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A C T I O N A L E R T

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NEW REVELATIONS OF ILLEGAL INTELLIGENCE FROM THE NATIONAL ARMY AGAINST DEFENDERS WHO CONTRIBUTE TO THE PEACE AGREEMENT

PBI Colombia expresses its major concern regarding recent news of **illegal intelligence operations that were exposed by a Colombian media outlet**. In spite of multiple signs and complaints made by journalists, human rights defenders, congressional representatives, and Supreme Court itself,¹ we lament that that **information did not lead to judicial investigations**.

According to information published on 1 May by the magazine Semana, in an article called "Las carpetas secretas" (The Secret Files), **130 individuals were the object of "profiling and surveillance" from parts of the Colombian National Army**, which sought to prepare military intelligence reports on their lives and professional and private activities.

These incidents seriously affect the constitutional and democratic order of the Colombian State, considering that the list includes international and national journalists, organizations and individuals who defend human rights, unionists, judges, lawyers for extrajudicial executions cases, and opposition parliamentarians. It is worth mentioning that employees and ex-employees of the Iván Duque administration and members of the State Security Forces themselves are also included in these files.² Also, the secret files' revelation took place amid a serious escalation of threats, assassination attempts, and murders against social leaders, and even massacres,³ in a context where adequate prevention and protection measures were not present.⁴

Ever since the article appeared in Semana, the available information continues to increase, with clear evidence that the leaked information is only the tip of the iceberg in a much bigger scandal. Based on the list referred to by Semana magazine, other data bases surely exist with more targets of illegal espionage. To date, **it has been confirmed that members of the José Alvear Restrepo Lawyers' Collective (CCAJAR) are included in the information revealed⁵. Also, the Commission of Justice and Peace (CJP) stated that two sources shared credible information on intelligence activities carried out against the organization, as well as social-environmental and peace leaders.⁶ This information is included in other existing data bases that could be made public if the State offers guarantees to witnesses and their families.⁷**

It is important to remember that in the past both organizations, accompanied by PBI, along with many other nationals and international organizations, were victims of persecution and illegal interceptions by state institutions, including the so-called "Chuzadas" (illegal wiretapping) carried out by the DAS,⁸ a state intelligence agency under the President's Office that was disbanded due to the scandal around

multiple and serious illegal activities it had carried out.

According to the *Semana* piece, to create these files the substructures of the Commands to Support Military Intelligence and Counterintelligence⁹ used computer tools to seek out and collect information on the victims in a “mass and indiscriminate” manner.¹⁰ The information includes telephone numbers, home and work address, emails, friends, family members, children, colleagues, traffic violations, and even polling stations.¹¹

The complaints highlight that these illegal activities **not only used Colombian public resources, but also those of a United States intelligence agency.** According to the leak, military members held onto part of the granted resources and fabricated false reports to legalize the funds. Apparently, those funds were then used to buy software and other tools to carry out what were referred to as “special” jobs.¹²

It must be mentioned that the intelligence organisms have profiled and harassed, among others, individuals and organizations that document the Military Forces’ alleged responsibility in multiple illegal activities, including cases of extrajudicial executions brought before the Special Jurisdiction for Peace, **a key component of the Peace Agreement.** Hence, the serious concerns regarding the use of military intelligence, which instead of aiding the prevention and prosecution of crimes is used to spy on individuals and organizations that contribute to Colombia’s democracy and do not constitute the most minimum risk for national security.

