

Keywords: Colombia, falsos positivos, conflict, peace process, Soacha

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Who are the *falsos positivos*

This work intends to analyze the events relating to the violations of human rights and humanitarian law in Colombia, examining in particular the phenomenon of *falsos positivos*, in the long conflict that for over fifty years has caused a high number of civilian victims.

Through the story of the families of the civilian victims and survivors, the intent is to show from a different point of view the story of a battle that has concerned every single Colombian family.



Student demonstration in Bogota

Credits: AP Photo / Fernando Vergara, File

The travel

In May 2014 I left for Colombia with a group organized by the international sector of Libera, an association that works against mafias. It was my third trip of “responsible tourism”. My third “globetrotters”, the journeys of commemoration and commitment that, in previous years, leading me firstly in Argentina and then in Mexico, had already made me know and fall in love with Latin America.

From the first day in Bogota, the capital, I realized that I arrived in Colombia in a very delicate moment, both politically and socially – sentence that I would have constantly heard during my stay.

A few days before, in fact, on the 25th of May, the election of the new President of Colombia had taken place. The main candidates were four, but most of the votes went to the outgoing President Juan Manuel Santos and to Ivan Zuluaga, both close to the former President Alvaro Uribe from extreme right: the first was his minister and the second his selected candidate. Since there was not a winner, Santos and Zu-

luaga would have a second election run-off in a few days. The tension and fear for a possible victory of Zuluaga was clear on the faces and in the words of every single person I talked to. “If he wins, I hope to get away from Colombia before they come to kill me”, many people told me. I have met many people, and a lot of faces have entered into my heart, but I keep a particularly intense reminiscence of the day spent in Soacha, the Comuna 1: it was a dormitory town outside Bogota where almost a million displaced people live. The roads to get there were unpaved, dusty and populated by stray dogs.

It took us one taxi, three buses and almost two hours travelling in order to reach the city, where we met a group of women, who were mother and who demanded truth and justice for their children.

As soon as we got off the bus we realized that everybody noticed our presence: a man approached and asked if we were going to the mothers of falsos positivos, offering to take us to them. We pretended not to understand and fortunately the man departed.

Once assured of not being followed, we reached the meeting place: a simple but comfortable house where we found a group of women waiting to welcome us. We introduced ourselves, and each of them told us their story and showed us pictures of their kids. All of them were killed by the army, and were registered as “combat deaths” and left in mass graves all over Colombia. They were all victims of the crimes of the Colombian State.

I felt puzzled and shocked. I wanted to ask a thousand questions, but I managed only to listen in silence to those stories, full of sorrow and love. But to understand or at least to try to explain these deaths, it is necessary to comprehend the historical and political context in which they occurred.

Colombia is divided by a conflict that has distant origins and whose roots and motivations are beyond the present work, but it is important to highlight the impact that continues to have on the civilian population: the number of civilians killed is very high and the internally displaced persons, the so-called desplazados, amounted to around 250,000 until 2010. An impressive figure that perhaps is second only to the situation in Darfur. A region of Sudan where an ongoing conflict broke out in 2003, causing about 400,000 dead and 2 million displaced persons according to the most reliable sources¹.

Those of Colombia are not numbers that only concern the past. Even today millions of peasants continue to be driven from their lands by the soldiers and paramilitaries, which aim to give the land to the narcos or the multinationals.

It is no exaggeration to say that every Colombian family has personally experienced the horror of this war, if we consider that at least in every family there is a member who joined the fighters or among the victims.

The *Plan Colombia* and relapses of the national law

The phenomenon of the systematic killing of civilians by guerrillas, paramilitaries and the army has a common element: the brutality of violence and the support of drug traffickers. The fact that those responsible for all these assassinations were the forces belonging to the state. It's still more outstanding because usually the army and the armed forces in general are responsible for protecting civilians, not killing them. For the systematicity, the method and the number of victims, the case of falsos positivos can be considered as a crime against humanity, in accordance with the Statute of the International Criminal Court².

