

****UNOFFICIAL TRANSLATION****

Judicial False Positives? The Case Harold Ordóñez

By: Carlos Duarte

Harold is the father of a five-year-old daughter. I believe he would agree with me that this previous sentence is the one that best defines him.

This is not just another paternalistic cliché; at an informal chat during a break from class at the university, he told me: “[...] My daughter is everything to me and what she thinks about me is all that matters”.

Harold is an environmental engineer, but he is also an intelligent, perspicacious, and – above all – self-critical student. I never saw him obstinately defend an idea or argument, no matter how intense the discussion was. But, above all, as his professor, I must say that Harold is a disciplined student. After four semesters in the master’s program, his GPA is 4.8 out of 5. He is, without any doubt, one of the best and most dedicated students of the group that started working within the framework of the peace process.

Harold has shown a firm commitment to social dialogue, and – despite many setbacks – he still believes in the peace process. I make these statements without hesitating, for at least three reasons.

Firstly, Harold has never doubted the importance of building dialogue between the peasant (*campesino*) organization struggling to create the Peasant Reserve Zone of Pradera and the Association of Sugarcane Growers of Colombia (ASOCAÑA), despite his profoundly leftist convictions.

Secondly, Harold is an employee at the Office of Territorial Peace and Reconciliation of the Departmental Government of Valle del Cauca. This is an institution where he necessarily must believe in other people and the conciliatory power of words in order to be satisfied with what he does.

Thirdly – beyond a collective decision – he decided to exchange weapons for dialogue. As you might have guessed, Harold was a member of the FARC and signed the Peace Accords.

The Attorney General’s Office:

However, on August 29, Harold was in the park in San Antonio (Cali) at a birthday party for one of his friend’s kids as he rebuilt his social life with them. While he was holding his five-year-old daughter’s hand to look for a bathroom, he was detained by members of the SIJIN.

The Attorney General’s Office accused him of conspiring to commit a crime; illegally possessing a weapon exclusively used by the armed forces; and aggravated homicide. In sum, the Attorney General’s Office argues that Harold Ordóñez is alias “Óscar,” the commander of the former

Central Block or the Central Joint Command Adán Izquierdo that operates in the mountainous region of Tuluá and Sevilla.

According to what the Attorney General's Office presented at the arraignment, the accusation is based on testimonies from three people who said that Harold is "Óscar." Additionally, the Attorney General's Offices presented the location and dates where "Óscar" supposedly committed these crimes. Among other things, the Attorney General's Office presented recordings of a subject identifying himself as "Óscar" and receiving a report from another person reporting a murder.

The Defense:

Elmer Montaña – a recognized lawyer and expert in the accusatory penal system, disciplinary issues, and state responsibility – bases Harold's defense on the following arguments.

Members of the Armed Forces have reported the relationship between Harold and alias "Óscar", based on members of the Palace Battalion in Buga, distributing photographs and saying that Harold was "Óscar."

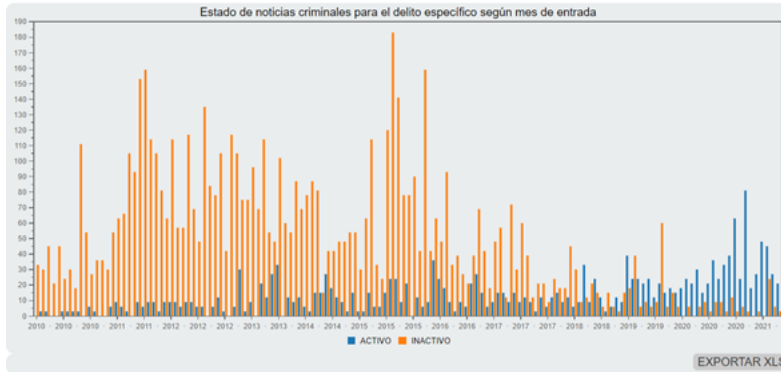
The Google application activated on Harold's cell phone allows to reconstruct his movements and locations. The dates and places, presented by the Attorney General's Office as irrefutable evidence, simply have no relationship with his movements reported by the Google application.

On top of that, the defense submitted minutes from meetings at the Office of Peace at the Departmental Government (where Harold works); photographs; course schedules from the master's program; and testimonies from various people pointing out that Harold could never have been at the places where and times on which they accuse "Óscar" of committing crimes.

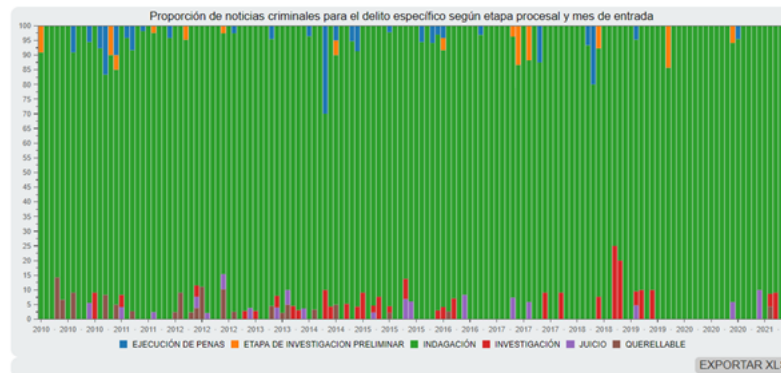
Judicial False Positive?

