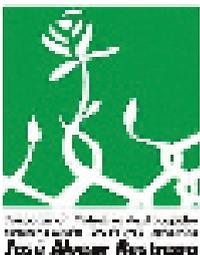


The Powerful & the Powerless

A Case Study of Unión Fenosa's Electricity Monopoly in Colombia



Research and information for this case study was provided by CCAJAR - the José Alvear Restrepo Lawyers Collective (www.colectivodeabogados.org). CCAJAR is a Colombian non-governmental human rights organisation with 26 years of experience in the prevention, defence, and promotion of human rights. CCAJAR contributes to the fight against impunity and to the construction of a just and equitable society with political, social, cultural and economic inclusion, as well as working toward the respect for the full development of the rights of peoples to sovereignty, self-determination, development, and peace with social justice.



European Coalition
for Corporate Justice

The Powerful and the Powerless

José Alvear Restrepo Lawyers Collective in Colombia (CCAJAR)

Colombia has had an armed conflict with legally and illegally armed protagonists for nearly 50 years. This has generated such grave consequences as forced displacement, forced disappearances and a longstanding humanitarian crisis in which more than 45 per cent of the population lives in poverty.¹ In addition to these socio-political problems, the population of close to 10 million people in the seven departments along Colombia's Caribbean coast have had their problems exacerbated by the presence of a powerful corporate monopoly that provides this region's electricity supplies - Spain's commercial energy giant, Unión Fenosa.²

In this case study, CCAJAR reports the claims made by civil society organisations, trade unions, workers and affected communities in the region that this European multinational enterprise (MNE) has either committed, or is otherwise implicated in, violations to internationally recognised human rights. Yet, as this case study reveals, the failure of the country's legal system to properly investigate the company's activities has left serious questions unanswered and many people without access to justice.

▶ MNES, PARAMILITARISM & TRADE UNIONS

The process of privatising the Colombian electricity sector, including the entrance of Unión Fenosa into the market, took place amid strong opposition by trade unions to the sale of this vital public service. This resistance was brutally silenced however, including through the systematic murders of eight union members who worked at Unión Fenosa subsidiary companies, Electrocosta and Electricaribe.

CCAJAR reports claims by trade unions and others in Colombian civil society that members of illegal paramilitary groups were behind the murders, and that a document written by Unión Fenosa companies may have played a role in these murders that should be fully investigated in a court.³

MNEs operating in Colombia have previously been implicated in paramilitary activities with some senior paramilitary leaders claiming a number of MNEs finance paramilitary operations in the country.⁴ The criminal investigations

Workers who fear joining unions are denied the ability to exercise their right to freedom of association.

carried out by Colombian public authorities in relation to the involvement of companies in such activities have made little progress, despite one US company, Chiquita Brands, pleading guilty in a US court and being fined US\$25 million for financing paramilitary activities, and other companies, for example the Dole Food company, facing an ongoing civil lawsuit in California.⁵ This weakened rule of law and alarming rate of impunity for the most serious of crimes is further demonstrated by the conviction rate of murdered Colombian union members over the last 23 years: of the 2,709 murdered, there have only been convictions in 118 cases.⁶

The failure by the legal system to bring these human rights violations to justice led segments of

Colombian civil society to convene an international opinion tribunal. The Permanent People's Tribunal, a non-governmental body that includes experts in international law, human rights and international humanitarian law, held sessions based on international conventions through several public hearings from 2005 to 2008. It considered evidence in the case of the eight murdered Unión Fenosa trade union members, including a document acknowledged by Unión Fenosa to having been written by two of the company's subsidiaries in Colombia, Electrocosta and Electricaribe. The document branded members of a trade union to which its workers belonged as part of extremist guerrilla groups. This is a life-threatening allegation in Colombia, as those branded become targets, and in numerous cases victims, of paramilitary groups and even of the public force - something the subsidiary companies would or should have been aware of.⁷ The Tribunal's final ruling found that activities by companies in the corporate group were crucial in explaining the deaths of the eight trade unionists.⁸

▶ LABOUR RIGHTS

The murder of unionised workers in Colombia's electricity sector is not only a grave violation of human rights, it also has significant consequences for the labour rights of all workers. Workers who fear joining unions are denied the ability to exercise their right to freedom of association, and to participate in a legitimate and democratic process through which they can stand up for their labour rights. In turn, lower membership means the collective power of unions to represent the best interests of workers is also



significantly weakened through reduced negotiating power.