Even though in the past this phenomenon was not instituted on a large scale, with the Alvaro Uribe government (in office 2002-2010) it has started to become systematic. In particular when the *democratic security project* began, soldiers were promised promotions and benefits for every guerrilla member killed, in order to produce the results required by *Plan Colombia*. For these reasons the army began to persecute civilians on a massive scale: indigenous, *campesinos* (peasants) and Afro-descendent groups. After the raids in the countryside, the Colombian armed forces have moved to the suburbs and to the poorest *barrios* of Bogota, thus arriving even at Soacha. Here between 2007 and 2008 soldiers recruited their victims with the help of the paramilitaries and some retired soldiers who approached the young with a deceptive proposal of a good job. *Plan Colombia* is a bilateral agreement signed in 1999 by the then President of the Republic of Colombia Andrés Pastrana and former US President Bill Clinton. The latter officially ordered a massive economic and military support to Colombia in order to facilitate the conclusion of the conflict and to combat drug trafficking. In the agreement the guerrillas were not considered as the expression of an internal discontent in the country, which erupted into an armed reprisal, but as a set of terrorist groups that must be defeated militarily to guarantee peace and security.



Banner of complaint at a manifestation

Credits: <http://www.alunatheatre.ca/2016/09/justice-peace-colombia/>



Some mothers and activists of Soacha

Credits: Flavia Famà

In July 2000, the Clinton administration approved an aid package of \$ 600 million value aimed at the creation and training of specialized bodies to fight drug trafficking, in addition to the concession of 60 Blackhawk helicopters, considered essential for the destruction of the coca plantations in the south of the country³.

Overall, the United States between 2000 and 2010 spent 5.683 billion dollars in Colombia, for military and police assistance. Only in 2012 they guaranteed \$ 25 billion in external political and military support to the country. In the face of these huge sums, Congress began to ask to make an assessment of US intervention efficacy, in order to justify the expenses incurred for the financing of campaigns abroad⁴ following the bilateral *Plan Colombia*. The Colombian government issued a series of directives of the Ministry of Defense and other internal rules with which they involved the granting of awards to the soldiers for each guerrilla member killed⁵.

Mothers of young boys from Soacha, and in general most of the family members of victims that I met during my stay in Colombia, have become, in spite of themselves, experts on violations of human rights and humanitarian law. The search for their loved ones and, subsequently, the constant demand for truth and justice for these atrocious crimes, fell on their shoulders. Simple people who maybe until some time ago did not know much about the ongoing conflict in their country, have started to investigate and study in order to know their rights. I tried myself, after that trip, to look for answers as to why such violence, and to find those answers, I tried to rationalize and to find a legal basis, something to restore dignity to all those families massacred.

These are the main documents that I found and analysed during my legal research in Colombia

All the facts of life have a cultural background: no fact can occur if there are not the conditions for this to occur. Even before the signing of the *Plan Colombia*, the Pastrana government adopted the *Law 418 of 1998* in which were offered incentives and rewards to those who collaborated with the law. Later, the government headed by President Alvaro Uribe brought forward the so-called “democratic security policy” and the *Law 782 of 2002* established the *National Security Fund and city cohabitation* aimed to finance the intelligence operations and rewards for those who cooperated with the law. These benefits and awards were strengthened with the subsequent directives of the Ministry of Defense *no. 29 of 2005, 15 and n. 16 of 2007*, supplemented by *Decree No. 1400 May 5, 2006* with which it was established remediation for operations of national importance, the so-called *BOINA*, and *Decree No. 1058 of 2008*.

To complete the regulatory framework, two further directives were issued that, in accordance with the rules of military discipline regime (contained in the *Law n. 836 of 16 July 2003*), were general and detailed instructions issued by the Ministry of Defense to commanders military force and police⁶. There are two relevant directives, including those issued in 2007: the *Directive. 300-28*, concerning transactions emerging from the ruins of “democratic security” policy; and *Directive n. 10*, concerning instead the protection of the civilian population.

In these regulations, on the one hand, it affirmed the need to have respect for human rights in carrying out operations against the insurgent groups, on the other hand, it claimed that the civilian population regularly engages in transactions with the guerrillas and that allegations of extrajudicial executions are actually part of the subversive strategy that takes to question the results of the “democratic security policy.”

This concept was already present in the Instruction *Manual for operations against the guerrillas* in 1979, the national army, which divided the civilian population into three categories:

- Whitelist: those who support the army;
- Blacklist: those who support the subversives;
- Gray list: those who do not have a position on it.

For the last two categories, the *Manual* disposal of intimidating measures, such as the threat of death or a threat so serious as to cause the person concerned to leave their place of belonging.

The following *Regulation de combate decontraguerriglia* of military forces, in 1987, divided “subversive forces” into two groups: the civilian population and the armed insurgent group.

