

HUMAN RIGHTS FIRST, FRONT LINE, FIDH AND OMCT JOINT SUBMISSION TO THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR)

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1. Introduction

This report is a joint submission by Human Rights First, Front Line, the International Federation for Human Rights (FIDH), and the World Organisation against Torture (OMCT) in the framework of their joint programme, the Observatory for the Protection of Human Rights Defenders (“the Coalition”). The submission is consistent with the guidelines approved by the Human Rights Council¹ and the Civil Society Unit of OHCHR.² This submission focuses on the situation of **human rights defenders** in Colombia, which is of particular relevance to sections I.A(B) and (C) of the Human Rights Council’s Guidelines, and to paragraphs 8(d) and (e) of the Civil Society Unit’s Guidelines. A human rights defender is anyone that peacefully protects or promotes human rights.

2. Executive Summary

Colombian human rights defenders face the following challenges:

- Colombia is one of the most dangerous states in the world for human rights defenders. They suffer from attacks and intimidation, including assassination, forced disappearances, kidnapping, death threats, assaults, surveillance, assassination attempts and robbery.
- One particular problem is the use of unsubstantiated criminal charges leveled against them by state prosecutors.
- Senior public officials also have a history of labeling human rights defenders as terrorist sympathizers and otherwise stigmatizing them.

The submission has the following recommendations to address these problems and better protect defenders:

- All criminal investigations against human rights defenders should be vetted by the Attorney-General’s office (*Fiscalia*) in Bogota. In criminal investigations and prosecutions, prosecutors should be barred from using uncorroborated witness testimony from ex-combatants or intelligence reports. The Colombian congress should enact legislation regulating the use and collection of information in government intelligence reports, requiring independent monitoring of the reports to ensure erroneous information is discarded.
- Officials must refrain from labeling peaceful human rights defenders as terrorists. The President should issue and enforce a directive prohibiting any public official from making false imputations or accusations that compromise the security or reputation of human rights defenders.

3. The State’s Failure to Adequately Protect Human Rights Defenders in Colombia³

¹ Human Rights Council, *Organizational and Procedural Matters, Human Rights Bodies and Mechanisms, Universal Periodic Review*, UN Doc. A/HRC/6/L.24 (September 24, 2007).

² OHCHR, *Information and Guidelines for Relevant Stakeholders on the Universal Periodic Review Mechanism* (July 1, 2008).

³ This section is relevant specifically to OHCHR, *Information and Guidelines for Relevant Stakeholders*, paragraph 8(d): “Cooperation of the country under review with... human rights defenders...”.

A. Overview

Colombia is one of the most dangerous states in the world for human rights defenders. The Colombian Commission of Jurists reports that from July 2002 – December 2007, 75 human rights defenders have been killed. They also face a range of other attacks and forms of intimidation, such as smear campaigns and break-ins, threatening and omnipresent surveillance, death threats, physical assaults, kidnapping, and assassination attempts. The Coalition has documented two other particularly pernicious types of attacks against Colombian defenders, unfounded criminal prosecutions and stigmatization as terrorist sympathizers, discussed in sections B and C.

The Colombian state's responsibility for attacks against human rights defenders is direct where caused by the armed forces or encouraged by members of the government (see section C below). However, state responsibility for human rights violations also extends to actions of non-state actors, such as paramilitaries, where the state facilitates those actions or fails to exercise due diligence to prevent, punish, investigate, or redress the harm caused by them.⁴ The Human Rights Committee and Inter-American human rights system have consistently held that States Parties to the *International Covenant on Civil and Political Rights* and *Inter-American Convention on Human Rights*, such as Colombia, have a positive duty to investigate and prosecute especially when the right to life is breached and especially in relation to mass atrocities:⁵ “the State Party is under a duty to investigate thoroughly alleged violations of human rights... and to prosecute criminally, try and punish those held responsible for such violations”⁶ The UN Human Rights Defenders Declaration also affirms that a State should “conduct a prompt and impartial investigation... whenever there is reasonable grounds to believe that a violation of human rights ... has occurred.”⁷ The Colombian state therefore bears responsibility for attacks against human rights defenders to the extent that it fails to investigate or punish those who commit such crimes. Moreover, intimidation of human rights defenders has worsened in large part due to the state's failure to prosecute those responsible.⁸