Just before the article was published – when the Ministry of Defense already knew of the complaints – Minister Carlos Holmes Trujillo issued a statement announcing that 11 officials and a Brigadier General would withdraw from active duty due to investigations related to illegal intelligence operations that had been denounced a few months prior. No names were provided.¹³

BACKGROUND TO THE SECRET FILES

Last year, there were already complaints filed on espionage activities, using funds originating from the United States. More specifically, on 13 January 2020, the magazine *Semana* reported on surveillance and interceptions carried out by the military intelligence against individuals involved in the negotiation of the Colombian Peace Agreement, including journalists and Supreme Court of Justice judges. **The article also mentioned human rights organizations, including “lawyers’ collectives” without revealing the names of the organizations.**¹⁴ The article indicated that there were hard drives, flash drives, extracts of conversations and audio, reports, videos, and photographs from the surveillance of the profiled individuals.¹⁵ A few days prior to the publication, the President of the Supreme Court of Justice warned that she suspected illegal interception of her communications.¹⁶

In that same 13 January article, one of the military members involved in the surveillance indicated that they had been ordered to provide a compilation of the information directly to a “recognized politician from the Centro Democrático,” the official government party.¹⁷ Additionally, to carry out the illegal interceptions it appears that “Hombre Invisible” software was used, acquired by the National Army from a Spanish company specialized in cyber intelligence.¹⁸ Mollitiam Industries, is the name of the company, which, according to information on its website, has received public funds from the Castilla - La Mancha Community of Spain (by means of IPEX) and the European Union’s European Regional Development Fund (ERDF).¹⁹

PBI feels that it is extremely serious that, in spite of years of insisting that the concept of “internal enemy” be eliminated from the national doctrine, the military intelligence organisms continue using public and international funds to profile and persecute human rights defenders, journalists, and the political opposition, apparently with no real control or consequences for their actions. This seriously damages the democratic principles on which Rule of Law is based.²⁰

IMPUNITY

Colombia has a long history of illegal intelligence actions against human rights defenders and politicians that originate from the Colombian State itself, as addressed by international bodies such as

the United Nations²¹ and Inter-American Human Rights System.²² This has led to serious crimes, such as **assassination attempts and murders**, as was proven in the trials against Jorge Noguera Cotes, Ex- Director of the DAS, convicted for the crimes of “aggravated homicide” and “aggravated criminal conspiracy” after having given over intelligence information to paramilitary groups.²³

An organization PBI accompanies, CCAJAR, was one of the many organizations to indiscriminately suffer the DAS’s ongoing actions between 2002 and 2010, within what was called “Operation Transmilenio.” In this case, the aim was to destroy the organization; persecution was not limited to CCAJAR members but also extended to family members with surveillance, death threats, and the sending of a package with a dismembered doll with a message alluding to a minor.²⁴ Nevertheless, to date, the investigations against the maximum responsible parties in these incidents have not advanced.²⁵ It is worth noting that international organizations and entities that enjoy special diplomatic protection, such as the United Nations, the European Parliament, or the Inter-American Commission on Human Rights also suffered this surveillance.²⁶

In spite of eliminating the DAS intelligence agency, illegal operations continued. In 2014, in the middle of the peace negotiations, a scandal called “Operation Andromeda” came to light. On that occasion, **an intelligence group from the National Army** used a cover office on the second floor of a Bogotá restaurant **to intercept the then peace negotiators.**²⁷ Even though the Attorney General’s Office searched the site and seized equipment, the investigations did not prosper.

In this context, **the purging of intelligence and counterintelligence archives** has not only been an historic request from human rights organizations, but also one from a governmental advisory commission, presided over by the Inspector General’s Office in 2016.²⁸ **However, the purging has not occurred**, as was affirmed this week by the president of the Truth Commission, Father Francisco de Roux,²⁹ which led him to conclude that a **structural reform of the Armed Forces** is needed.³⁰ A vast majority of these cases remain unsolved, in spite of criminal and disciplinary investigations. Aside from a few advances in investigations and sanctions,³¹ to date it has not been possible to cease these illegal activities against journalists, defenders, and opposition politicians. Additionally, the **maximum responsible parties and additional public employees have not been included** in the judicial procedures, individuals who potentially had a role in the different illegal activities.³²

SCANDAL IN THE ARMED FORCES

The 2019 interceptions coincided with the period when General Nicacio Martínez Espinel was Commander of the Army. The General surprisingly left his post at the end of December, weeks before *Semana* magazine’s first publication about the “chuzadas.” According to President Iván Duque, he resigned due to “family related circumstances,”³³ Currently, the Attorney General’s Office has called retired General Nicacio Martínez Espinel for questioning about the illegal interceptions case.³⁴