The few studies carried out so far on the effectiveness of *Plan Colombia* have been drawn from internal agencies that evaluated the impact of US aid based on purely

military targets, the achievement of which is not covered respect for human rights in intervention operations in foreign countries⁷.

Some US documents were declassified today, as the Report⁸ of American ambassador in Bogota Myles Frechette, reveal that, in reference to the contrast of the guerrillas, the method adopted by the Colombian government and the senior officers to calculate the results and incentives to be given to the military was counting the bodies of people who died in combat. According to the Colombian analyst Michael Evans, this approach has led to human rights violations, such as the practice of *falsos positivos*, and boosted collaboration of the army with paramilitary groups. This collaboration was, however, also reported by American Ambassador Kurtis Kamman, who, in a February 2000 paper, reported that the killing of some fighters had been claimed separately either from the army and paramilitary groups.

The perverse consequences of Plan Colombia and incentives to soldiers

The lack of control and verification on the incentives system has in fact caused the proliferation of “combat deaths” in order to receive awards and public recognition¹¹.

Some activists for the protection of human rights, such as the Colombian Senator Ivan Cepeda Castro, have strongly advocated that the extrajudicial killings and the phenomenon of false positives were a direct effect of political strategy brought forward by the Government.



A manifestant banner

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The most serious situation was recorded in the years of presidency of Alvaro Uribe (2002-2010) who, with his “democratic security” policy, based on a vision of the FARC and other insurgent groups as terrorist movements, continued the action of repression of the conflict only on the military level¹². On the day of February 17, 2009 Manuel Santos, then Minister of Defense, signed a circular which increased the reward offered to the soldiers who killed the guerrillas and drug traffickers. These could in fact also acquire the uniforms, radios and weapons of their victims, receive medals and attend courses abroad.

The Human Rights Committee of the United Nations in its 2010 Report¹³ expressed strong concern about the spread of the practice of extrajudicial executions of civilians by the public force. To awaken the concern of the Committee, particularly to the disappearance of about nineteen young people in unclear circumstances between the end of 2007 and the summer of 2008 in Soacha Town Hall, just outside Bogota.

The scandal of Soacha

Some of the young people disappeared had told the family that they were going to do a job interview in the Department of Santander, in the central-eastern Colombia, and there was no news about their fate until the “case Soacha” broke out.¹⁴

It was as a result of this scandal, also at international level, that the phenomenon of falsos positivos, already widespread in the country, came to light: the phenomenon that the Special Rapporteur of the United Nations on extrajudicial executions, Arbitrary and Summary Executions Philip Alston called during his visit to Colombia in 2009, as “the cold-blooded and predetermined killing of innocent civilians, in order to benefit from it.”¹⁵ In his report to the Human Rights Council in March 2010, the Special Rapporteur pointed out that cases of false positives had reached an alarming spread as early as 2004.¹⁶

Unable to count on the support of the institutions, the mothers of some of the boys who disappeared from Soacha began the search personally. Only in this way they managed to find out that their children had been found dead and had been buried in several mass graves and registered as NN, that is “not known”.

When the news spread, that the bodies of young men from Soacha had been found in a mass grave in Ocaña, in Norte de Santander Department, about 700 km from the town, the mothers went to the Office of Legal Medicine. In that place, they were shown photos of what was left of the bodies and they were informed that those boys, whom they were desperately asking for news, were dangerous criminals, drug traffickers, paramilitaries or even members of the guerrilla killed in combat, whose remains were found in a mass grave.¹⁷

In this way Luz Marina, Carmenza, Doña Blanca, doña Elvira, doña Flor and Señora María met each other. That same day the Forensic Office was crowded with journalists, who had gone there for other reasons. Reporters became curious to see these women sitting and holding pictures of their children. A reporter came up, asked for

information and heard repeatedly the same story by every mother: all were there for news of their children disappeared from Soacha and discovered that they had been killed and buried in a mass grave in Ocaña. Thanks to this little coincidence the voices of the mothers of those young innocents managed to get to us and it did not remain confined within the walls of the forensic Office, with the risk of being isolated, as had already happened in most cases of false positives.