B. Use of Unfounded Criminal Charges

i. Nature of the Problem

The work of human rights defenders in Colombia is often impeded by unsubstantiated criminal charges leveled against them by prosecutors.⁹ These criminal charges are typically based on false allegations by ex-combatants receiving economic benefits from the state or on intelligence reports that contain false information. Legal proceedings often entail prolonged arbitrary detention during open-ended criminal

⁴ See, e.g., Human Rights Committee, *General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 21 May 2004, CCPR/C/74/CRP.4/Rev.6, para. 8; Inter-American Commission on Human Rights, *Velásquez Rodríguez v Honduras*, Judgment of 29 July 1988, Series C No 4, para. 172; Inter-American Court on Human Rights, *Barrios Altos Case*, Judgment of November 30, 2001, Series C, No. 87 (2001).

⁵ See, e.g., Human Rights Committee, *Concluding Observations on Peru*, UN. Doc. A/51/40 Vol. I (1996) 48, paras. 347, 358; *Meneses Reyes et al v Chile*, Report No. 34/96, OEA/Ser.L/V/II.95 Doc.7 rev at 196 (1997) (October 15 1996) para 106; see also *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, G.A. Res. 60/147, UN Doc. A/Res/60/147 (Dec. 16 2005).

⁶ Human Rights Committee, *Bautista de Arellana v. Colombia*, U.N. Doc. CCPR/C/55/D/563/1993 (Nov. 13, 1995), para. 8.6.

⁷ *U.N. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, UN. Doc. A/RES/53/144 (March 8, 1999) art. 9.5

⁸ While the failure to prosecute members of the security forces and paramilitaries is especially relevant to the protection of human rights defenders, there is also a need to close gaps in law and practice concerning prosecution of private military security contractors, many of them foreign nationals. See Colectivo de Abogados José Alvear Restrepo, *Private Security Transnational Enterprises in Colombia*, (February, 2008) http://www.colectivodeabogados.org/IMG/pdf/0802_merc_wisc_eng-2.pdf

⁹ See Human Rights First, *Colombia's Human Rights Defenders in Danger: Case Studies of Unfounded Criminal Investigations against Human Rights Defenders*, September 2007, <http://www.humanrightsfirst.info/pdf/07906-hrd-colombia-white-paper.pdf>

investigations. Investigations are generally undertaken with respect to one or more of a standard set of offences that are particularly open to political misapplication: slander, defamation, rebellion, contempt of authority, attacks on public order, or the formation of a terrorist group.

Such criminal investigations are often carried out against defenders under the guise of combating terrorism and defending “democratic security.” The practice of bringing unfounded criminal charges against human rights defenders is damaging for them in at least four ways. First, by stigmatizing them as criminals or as terrorist sympathizers, it places them at considerable risk of reprisal attack by armed groups, such as the paramilitaries that act covertly throughout Colombia, often in collaboration with the armed forces. Second, the proceedings force defenders to expend their limited time and resources defending themselves, diminishing the amount of productive human rights work they can perform. Third, the charges discredit them and tarnish their reputations as legitimate human rights activists, thereby reducing the effectiveness of their work. Last, the threat of political prosecution has a chilling effect, encouraging defenders to practice self-censorship and limit their activities. As the Special Representative on Human Rights Defenders has stated, “[t]hese proceedings are part of a strategy to silence human rights defenders.”¹⁰

ii. Case Examples

The case of Principe Gabriel Gonzalez is emblematic of this wider practice. Gonzalez was regional Coordinator of the Political Prisoners Solidarity Committee (FCSP), and was imprisoned for over one year in 2006/7. He was charged with rebellion and leading an urban militia force. In dismissing the criminal charges against him a judge found that they were baseless and relied on witness evidence and government reports that lacked credibility.¹¹ Both of the witnesses in the case were allegedly former guerilla members, yet one was unable to physically identify or even name Mr. Gonzalez and the other had admitted to providing statements under duress from authorities.