Just two weeks before, on 18 December, the Supreme Court judge Cristina Lombana, presided over the search of the National Army’s Cyber Intelligence facilities, which is presumed to be involved in the present scandal. This action was focused on the alleged role of ex- President Álvaro Uribe Vélez in previous illegal interceptions³⁵ within the criminal procedures related to the aforementioned “Operation Andromeda.” During the search, dozens of flash drives and other illegal intelligence archives were seized; which became famous due to its cinematic style, with cell phones being thrown out windows and individuals trying to hide in the offices with hard drives.³⁶ Judge Lombana, who herself was until recently an active member of the military, only handed over the evidence obtained during the search to the Prosecutor’s Office on 4 May, after the “Secret Folders” article was published in *Semana* magazine.³⁷

Almost a year ago, The New York Times accused the Armed Forces in another scandal; at that time the US newspaper revealed the **existence of military directives within the Army that called for an exponential increase in the number of people killed in combat**, even if there were questions about the objectives being attacked.³⁸ The directives are similar to those that generated at least between 1,741 and 2,248³⁹ previous cases of extrajudicial executions, the ill-named “false positives” - when Army members murdered civilians, the vast majority peasants or inhabitants of poor neighborhoods, and then presented them as guerrillas killed in combat. Currently, there are criminal investigations in

the ordinary justice system and Special Jurisdiction for Peace, within the Peace Agreement, against several military commanders who are part of the current Army leadership.⁴⁰ It is important to highlight that the **American journalist who published The New York Times article**, is one of the victims of illegal intelligence perpetrated by the National Army.

INTELLIGENCE AND CYBER INTELLIGENCE AGAINST ORGANIZATIONS ACCOMPANIED BY PBI

Illegal cyber intelligence activities are only one part of the illegal intelligence carried out against human rights defenders. Over the last several months, PBI has alerted to multiple suspicious and illegal actions against accompanied organizations and individuals:

In October of last year, **lawyer Germán Romero**, reported information theft, followings, calls, and a direct death threat from an unidentified individual. These incidents occurred in the context of multiple investigations that the lawyer has against High Commanders of the Military Forces due to their alleged responsibility in extrajudicial executions and enforced disappearances.⁴¹

In February 2020, two other human rights organizations alerted that they had suffered illegal surveillance by means of followings⁴² and drones flying over their offices.⁴³ One was the organization **Commission of Justice and Peace (CJP), an organization accompanied by PBI Colombia, that today is included in the new lists.**⁴⁴ It is important to remember that CJP's Executive Secretary, Danilo Rueda, was previously declared as the objective of an assassination plan.⁴⁵ Lawyer Daniel Prado, associated with CJP, has also reported the presence of a high-power drone which fell into the patio of his residence; in addition to facing a threats and intimidation campaign as the victims' council in the criminal case against the paramilitary group known as "Los 12 Apóstoles." In this case, Santiago Uribe Vélez, Ex- President Álvaro Uribe Vélez's brother, has been charged with sponsoring the paramilitary group that was created and trained on a farm property owned by the Uribe family.⁴⁶

Sebastián Escobar, member of the governing body of CCAJAR, is the lawyer in charge of documentation for the International Criminal Court (ICC), the Special Jurisdiction for Peace (JEP), and participates in the campaign "Quién dio la orden" (Who Gave the Order?),⁴⁷ actions that seek to clarify extrajudicial executions where high-level commanders are accused, in particular General Nicasio Martínez Espinel.⁴⁸ And it is precisely Sebastián Escobar who appears in these secret files with photos and notes,⁴⁹ even though the magazine mentions the profiling of "**several members of the José Alvear Collective**," some of whom represent the victims of extrajudicial executions in cases against retired generals.⁵⁰ Another CCAJAR lawyer helped prepare a report from "Ruta del Conflicto," **a media outlet that was also profiled in the secret files**; this report demonstrated potential corruption in the agreements between national and transnational companies and the State Security Forces, where funds allocated to favor national security end up in vacations plans for the military.⁵¹