The time and the decisions of the competent judicial authorities then established that the Soacha guys were actually killed by the Colombian army, particularly by the troops of the Battalion Francisco de Paula Santander or Mobile 15 Brigade.¹⁸

Each family had to pay large sums of money - at least four million pesos¹⁹ - to be able to bring home the remains of their children and give them a proper burial. Some mothers instead could not recover what was left of their loved one and did not even have a body to mourn. Today mothers and surviving family members who have decided to break the silence, to give birth to a strong battle against the impunity of the state and those directly responsible, are constantly threatened. Some of them were beaten and was told to keep quiet, otherwise they would have gone the same way of the children.²⁰

Before these terrible events, none of the mothers had never heard of enforced disappearances or disappears with the end of the murder. Most of them lived a quiet life and would have imagined to create a movement to seek the truth and justice, to face threats to restore dignity to the death of their children, to be told that they too would end “with mouth full of flies”. This is what happened to Senora Maria, when two men on a motorcycle tried to intimidate her. Or to señora Edilma and to señora Melida that, because of threats by family members of the recruiters, had to leave their homes: victims twice, now even *dezplazadas*, displaced.



The author Flavia Famà with Luz Marina, one of the mothers of Soacha
Credits: Flavia Famà

The Soacha boys were innocent young boys looking for a better future that, after being deceived with promises of a job, were killed and then disguised as guerrillas, to be added to the number of combat deaths. An emblematic case, that it has recently been recognized as a crime of lese-humanity, is that of Fair Leonardo Porrás Bernal, the son of Luz Marina. Leonardo, 26, was kidnapped on January 8, 2008 in Soacha and killed a few days later. He suffered the birth of a physical and mental disability of 50%, due to which he did not move neither hand nor the right foot. Therefore, it was clear that he was not able to hold a weapon. The family searched for him for eight long months until, to the Office of Legal Medicine, an official told her mother that it has been found the body of his son Leonardo and showed her photos of the find. The young man's face was probed by the blows of a firearm, which had disfigured the left side and unhinged his jaw. In death certificate, like all false positives, Leonardo was registered as a dangerous leader of an armed group narco-terrorists killed in combat.²¹

Leonardo, like all boys disappeared in Soacha, had been approached by a recruiter paid by the army that was offering him some interesting job, as admitted Alexander Carretero Díaz himself, who was paid a million pesos for every young person he recruited.²²

For Leonardo's death were sentenced to 50 years in prison Major Marco Wilson Quijano Mariño, Lieutenant Diego Aldair Vargas Cortés, Carlos Manuel Gonzáles Alfonso, Richard Ramiro Contreras Aguilar, Ricardo García Corzo and Carlos Antonio Zapata Roldán.

The Movement of Soacha mothers

When the first bodies of the children were found, which were considered desaparecidos, it was immediately understood that something was wrong. The military, in most cases, had tortured them, killed them and then put them in guerrilla clothes and uniforms: but often the holes in the clothes did not correspond to the bullets on the body, the shoes worn were of different numbers or, again, the weapons were fake or coming from the black market. Overall, there are at least 5,000 cases of falsos positivos, victims of the crimes of the Colombian state for which, in most cases, a trial has not even started.

Some organizations - such as Amnesty International - have supported their struggle and, thanks to international attention, something slowly moved. The Colombian government has the heavy responsibility and on some occasions it seemed that it wanted to make fun of the victims, the survivors and also to all of us.

An example, among all, can be made: during the visit to Colombia by the US State Secretary Condoleezza Rice, the then President Uribe dismissed 27 military following the Soacha scandal. But two of them were appointed ambassadors, one in Santo Domingo and one in Sweden, and only thanks to the popular indignation have subsequently lost the position. The strong denunciation that comes from the families of the victims and survivors is that all armed forces in Colombia violate human rights: violence, torture, rapes, housebreaking and kidnappings are commonplace.

When families went to the police for an explanation about the death of their children, they were answered that, according to the death certificate, the children had died in

combat and that the army had killed them because they belonged to groups on the margins of legality (paramilitaries or guerrillas).

Pain, anger, helplessness, despair, anger, but also empathy and tenderness: these are the feelings that I have crossed nonstop from the moment I met the mothers of Soacha. Years later I can not get rid of the image of the bodies of the boys, disfigured and with a mouth full of flies.

It is unthinkable that in a situation of widespread militarization, with the presence of six American bases, Colombia has failed to control the situation or to ensure the security and freedom.

I left that house with the heart full of pain and love, and with the promise that I would follow the evolution of this terrible story.

“We were not born as isolated seeds, we are here to make our contribution, and if it means losing our life, that is so,” said Cesar, one of the activists of the Movement of Victims of State Crimes before my departure.