In December 2007 Hector Hugo Torres was detained by the Judicial and Investigative Police (SIJIN) in Bosa, Bogota, also accused of rebellion. Torres is President of the Human Rights and International Humanitarian Law Commission in Bajo Ariari. Two days after his detention, a judge ordered his immediate release. The judge found that Torres’s defense and due process rights had been violated and that the prosecution had failed to observe basic rules of procedure. He stated, “the Prosecutor has used ‘professional witnesses’ ... to provide false evidence against innocent people...”¹²

On September 29, 2007, several leaders of the *Asociación Campesina del Valle del Rio Cimitarra* (ACVC) including Oscar Duque, Mario Martinez, Evaristo Mena, and Andres Gil, were arrested, detained and charged with the crime of rebellion. On April 23, 2008, the criminal cases against Duque, Martinez, Ortega and Mena were closed, and the men were released. The resolution issued by the Prosecutor’s Human Rights Unit in Medellin (Prosecutor 37) stated that the government witnesses were vague and lacked specificity and that the allegations of links between the ACVC and the FARC were unsubstantiated.

iii. Recommendations¹³

¹⁰ Hina Jilani, *Report of the Special Representative of the Secretary-General on human rights defenders* (Commission on Human Rights, 58th session) UN Doc: E/CN.4/2002/106/Add.2. 24 April 2002. pp 24-25.

¹¹ Judge Jose Pabon Ordóñez, *Decision of First Instance*, 8th Criminal Circuit Bucaramanga, No. 2006-0179, March 30, 2007.

¹² *Judgment of Second Municipal Criminal Court of Villavicencio*, December 27, 2008.

¹³ This section and the recommendations that follow are relevant to OHCHR, *Guidelines for Relevant Stakeholders*, paragraph 8(f): “Key national priorities as identified by NGOs, initiatives and commitments that the State concerned should undertake.”

In close consultation with Colombian human rights organizations, the Coalition makes the following recommendations, which the Colombian state should implement in order to address the problem of unfounded criminal charges:

1. All criminal investigations against human rights defenders should be vetted by the Attorney-General's office (*Fiscalia*) in Bogota for compliance with due process standards. All those cases found to be specious should be closed immediately.
2. The Attorney-General (*Fiscal-General*) should issue a resolution or directive addressed to all judicial and prosecutorial institutions reemphasizing the Colombian and international law standards for impartial investigations. The resolution should also instruct prosecutors that the Attorney-General will not tolerate the initiation of specious criminal investigations against human rights defenders. It should also instruct Prosecutors to reject uncorroborated testimony by ex-combatants who are receiving reintegration benefits.
3. The Colombian government should enact legislation regulating the collection and use of information in government intelligence reports.¹⁴ The Inspector-General (*Procurador General*) should be mandated to review intelligence reports to exclude from those reports all unfounded information that incriminates or is prejudicial to human rights defenders.¹⁵

C. Political Environment that Delegitimizes and Threatens Human Rights Defenders

i. Nature of Problem and Examples

Colombian human rights defenders have told us that their greatest need is for a political environment that is supportive of their work. Unfortunately the environment in which they operate is far from this ideal. Public officials have a history of labeling human rights defenders as terrorist sympathizers and otherwise stigmatizing them. Equating human rights defenders with terrorists delegitimizes their essential work and makes the dangerous suggestion that acts of violence against them enjoy the acquiescence of the government.

Two examples from early 2008 demonstrate this problem. Many Colombian NGOs, led by defenders such as Ivan Cepeda, organized a peaceful rally on March 6 against paramilitary violence. After the rally, trade unionists and other human rights defenders reportedly associated with the demonstration were killed, subject to physical attacks and harassment. Moreover, a large number of human rights organizations received email death threats purportedly coming from the Black Eagles paramilitary group. The emails accused the human rights defenders of being guerrillas, referred explicitly to the March 6 demonstrations, and stated that they would be killed promptly.