Additionally, the **Corporation for Judicial Freedom (CJL)**, another organization accompanied by PBI, publicly reported illegal surveillance and harassment last 18 February, 2020,⁵² when three men in civilian dress appeared at the organization's office, taking photographs and interrogating the watchman to obtain information on the human rights lawyers. Later, it was verified that the motorcycle used by these men is property of the Ministry of Defense.

Due to the prior, PBI expresses its serious concern and urgently calls on the international community to call for the clarification, sanction, and definitive dismantling of all types of illegal espionage within the Colombian Armed Forces, as well verifying the existence of similar activities in other institutions. To do this it is fundamental to ensure guarantees of non-

repetition.

These operations' magnitude, methods and technologies used, as well as the funds invested cannot be seen as individual actions or so-called "rotten apples," as they were presented in declarations⁵³ from the Colombian Government. Instead, the serious impact on Colombia's democratic order must be recognized.

PETITIONS:

We request that the International Community, in the context of its political and economic relations with Colombia, in addition to its significant contribution to the Peace Agreement's implementation, urge the Colombian State to:

- Provide all necessary protection measures, agreed upon with the organizations, to ensure their physical and psychological integrity, as well as that of those around them; this includes the **opening and purging of all existing intelligence files**, whether from the State Security Forces or other institutions, that could have been collected on human rights organizations.
- **Publish all existing lists and data bases on victims of illegal intelligence operations (both cyber intelligence and other surveillance/interception activities)**, clarifying who was in charge, to whom they reported, what kind of intelligence was carried out, and with what objective. There also should be private communication with the victims to share all the information that has been collected on them.
- That the **Inspector General's Office and Attorney General's Office present the results from their investigations** in a prompt and effective manner, through the trial and sanctioning of the maximum responsible parties.
- Foment and support the **creation of an independent commission of international experts** to advance in a comprehensive clarification of what occurred. This commission must have the support and cooperation of the Colombian State to access the files with the related information.
- **Provide guarantees for witnesses** (in addition to their family members and the information itself) willing to contribute to a reconstruction of the truth, an indispensable step to guarantee non-repetition. These individuals currently do not enjoy the minimum security conditions to do this.
- Back the proposal from the President of the Truth Commission for a **restructuring of the National Army, generating conditions that do not allow for a repetition of these incidents in Colombia**. Ensure the promotion of and guarantees for the National Army's maximum cooperation with judicial authorities to identify and sanction the direct perpetrators and masterminds.

Also, PBI respectfully requests that the International Community:

- Make prompt statements and strongly **reject this kind of operations, demonstrating their serious and repetitive nature**, pressing for structural changes as the only possible step towards the construction of sustainable peace.
- To the United States, United Kingdom, Germany and other countries that provide military assistance and intelligence support to the Colombian Government, **revise your military cooperation policies for Colombia to establish solid guarantees that the transferred resources, tools, and military intelligence capacities are not used against human rights and fundamental liberties. Also, ensure that your countries' companies are not selling products that are used to violate human rights, even more so when these companies have received public, or state resources.**

PBI is grateful for your continued support in the protection of human rights defenders and displaced communities.
PBI Colombia



Notes:

- 1Semana: [Creo que estamos chuzados: Presidenta de la Corte Constitucional](#), 1 April, 2020
- 2Semana: [Las carpetas secretas](#), 1 May, 2020
- 3 OACNUDH: [Informe de la Alta Comisionada de las Naciones Unidas para los Derechos Humanos sobre la situación de derechos Humanos en Colombia durante el año 2019](#), 25 February, 2020
- 4Earthrights: [Carta de organizaciones de la Sociedad Civil a la UNP](#), 4 May, 2020
- 5Colectivo de Abogados José Alvear Restrepo (@ccajar): [#ComunicadoOficial sobre la investigación #CarpetasSecretas: Exigimos sanción disciplinaria a integrantes de la fuerza pública involucrados en espionaje contra el Colectivo de Abogados José Alvear Restrepo](#), Tweet, 11:17am, 2 May, 2020
- 6Comisión de Justicia y Paz: [Inteligencia ilegal contra lideresas y defensores de J&P](#), 4 May, 2020
- 7 Ibid.
- 8Departamento Administrativo de Seguridad (Administrative Security Department). Comisión de Justicia y Paz: [Operación Bautizo, la historia detrás del nombre de las operaciones detrás del DAS](#), 22 April, 2010; Consejo general de Abogacía Española: Consejo general de Abogacía Española: [Abogacía en riesgo. Reynaldo Villalba, de CCAJAR, analiza la situación de Colombia](#), 21 February, 2017; El Espectador, [los Escándalos del DAS](#), 31 January, 2015
- 9 Semana: [Las carpetas secretas](#), 1 May, 2020; Some of these tasks were carried out by the Cyber-intelligence Battalions (BACIB) which are part of the Military Intelligence Brigades and the Counterintelligence Battalion for Information Security (BACSI). Both are under the Command to Support Military Intelligence (CAIMI) and the Command to Support Military Counterintelligence (CACIM).
- 10 Ibid.
- 11 Ibid.
- 12La Silla Vacía: [Seguimientos ilegales y plan contra Maduro: o Duque sabía, o no controla la inteligencia](#), 3 May, 2020
- 13El Espectador: [Nuevo escándalo en inteligencia militar: 11 oficiales y un general salieron del Ejército](#), 1 May, 2020
- 14Semana: [Chuzadas sin cuartel](#), 13 January, 2020
- 15 Ibid.
- 16 Semana: [Creo que estamos chuzados: Presidenta de la Corte Constitucional](#), 1 April, 2020
- 17 Semana: [Chuzadas sin cuartel](#), 13 January, 2020
- 18 Ibid.
- 19 Mollitiam Cyberintelligence: [Proyectos](#)
- 20Defensoría del Pueblo (@DefensoriaCol): [1 Intelligence activities in a State, such as the Colombian, are essential when used to combat crime or to prevent and clarify human rights violations, however, if they are used with the aim of political persecution they are an attack \(Las actividades de inteligencia en un Estado como el colombiano son esenciales cuando se dirigen a combatir la criminalidad, prevenir y esclarecer graves violaciones a los Derechos Humanos, pero si se hacen con fines de persecución política atentan contra ellos\). Thread](#), Tweet, 11:50am, 2 May, 2020
- 21United Nations Special Rapporteur on the situation of human rights defenders, Press Release: [Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to Development, A/HRC/13/22/Add.3](#), 4 March, 2010
- 22 Comisión Interamericana de Derechos Humanos: [Comunicado de prensa No 09/09 Preocupación de la CIDH por actividades de inteligencia en Colombia](#), 26 February, 2009
- 23FIDH: [Colombia – Las actividades de inteligencia del Estado – DAS – al servicio de intereses criminales y de persecución política](#), 21 May 2010; RCN Radio: [Niegan permiso a Jorge Noguera para salir de la cárcel durante 72 horas](#), 30 March, 2020
- 24Colectivo de Abogados José Alvear Restrepo (Cajar): [Chuzadas ocho años de espionaje y barbarie](#), 1 May, 2016
- 25Colectivo de Abogados José Alvear Restrepo (Cajar): [Condenan a Jorge noguera por concierto para delinquir al interior del DAS](#), 11 September, 2017
- 26FIDH: [Colombia – Las actividades de inteligencia del Estado – DAS – al servicio de intereses criminales y de persecución política](#), 21 May, 2010
- 27Semana: [¿Quién trata de sabotear el proceso de paz?](#), 2 April, 2014
- 28MOVICE: [Piden a la JEP abrir un caso sobre inteligencia ilegal en el marco del conflicto](#), 7 February, 2020
- 29El Espectador: [Comisión de la Verdad solicita al Ministerio de Defensa documentos de seguimientos y espionajes](#), 4 May, 2020
- 30El Espectador: [“Los seguimientos ilegales afectan la consolidación de la paz”: Francisco de Roux](#), 5 May, 2020
- 31Semana: [‘Chuzado’ del DAS: crimen y castigo](#), 28 February, 2015
- 32Colectivo de Abogados José Alvear Restrepo (Cajar): [Chuzadas ocho años de espionaje y barbarie](#), 1 May, 2016
- 33Iván Duque (@IvanDuque): [#Bogotá Agradecemos al General Nicacio Martínez por tantos años de entrega al servicio de la patria. Su sacrificio siempre será reconocido por una institución que lo despide pero que mantiene en el corazón y en la conciencia su trasegar por el @COL_EJERCITO. Le deseamos lo mejor](#), Tweet, 2:49pm, 30 December, 2019
- y El País: [El cuestionado jefe del Ejército colombiano abandona el cargo](#), 27 December, 2019
- 34El Espectador: [Fiscalía citará a interrogatorio al general Nicacio Martínez por escándalo de inteligencia](#), 4 May, 2020
- 35El Espectador: [La denuncia que originó el allanamiento al Batallón de Ciberinteligencia del Ejército](#), 14 January, 2020
- 36Semana (Revista Semana): [Allanamiento de película](#), YouTube, 13 January, 2020
- 37 Semana: [Las carpetas de la magistrada](#), 10 May, 2020
- 38New York Times: [Colombia Army’s New Kill Orders Send Chills Down Ranks](#), 18 May, 2019
- 39The [auto no 005 de 2018 of the JEP](#) cites figures from the Center for Investigation and Popular Education (Cinep), that registered 1,741 victims between 1984 and 2011; from the Coordination Colombia-Europe-United (CCEEU), a group of social organizations, that counted 1,257 from 2002 to 2014; and data from Prosecutors Office that counted 2,248 deaths between 1988 and 2014; Colombia Check: [Explicador: Cuántos son los casos de ‘falsos positivos’](#), 16 April, 2019
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- 41DH Colombia: [Nueva amenaza a representante de víctimas y defensor de derechos humanos Germán Romero Sanchez](#), 4 October, 2019