The first cases of false positives and the birth of paramilitarism

At this point it is appropriate to explain how the creation of further legal armed groups - or has taken place, at least, they were at the time of their constitution.

The normative source that, authorizing the first “civil self-defense groups”, has legitimized juridically the phenomenon of paramilitarism, is the article 33 of the *law 3398 of 1965*, converted into permanent law by the *law 48 of 1968*.

This law attributed to the Ministry of Defense “the possibility of releasing the port of war weapons to private citizens when it was deemed appropriate.”²³

Colombia has a long history in the field of violations of human rights and humanitarian law. Already between 1988 and 1994 there have been cases of extrajudicial executions, carried out by both insurgent groups by paramilitary and state agents who killed hundreds of civilians during covert actions. In those years also were the first cases of false positives, such as that of Gustavo Giraldo Villamizar Duran, who died on 11 August 1996; Elio Gelves Carrillo, who died May 28, 1997; Carlos Arturo Uva Velandia, who died June 21, 1992 and Wilfredo Quiñónez Bárcenas, José Gregorio Romero Reyes and Albeiro Ramírez Jorge, disappeared on September 4, 1995.²⁴ In all these cases²⁵ the victims were innocent civilians, who did not belong to insurgent groups, but that they have been declared dead in the course of fights that have never occurred.

It should be added a further element to the already complex situation and introduce another key player in the conflict: the paramilitary groups. These groups, in most cases, were created by former military and from that part of the population initially unrelated to war that, at a given time, decided to arm itself, perhaps to defend against the guerrillas, or to deal with the private security of large landowners companies. The

paramilitarism is still a very actual phenomenon in Colombia, although such groups have been officially declared illegal. Many of them are behind civilian security associations and control of the territory, even managing to have the support of local authorities; others have been converted into real criminal gangs, the so-called *BACRIM*.

The *Special Rapporteur* for extrajudicial, summary or arbitrary executions of the United Nations, in the 1990 Report²⁶, declared its appreciation for the enactment of some decrees that, in order to contain the paramilitary groups, declared them illegal.²⁷ At the same time it pointed out the need for the Colombian government to make a greater effort in order to counter in a concrete and effective manner the phenomenon of extrajudicial killings, and expressed its concern about the collaborations between some members of the army and the paramilitary groups.

Therefore, in addition to the official armed groups such as the army and the guerrillas, among which the most famous are the *Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo (FARC - EP)* and the *Ejército de Liberación Nacional (ELN)*, public police, private police and paramilitary groups also participate in the conflict.

Some cases still open

From the perspective of a better life thanks to a job offer, to the atrocious death, in a very short time: in almost all cases, the young boys were assassinated between 6 and 24 hours after their disappearance. It is clear that this is too short time for someone to have decided to join an insurgent group, start fighting and end their own way by dying during a fight.

That of the youths of Soacha is not an isolated case, and the practice of killings of false fighters is not limited to the past, but there have been recent episodes. Many cases are still open throughout Colombia, such as the death of Anderson Daza Hernández²⁸, killed during a military operation on 10 February 2015 in the Columna Héroes de Marquetalia, in the Caldas Department. Or that of Álix Fabián Vargas Hernández, disappeared and killed between 7 and 8 August 2008 in the city of Tunja, where he worked as a porter at the bus station. Just at the Tunja station, an unknown number of young people have disappeared, of which the case is still being investigated.

But the search for truth and justice is always an uphill path, especially when, as in the case of false positives, it is suggested to families not to report the disappearance of their relatives.

The consequences of the war machine

Over the years it has become increasingly clear that the system of incentives and rewards had generated strong competition among the army groups.

Some members of the national army tried for cases of false positives²⁹ have confirmed that those who showed the greatest number of deaths were conferred the awards. Some were granted an entire month's leave in December.

It should be recalled that the critical aspect of the question, in addition to the incentives provided, is represented by the total absence of controls and transparency in

the management of conflicts and granting same rewards, as well as the absence of effective administrative and judicial mechanisms to punish those who have committed extrajudicial executions.

Recent surveys of the Judiciary Supreme Court emphasized the existence of a direct relationship between the summary executions and the “democratic security policy” pursued by former President Alvaro Uribe Vélez, who currently holds the office of senator and is also under investigation for corruption and financing of paramilitary groups. To this extent, a study of the *Colectivo de Abogados José Alvear Restrepo - CAJAR*³⁰ - it analyzed some episodes in correlation with the increase in extrajudicial killings, particularly of the falsos positivos phenomenon. In this regard it is noted that the presidency of Alvaro Uribe is associated with an increase from 84% to 101% of extrajudicial executions and that from March 2006 to November 2008, corresponding to the period when General Mario Montoya was the head of the army with the support the United States, such executions rate increased by 144%.