CCAJAR reports that contracts between Electricaribe and its workers include a clause for employees not to join trade unions in exchange for receiving a bonus,⁹ which potentially constitutes a violation to the International Labour Organisation Convention that grants workers the right to freedom of association. Furthermore, the average monthly salary of the 6,000 subcontractors working for Unión Fenosa subsidiaries in the country is reported to be less than half the average monthly salary in the electrical sector and is not enough to cover basic family living costs¹⁰ - a violation of the Universal Declaration of Human Rights.

▶ ABUSE OF POWER & ELECTROCUTIONS

Communities from the Caribbean coast have reported being subjected to power cuts, reconnections, overbilling and undeclared electricity rationing. In so-called marginalised neighbourhoods,¹¹ where 69.7 per cent of the population live in poverty, there have been reports of up to 10 unannounced interruptions occurring per day, with some cut-offs lasting up to several days.¹² Complaints concerning billing have also been abundant. In the Las Malvinas neighbourhood in Barranquilla, the population gathered all of the irregular billing from 2007 and 2008

and documented 160 cases, with at least eight different anomalies of a diverse nature.¹³

Serious claims have also been made about the safety of the electricity infrastructure provided by Unión Fenosa companies, including a failure to protect local communities from the risk of electrocutions. While there are no comprehensive official statistics for fatal electrocutions in Colombia, reports of deadly electrocutions are very common. For example, from January to May 2008 in the area of Barranquilla, Atlantico, 12 people died from electrocutions, with a further five people electrocuted in the period from June to August.¹⁴

It is claimed many electrocutions occurred due to poorly installed cables and insufficient maintenance, but the companies deny any responsibility, alleging that people in poor neighbourhoods are trying to connect to the electrical grid without authorisation. However, there are multiple cases of electrocutions that fall within the responsibility of the subsidiaries of Unión Fenosa as evidenced by a court order in 2009 that found one of the subsidiaries guilty of failing to maintain the cables at a gas station, which resulted in the electrocution of two people, killing one of them.¹⁵

▶ ECONOMIC & SOCIAL RIGHTS

Given the alarming culture of impunity within the Colombian

legal system, and the absence of independent investigation, there is little real chance for the victims and their families to carry out legal actions against MNEs. Confronted with an environment of intimidation and financial difficulty, they risk being stigmatised, threatened and even murdered should they seek justice through Colombia's legal system for these human rights violations.¹⁶

In addition to its ruling on Unión Fenosa's eight murdered trade unionists, the Permanent People's Tribunal also issued a verdict convicting 43 companies and the Colombian State as responsible for multiple violations to individual and collective rights; including the right to life and physical integrity, the right to health and food, women's rights, the right to freedom and freedom of movement, labour rights, and the right to live a life with dignity.¹⁷ Unión Fenosa was one of a number of MNEs notified of the accusations and the ruling against it by the Tribunal. In response, however, the company simply stated that it availed itself of internationally agreed human rights, labour, environmental and anti-corruption principles for businesses established by the United Nations.¹⁸

The Colombian government has ratified many international treaties on economic, social, cultural and other human rights. CCAJAR argues that the rights of the Colombian people under a number of these international treaties appear to have been violated, including: the Universal Declaration of Human Rights (1948); the International Pact on Economic, Social and Cultural Rights (1966); the International Pact on Civil and Political Rights (1966); the Universal Declaration on the Eradication of Hunger and Malnutrition (1974); the Universal Declaration of the Rights of Peoples (1976); the Declaration on the Right to Development (1986); and the European Criminal Law Convention on Corruption (2002). However, CCAJAR reports that no MNE has ever been convicted in Colombia for its responsibility in the commission of human rights violations.