According to CINEP (as cited by Juliana Cortés), judicial false positives are: "judicial setups of civilians, many of whom are activists that denounce and/or defend human rights and victims' rights. The objective: brand them as members of guerrilla organizations and delegitimize their work in defense of victims' rights. [Judicial false positives] stand out due to their irregularities; the key role of supposedly demobilized individuals from guerrilla organizations; the illegal collection of information by DAS and other intelligence agencies; and the fabrications of intelligence reports within military installations that are later used by prosecutors to open cases."

The charge of "terrorism" is common in the charges made in the framework of these judicial false positives. An increase in active and inactive criminal procedures since 2019 becomes evident in the data from the Attorney General's Judicial Statistics System: they reach historic highs in November 2020 and January 2021, with a monthly average of 37 criminal procedures regarding the crime of terrorism so far this year.



The following graphic (also from the Judicial Statistics System) shows the procedural stages of these crimes. A large part of them is in the “judicial inquiry” stage, while a low percentage of them are in the other procedural stages.



Similarly, [human rights organizations](#) have denounced the practice of judicializing human rights defenders, political opponents, and social leaders with the intent to harass and discredit them. For example, the Committee of Solidarity with Political Prisoners documented that at least 249 human rights defenders were judicialized between January 2012 and July 15, 2019. It is worth noting that from 235 cases, 17% are women and 83% are men.

According to an interesting article by [Omar Rojas](#):

“The Judicial False Positive does not appear out of thin air; its executors take time to construct the case. The public servant builds judicial files based on false, deceptive and untrue evidence about vulnerable people that do not have knowledge about the legal system. It publicly tortures its victims for hours, days, weeks, months, and even years.

The member of the Public Force who carries out a False Positive, tortures his victim from the moment of recruiting or apprehending them to the moment of killing them. Generally, the torture of the victim by the soldier – as opposed to the judicial victim – lasts a few hours or a few days,

and the distress is prolonged until the moment the victim is killed and presented as a terrorist. The act of torture in a Judicial False Positive is for life. Torture and imprisonment are a message from the regime for those that dare to doubt, criticize, or oppose the violations of human rights; to those that struggle for social causes; and to those that are committed to building a more democratic, plural, and inclusive society. The Judicial False Positive not only subjects the human being to physical and psychological barriers—it attempts to kill ideas and projects.”

The Effects on Peace:

There are various elements that raise doubts about the activities of the Attorney General’s Office in the case of Harold Ordóñez.

For example: 1) The accusations against Harold go back to June and November of 2020. Why wait for so long (September of this year) to capture him without adding any new information? 2) If the Attorney General’s Office is so sure that Harold is “Óscar,” then why didn’t they confiscate Harold’s cell phone and use that information about his location as unequivocal evidence in the accusations?

It seems that the only consistent aspect of the Attorney General’s Office evidence is that Harold works in different rural areas of the municipalities of the central mountain range of Valle del Cauca. However, Harold does not carry out – and could not have carried out – activities as commander of a FARC dissident group. He does this work to support diverse collectives of peasants and to struggle for the territorial formalization of their land, as well as to protect their families’ economic well-being, by creating a Peasant Reserve Zone (a legal entity that is part of the Law 160 Agrarian Reform).

In this case and according to defense lawyer Elmer Montaña, military intelligence knows exactly who “Óscar” is and what he looks like. As such, they know that Harold is not alias “Óscar.” Furthermore, the military intelligence apparatus surely knows that the criminal activities of the commander of the dissident Central Block or the Central Joint Command Adán Izquierdo could not live in Palmira. Nor could Harold fulfill obligations as a full-time employee of the Departmental Government of Valle del Cauca and, even less so, as a scholarship-holding student in a master’s program.

Therefore, there are two ideas that remain up in the air that are both equally concerning. First, they are not accusing Harold based on a legally sustained motive or rigorous evidence—they are accusing him precisely because he is a peasant leader. Second, instead of pursuing individuals who are not complying with the Peace Accord, the state is incomprehensibly undertaking cruel action against an ex-combatant who is a responsible father, a brilliant student, a supporter of dialogue employed by the state, and a peasant leader.

Last, but not least: Why does the Attorney General’s Office – if it knew so much about Harold’s movements – feel the need to order the detention of a person during a social event where a

person who came out of the war is attempting to rebuild his social ties with new friends during a children's party in front of his five-year-old daughter?

It seems the objective is not to administer justice or to combat rampant delinquency. Instead, the objective is to socially kill a political opponent by potentially pushing them back into illegality and sending a sad signal to all the people who still stubbornly believe in the word of the Colombian state and in the Peace Process.