From a historical point of view in Colombia, as in many other countries, violations of human rights are characterized by a high level of impunity that is caused by several factors:

- First some technical difficulties to carry out examinations at the crime scene, which is often impaired by the same police force with the intention to mislead the investigation and cover up their crimes. In this regard, the Representative of the High Commissioner for Human Rights of the United Nations said he was concerned by the low number of active processes and judgments delivered in relation to the number of victims of extrajudicial executions and in particular of falsos positivos, as well as the lack of access to justice for the victims and their families.³¹
- The moment of complaint and the request for a trial by relatives of the victims is a very critical time. The falsos positivos were recorded as “killed in combat” and in many cases the relatives who sought clarification from the army or the prosecutor were rejected and threatened. The main task of the judiciary should be to investigate and to seek truth of the facts and, on the other hand, in almost all cases, were the mothers who had to investigate and prove that their children were not combatants but civilians killed by an extrajudicial execution.

From impunity to the first convictions

Only in 2009, according to data provided by the National Unit for Human Rights and International Humanitarian Law, out of 1,300 cases, only 5% have passed the first stage of inquiry. Most did not pass, however, the stage of the investigation. The number of cases that have been trained and who have come to judgment has increased in the following years: from 11 in 2009 has reached 240 in 2013.

A first turning point came in June 2015 when the prosecutor put under investigation 5,137 civil servants, including members of the national army and people belonging to other security forces suspected of committing extrajudicial executions, particularly with the falsos positivos mode.

Of those, only a fraction has been convicted, in part because of continuous false leads, as demonstrated by some interceptions made public by the newspaper *Semana* in August 2015.³² A further step towards truth and justice, without which any path to build a stable and lasting peace appear unsuccessful, was taken on April 3, 2017 with the conviction of twenty soldiers. There was Colonel Gabriel de Jesús Rincón among them, the former commander of the 15th Brigade of the North of Santander, sentenced to 46 years in prison for criminal conspiracy, murder and forced disappearance of some young boys disappeared in Soacha: Diego Alberto Tamayo Garcera, Víctor Fernando Gómez Romero, Jader Andres Bustamante Palacio, Julio César Mesa Vargas and Jonathan Orlando Soto Bermúdez.³³

Diego Tamayo was 25 years old when he was seen for the last time by his family, on August 23, 2008. He was found a few days later registered as a member of the paramilitary group “Black Eagles”, who died in combat to more than 600 km from home. As had happened to Leonardo Porras Bernal, Julio César Mesa Vargas and Jhonatan Orlando Soto Bermúdez they had been recruited by Pedro Gámez and Alexander Carretero, as reported by the same Carretero, the young motorbike taxi driver of Ocaña, who became a key witness in the trial of the military responsible the death of young people from Soacha.

The young motorbike taxi driver, who before “ferrying” human beings was a drug courier, confirmed the existence of close links between the army and the narco world.³⁴

It is also necessary to report that for a long time almost all the investigation was opened only against the ordinary soldiers, without checking any responsibility of senior officers who, if having not directly participated in the executions, could still not be aware of what was happening under their command.

Another difficulty to reach the truth and justice is the fact that for a long time, the military jurisdiction has arrogated to itself the power to judge the military, because they were not recognized the scale and systematic nature of violence against civilians. This choice has proven less effective than the protection of victims of crime.

International humanitarian law

International humanitarian law places restrictions on the warring parties to limit the indiscriminate use of weapons and at the same time protect the civilian population not taking part in combat.

During a conflict the killings of fighters are an integral part of everyday life and, if carried out in accordance with humanitarian law, are accepted at the tip of law.

Article 3 common to the four Geneva Conventions³⁵, legal pillar of humanitarian law, prohibits committing against people taking no active part in hostilities, “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture, taking of hostages, outrages upon personal dignity, in particular humiliating and degrading treatment, convictions and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples. “



Poster about falsos positivos

Credits: <http://hijosenbogota.blogspot.it/>

Since 2007, the Colombian Ministry of Defense stated that common Article 3 and Additional Protocol II were applicable to the ongoing conflict against the FARC guerrillas. The International Committee of the Red Cross - ICRC - that frames it as an internal armed conflict, has the same opinion. Therefore, the phenomenon of widespread extrajudicial executions in the country it is a serious violation of the “rules of war”. Such hypotheses apply when guerrilla members are killed outside the context of the fight, then to be regarded as civilians; when they killed leaders of groups or communities on suspicion of being supporters of the guerrillas; when they killed informants or others to conceal the previous crimes, evidence or collusion; when they killed people belonging to criminal groups as a result of acts of corruption or agreements with rival groups; or, again, when people are killed for mere error and states that such deaths occurred during a fight.