- 42 Comisión de Justicia y Paz: [Seguimiento a defensores](#), 30 January, 2020
- 43 World Organisation Against Torture: [Colombia: Actos de vigilancia ilegal contra la CCJ y contra el abogado Daniel Prado](#), 11 February, 2020
- 44 Comisión de Justicia y Paz: [Inteligencia ilegal contra lideresas y defensores de J&P](#), 4 May, 2020
- 45 Comisión de Justicia y Paz: [Nuevo plan contra Justicia y Paz por promover verdad, derecho a la tierra y al ambiente](#), 2 February, 2019
- 46 El Espectador: [‘El mayor Meneses debe contar en la JEP la alianza entre Estado y paras’: Daniel Prado](#), 20 April, 2020
- 47 Colectivo de Abogados José Alvear Restrepo (Cajar): [Con tutelas buscan censurar mural ¿Quién dio la orden?](#), 30 June, 2019
- 48 Colectivo de Abogados José Alvear Restrepo (Cajar): [Y volveremos a cantar, con los aires de la paz y el anhelo de justicia](#), 22 June, 2019
- 49 Semana, [Las carpetas secretas](#), 1 May, 2020
- 50 *ibid.*
- 51 Rutas del Conflicto: [Petroleras y mineras financian a la fuerza pública y a la fiscalía](#), 24 June, 2019
- 52 Corporación Jurídica Liberta: [Denuncia Pública: Ejército Nacional realiza labores de inteligencia ilegal en contra de la CJL](#), 20 February, 2020
- 53 El Espectador: [“Actuaciones individuales no pueden definir la institución” general Zapateiro](#), 2 May, 2020