End Notes

- 1 2008 Annual Report of the United Nations High Commissioner for Refugees (16 June, 2009) and Report by the United Nations Human Rights Commissioner on the situation in Colombia, Bogota, 2007, p.37.
- 2 In 2009, Gas Natural purchased 95% of Unión Fenosa creating one of the 10 largest utilities in Europe: "Unión Fenosa Aprueba su Fusión con Gas Natural, que Canjeará Tres de sus Acciones por Cinco de la Eléctrica". Cotizalia Magazine, Madrid, 23 April, 2009. Gas Natural and the majority of its shareholders are also European companies: Annual Report by the Gas Natural Corporate Government, 2008, p.4.
- 3 Documentation by the Central Workers Union (CUT) and the Electricity Workers Trade Union (SINTRAELECOL). See also the Ruling for the Permanent Peoples' Tribunal hearing on public services, Bogota, 8-10 March, 2008.
- 4 For example, "Mancuso Dice que Directivos de Postobón y Bavaria Tenían Conocimiento de los Pagos de estas Empresas a los Paramilitares." Semana magazine, Bogota, 17 May, 2008. See also: "Nos Quieren Extraditar Cuando Empezamos a Hablar de Políticos, Militares y Empresarios." Verdadabierta.com, Bogota, 11 May, 2009.
- 5 US vs. Chiquita Brands, US District Court of the District of Columbia, No. Criminal 07-055, 19.03.07. In 2009, family members of other victims filed a lawsuit in California (USA) against the Dole Food Co. for having made million dollar payments to paramilitary groups in Colombia, though a ruling has yet to be issued in this case: "Demanda Acusa a Dole de Financiar a 'Paras' en Colombia." El Nuevo Herald newspaper, Miami, 29 April, 2009.
- 6 2009 Annual Report by the International Trade Union Confederation (ITUC), June 2009, and "Informe de la CSI sobre Violaciones de Derechos Sindicales en 2008." Escuela Nacional Sindical, Medellín, 10 June, 2009.
- 7 See for example the case of the Peace Community of San Jose de Apartado. Before suffering a massacre of five people in February 2005, they had been branded in public as being members of guerrilla groups. "Orden de captura a ex coronel Duque por massacre". Verdadabierta.com, Bogota, 24 August, 2009.
- 8 Ruling on Public Services, Permanent Peoples' Tribunal: Bogota, 8-10 March, 2008. For more information on the Permanent Peoples' Tribunal, see: www.internazionaleleliobasso.it/index.php?op=6
- 9 Interview by CCAJAR with the Central Workers Union (CUT) – Bolivar Chapter on 19 May, 2009.
- 10 Interview by CCAJAR with SINTRAELECOL member in Cartagena on 8 July, 2009, and Silverman, J. and Ramírez, M. (October 2008) "Informe: Unión Fenosa en Colombia." Escuela Nacional Sindical (ENS), Medellín.
- 11 These neighbourhoods are regulated by Resolution 120 of the Energy and Gas Regulatory Commission (2001) and are affected by different kinds of discrimination, including a single bill being issued for an entire neighbourhood (inhabitants must collectively take on responsibility for payment, even for late bills) and the neighbourhood having to cover the costs for the installation of community meters, leaks, and the billing process – none of which has to be covered by other consumers.
- 12 Material gathered by CCAJAR from interviews in Barranquilla, Cartagena, Montería and Santa Marta. See also: Mancera, Carlos Arturo: "Por Qué las Lluvias Infartan el Sistema Eléctrico de Barranquilla?" El Heraldo newspaper, Barranquilla, 3 May, 2008, p.4a.
- 13 Documentation of the Las Malvinas neighborhood, Barranquilla, May 2009.
- 14 Documentation from Red de Usuarios, Barranquilla, presented at the Permanent Peoples' Tribunal, Lima Chapter, 13-16 May, 2008. "17 Personas Han Muerto por Accidentes Eléctricos." La Libertad newspaper, Barranquilla, 24 August, 2008, p.4d.
- 15 "Electrocosta tendrá que pagar indemnización." El Universal newspaper, Cartagena, 10 June, 2009.
- 16 See claims made by the Inter-Church Commission of Justice and Peace (www.justiciaypazcolombia.com), CCAJAR (www.colectivodeabogados.org) and the National Movement of Victims of State Crimes (www.movimientodevictimas.org).
- 17 Permanent Peoples' Tribunal Ruling: Bogota, 21-23 July, 2008.
- 18 For more information about these principles, see: www.unglobalcompact.org

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The European Coalition for Corporate Justice (ECCJ) is the largest civil society network devoted to corporate accountability within the European Union. Founded in 2005, its mission is to promote an ethical regulatory framework for European business, wherever in the world that business may operate. The ECCJ critiques policy developments, undertakes research and proposes solutions to ensure better regulation of European companies to protect people and the environment. The ECCJ's membership includes more than 250 civil society organisations in 16 European countries. This growing network of national-level coalitions includes several Oxfam affiliates, national chapters of Greenpeace, Amnesty International, and Friends of the Earth; the Environmental Law Service in the Czech Republic, The Corporate Responsibility (CORE) Coalition in the United Kingdom, the Dutch CSR platform and the Fédération Internationale des Droits de l'Homme (FIDH).

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