It is obvious that these principles laid down by the Geneva Conventions are not in fact able to establish themselves and are constantly being violated.³⁷

For violations of these obligations the powers of the International Criminal Court, Article 7, letter k, of its Statute, is included among the crimes against humanity, the “inhuman acts direct to cause great suffering, or serious damage” when committed systematically and massively against the civilian population with knowledge of such an attack. The International Criminal Court framed the deliberate attacks on civilian populations, as such or against individual civilians not taking direct part in the fighting, such as war crimes.³⁸

In his report on the situation of 2012 in Colombia , the Prosecutor of the International Criminal Court has also stated that the practice of falsos positivos appears equivalent to a “generalized and systematic attack against the civilian population.”³⁹

Respect for the right to life and physical and moral integrity of all persons not taking part in hostilities, such as wounded, sick, prisoners and civilians, is the core of international humanitarian law.

The war against drug trafficking and the role of Member States

The Colombian events must be examined taking into account their international impact and influences from other countries.

It can't be ignored, for example, the role played by the United States when they decided to take part in the war against drug trafficking, and in particular against the Medellin Cartel, whose summit there was Pablo Escobar Gaviria.

Initially it was an unofficial partnership that saw the involvement of army units, navy and US intelligence services after the authorization of the US President George Bush.⁴⁰

In that phase of history many extrajudicial executions were committed by armed groups that provided help to the Colombian authorities in the search for Escobar.

The International pronouncements

The Inter-American Commission for Human Rights, in his latest report, it expressed appreciation for the increase in investigations and trials against extrajudicial executions, but it reiterated that the results are still insufficient compared to the number of victims.⁴¹

In this regard, it is noted that from the moment in which it became known the proliferation of extrajudicial executions, and in particular of the phenomenon of *falsos positivos*, there are still very few high-ranking soldiers who have undergone a trial and even fewer those who received a conviction.

Following the spread of wiretaps between two soldiers involved in the scandal of extrajudicial executions that have been spread by a few local newspapers in the summer of 2015 he learned of *Tapen-Tapen* strategy, a technique aimed at covering up and lengthening the investigations in order to protect the high officers and the colonels involved in such crimes.⁴² With these new elements have been opened 5 more dependent investigations of high-ranking military personnel involved in the scandal of falsos positivos. Some cases of *falsos positivos* documented by the Inter-American Commission, including those that occurred in the nineties, have been recently refurbished to the Inter-American Court for Human Rights, following the non-fulfillment of the recommendations contained in the Informe of the Commission itself. In such cases, the Commission has put on the assessments of the Court all the allegations in its report. Italy did not remain indifferent to such a complex situation, and, on several occasions, the Foreign Affairs Committee has initiated surveys on the situation of human rights in the world by inviting representatives of Colombian civil society.

According to the lawyer Jorge Molano, an activist for human rights in Colombia, heard by the Commission in June 2015, the impunity of paramilitaries, that as part of the "Justice and Peace" process had been demobilized and committed to tell the truth about the crimes committed, it is 99.99%.⁴³

What to do?

If we really want to build a stable and authentic peace we must start again from the victims of conflicts and restore dignity to the dead, reminding us that each of our actions, even the smallest, produces effects on everything that surrounds us, and that each of us has the possibility and the responsibility of choosing which hurricane to provoke with one's own beating of wings. As Carmenza tells us, Vito Fernando's mother, "Sin justicia no hay Paz".

Luz Marina, which has made the search for truth and justice, her reason for living, she founded the Movement of Soacha mothers: a group of six mothers who, despite threats and persecution, decided to introduce the stories of their children and all *falsos positivos*, starting from the need to restore dignity to those deaths.

Lucero Carmona, Omar's mother Triana and María Sandoval and the mother of Jaime Valencia, along with Luz Marin, have started acting in theater. Through the play "Antigone women Court" they highlight some cases of human rights violations in Colombia, starting from their personal stories and persecution experience.