This string of threats and attacks, which were repeated in June 2008, calls directly into question the effectiveness of the paramilitary demobilization process. The Organization of American States has reported that 22 armed groups linked to the paramilitaries remain active around the country and has expressed doubts about the effectiveness of demobilization and disarmament.

The threats and attacks came shortly after a series of public accusations made by Presidential advisor, José Obdulio Gaviria, against the organizers of the March 6 protest. In February, Mr. Gaviria publicly suggested that the march's organizers, including Iván Cepeda, were affiliated with the guerrillas of the Revolutionary Armed Forces of Colombia (FARC). In March he continued to suggest that Mr. Cepeda was essentially a member of the FARC, which was particularly irresponsible coming after the wave of attacks. As the Inter-

¹⁴ See Human Rights First, *Letter to Colombian Congress re Intelligence Bill*, June 10 2008, available at <http://www.humanrightsfirst.info/pdf/080612-HRD-colombia-sen-intel.pdf>

¹⁵ See also, Office of the United Nations High Commissioner for Human Rights in Colombia, *Annual Report 2005*, p. 32.

American Commission on Human Rights has noted, using the language of terrorism portrays the individuals concerned as legitimate targets and suggests “that acts of violence aimed at suppressing [them] enjoy the acquiescence of the government.”¹⁶

In May 2008, President Uribe himself continued the stigmatization of human rights defenders by labeling Cepeda a “human rights fake” who “encourages human rights violations.” It is not the first time President Uribe has made such comments, which have a dangerous effect on human rights defenders. In 2007, he made similar remarks and days later approximately 70 of Colombia's leading human rights defenders received death threats echoing these comments in an email from paramilitary groups.¹⁷

Baseless comments such as these are profoundly damaging to Colombian democracy and human rights, and place those against whom they are made in direct danger of violence. These statements stigmatize the legitimate work of thousands of human rights defenders, trade unionists, and victims, and can have a chilling effect on the exercise of rights to freedom of expression and free association.

Many human rights defenders in Colombia are of the opinion that the Interior Ministry's protection program is of limited value if the President or other senior government figures make statements that increase the likelihood of attacks against them.

ii. Recommendations

1. Public officials, especially senior government members, should refrain from making statements that discredit human rights defenders and that can give the impression that they condone illegal acts of violence against them.
2. The President should issue a new Presidential Directive on human rights defenders, similar to directives issued by previous governments such as Presidential Directive 7 of 2001, which ordered public servants “to abstain from questioning the legitimacy of... NGOs and their members... and abstain from making false imputations or accusations that compromise the[ir] security, honor and good name...” The government should ensure that the directive is operationalized and respected.
3. President Uribe should regularly and publicly recognize the importance and legitimacy of the work of human rights defenders. The statement on his presidential website on March 8, 2007 supporting defenders was a good first step but such support should be made in person and be well-publicized.
4. The Attorney-General's office (*Fiscalia*) should promptly investigate threats and attacks against defenders and prosecute those responsible. Any supposedly demobilized persons who participated in these crimes should be stripped of their paramilitary demobilization benefits.
5. The Interior and Justice Ministry's protection program should amend its risk evaluation framework to more realistically reflect the dangers facing individual defenders when considering protection measures. Such an amendment would be consistent with the requirements of the UN Human Rights Defenders Declaration to provide adequate protection for defenders.

¹⁶ Inter-American Commission on Human Rights, *Report on the Situation of Human Rights Defenders in the Americas*, Doc: OEA/Ser.L/V/II.124 (7 March 2006) 48.

¹⁷ Human Rights First, “Human Rights Group Says Colombian President's Rhetoric Endangers Activists,” *Press Release*, February 17, 2007. available at <http://www.humanrightsfirst.org/media/hrd/2007/alert/312/index.htm>