Like the mothers of Plaza de Mayo in Argentina, they started also with a simple but painful demand for truth and justice, and initially did not think to become the defenders of human rights. They have been the reaction of the Government, the lack of concrete answers, attempts at misdirection and sully the memory of those young martyrs causing them - and pushes still - to be first in line to restore dignity to all the *desaparecidos* and all the victims of the Colombian conflict.

The role of victims must be protected and strengthened, that their witness, their memory, must form the foundation on which to build a world in which crimes of this magnitude may not repeated, trying to break the cycle of "historical courses and resorts" of vichian's memory.

Endnotes

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⁴ Falsos positivos, en Colombia y el papel de la asistencia militar de Estados Unidos, op. cit

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¹⁵ Statement to the press by Professor Philip Alston, Bogotá, June 18, 2009, available at link <http://186.113.24.4/index.shtml?apc=i1-----&s=n&x=58590>

¹⁶ Statement of the Special Rapporteur on extrajudicial, arbitrary and summary related to the mission in Colombia (from 8 to 18 June 2009), UN Document A / HRC / 14/24 / Add.2, 31 March 2010, para. 10

¹⁷ Interview with the movement of the mothers of Soacha, June 2, 2014.

¹⁸ “The war if mide en litros de sangre. Falsos positivos, crimen de lesa humanidad: más altos responsables en la impunidad.” July 2012, p. 7 FIDH - coordinación Colombia - Estados Unidos

¹⁹ Corresponding to about 1,148 euros

²⁰ “The dynamic of de la DESAPARICION forzada en Colombia (1970-2012)”, dirigida investigación por Carlos Miguel Ortiz, Centro Nacional de Memoria Histórica. Tomo III, “Impactos psicosociales de la DESAPARICION forzada, Relatora Arévalo Naranjo L.

²¹ From the testimony of Luz Marina Bernal, one of the founders of the movement of the mothers of Soacha, art.cit.

²² “Falsos positivos: por cada joven de Soacha pagaban a millón de pesos”, of Semana del 12 May 2011 <http://www.semana.com/nacion/articulo/falsos-positivos-cada-joven-soacha-pagaban-millon-pesos/250431-3>

²³ Norm later declared unconstitutional by the Supreme Court in May 1989.

²⁴ Colombia has ratified the American Convention on Human Rights 31 July 1973 and has accepted the jurisdiction of the Court on 21 June 1985. The Inter-American Convention on the Prevention and Punishment of Torture has been ratified on January 19, 1999.

²⁵ Cases April 14, 2016 were submitted by the Inter-American Commission for Human Rights examined by the Inter-American Court saw that the Colombian State has not adapted to the recommendations and guidelines established by the Commission itself in its report No. 41/15.

²⁶ Disclosure of 1990 special Rapporteur for extrajudicial, summary or arbitrary executions of the United Nations (E / CN.4 / 1990/22 / Add.1)

<http://www.hchr.org.co/documentoseinformes/documentos/html/recomendaciones/reco14.html>

²⁷ With the decree n. 813 was created a commission to combat paramilitary groups whose mandate was to create an action plan to combat the paramilitaries. With the decree n. 814 created a special force was made up of 1,000 men trained to fight against the paramilitary groups. Following this strategy, the government claimed to have dismantled 17 paramilitary groups. With the decree n. 816 was recognized the legitimacy of self-defense groups duly constituted on the initiative of the President by means of a decree countersigned by the Minister of Defense and the government and it was specified that the recruitment of civilians were to have only defensive purposes.

²⁸ “Falsos positivos, a herida abierta que sigue”

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- ³⁸ Article 8, para. 2 Rome Statute.
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- ⁴³ Consultation on the protection of the rights of minorities for the maintenance of peace and security internationally. Foreign Affairs Committee of the Chamber of Deputies. Hearing of Jorge Molano, an activist for human rights in Colombia. Sitting n. 6, June 11, 2015
- ⁴⁴ “El joven que de Soacha ended asesinado disfrazado de guerrillero” *Las Orillas* 2 of May 19, 2017
- ⁴⁵ Theory of the philosopher Giambattista Vico, who lived between the seventeenth and eighteenth centuries, according to which history is characterized by the continuous and incessant repetition of three distinct cycles: the primitive and divine age, the poetic and heroic age, the civil and truly human. The continuous repetition of these cycles does not happen by chance but is predetermined and regulated.



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