

HUMAN RIGHTS FIRST BRIEFING PAPER

SPECIAL RAPPORTEUR ON THE INDEPENDENCE OF JUDGES AND LAWYERS

VISIT TO COLOMBIA, DECEMBER 7 - 16, 2009

Decades of internal armed conflict has had a lasting effect on the rule of law in Colombia. Attacks on the independence of lawyers, prosecutors, and judges are disturbingly emblematic of the administration of justice. Human Rights First is deeply troubled by the systematic violations of due process that frequently violate fair trial standards.

The following key points and recommendations are grouped under important issues relevant to the Rapporteur's mandate. Links to further information are also provided.

1. Attacks on the independence of lawyers

2. Human rights lawyers in Colombia are subject to the full gamut of human rights violations that undoubtedly affects their independence and ability to practice. Human rights lawyers are placed on lists wrongly identifying them as terrorist supporters, subjected to groundless investigations and disciplinary complaints, illegally detained without evidence, subject to illegal surveillance and consistently receive death threats. The examples below, rather than isolated cases, are representative of broad patterns of persecution that threaten the independence of lawyers. The cases discussed below are available here in [English](#) and in [Spanish](#).

A. Faulty intelligence reports:

- In early May 2009 a military intelligence report identified 97 individuals, including human rights lawyers, as FARC rebel group supporters. Human Rights First fears that the report was an attempt to silence lawyers who participated in a truth hearing in Caquetá to expose extrajudicial killings and human rights violations allegedly committed by the army.

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- Human Rights First’s petition discussing the use of this faulty report to stigmatize human rights lawyers
<http://www.humanrightsfirst.org/pdf/090527-HRD-dan-ltr-eng-no-sig.pdf>.

B. Groundless investigations and disciplinary complaints

- Teresa de Jesús Cedeno Galindez, a criminal defense attorney, was held for three days without access to her lawyers based on flawed witness statements and military intelligence reports.
- Elkin de Jesus Ramirez, a lawyer and professor, was not notified of the ongoing investigation against him until his arrest. The case against him was dismissed after testimonies were deemed incoherent, illogical, unreasonable, contradictory, and vague.
- Prosecutor 32 of Medellín filed a disciplinary complaint against human rights lawyer, Diana Teresa Sierra, alleging that Sierra had acted “recklessly and with bad faith”. A judge later stated that Sierra had not obstructed justice and that the complaint was a waste of the court’s time and a lamentable stain on the administration of justice.

C. Illegal detention

- Claudia Montoya, a human rights lawyer in Medellín, was illegally detained and allegedly abused by public authorities. A reviewing prosecutor closed the investigation after finding that witness statements strongly demonstrated improper coaching and interference by prosecutors.

D. Failure to provide protection

- In November 2007 an ex-paramilitary commander “Don Antonio” admitted that he ordered the assassination of Jose Humberto Torres Diaz, a renowned human rights lawyer. Although the order to assassinate Torres remained in force, the response of the Colombian government was inadequate and left Torres without sufficient protective measures.

- Human Rights First's petition discussing this case <http://www.humanrightsfirst.info/pdf/071205-hrd-humberto-peti-engl.pdf>
 - The cases discussed above are available in [English](#) and in [Spanish](#).
- 3. Attacks on the independence of prosecutors/judges**
- Prosecutors and judges are unduly influenced by different powerful actors in Colombian society. Close ties between military officials and prosecutors limit prosecutorial independence. Military officials armed with false intelligence reports many times pressure prosecutors to initiate groundless investigations. Links between paramilitary groups and public officials are also problematic.

4. Obstruction to fair trials and due process

A. Prosecutorial bias

- Some prosecutors in Colombia demonstrate prejudice towards a predetermined outcome by beginning an investigation or filing charges in the absence of any evidence at all, or without considering exculpatory evidence as required by law.
- The widespread and dangerous practice of publicly describing human rights defenders as terrorists before trial renders a fair trial impossible, breaches the presumption of innocence, and encourages attacks against the accused.
- Full report available in [English](#) and [Spanish](#)

B. Problems with witness testimony

- Criminal investigations often rely on testimony from ex-combatants or guerrilla informants who are receiving reintegration benefits. The inherently unreliable nature of such evidence is compounded by indications that testimony is often coached or otherwise influenced by public officials resulting in testimony that is vague, incoherent, and contradictory.

- Full report available in [English](#) and [Spanish](#)

C. Illegal reliance on false and unreliable intelligence reports

- In clear violation of Colombian Law, prosecutors often rely on flawed intelligence reports prepared by the armed forces or judicial police to initiate and continue criminal investigations. These reports often contain information that is fallacious and contains no more than a summary of dubious witness statements without corroborating evidence.
- Full report available in [English](#) and [Spanish](#)

D. Preliminary investigation problems

- Prosecutors repeatedly exceed statutory limits for preliminary investigations, detain defenders for longer periods than permitted, and conduct investigations without informing the defendant of the investigation or even of the subsequent charges.
- Full report available in [English](#) and [Spanish](#)

E. Arbitrary detention

- Defendants are frequently arrested without a valid warrant, are unjustifiably held in preventative detention, and suffer unacceptable conditions of detention.
- Full report available in [English](#) and [Spanish](#)

5. Ways and means to improve the judicial system

A. Implementing the new accusatorial criminal justice system

- Many criminal investigations continue under the old procedural code even though the new accusatorial code is now in effect throughout the country. The prosecutor general and judiciary need to re-double efforts to ensure that the new accusatorial system is being used in all new cases. The prosecutor general should issue guidelines clarifying that: 1)

for ongoing crimes such as disappearances or membership based crimes such as rebellion, the relevant date to determine which code governs the case is the date of arrest and therefore all new investigations into these crimes should be brought under the new code; 2) if there is doubt about which code to apply to a given case, the ambiguity should be resolved in favor of the system with greater protections for the defendant, ie the new code should be applied.

B. Coordinating a centralized review of investigations against human rights lawyers and defenders.

- The prosecutor general should pass a resolution empowering a unit in Bogotá to coordinate the review of all criminal investigations against human rights lawyers and defenders. This unit could quickly vet investigations for compliance with due process standards or rapidly delegate the review to the regional prosecutorial Human Rights Unit, if appropriate. All cases found to be specious should be closed immediately. Defendants should be able to lodge complaints directly with the Human Rights Unit.
- The Inspector General's office should ensure that its judicial inspectors promptly and consistently intervene in cases of malicious prosecution of human rights lawyers. Judicial inspectors should support the dismissal of specious charges against defenders.

B. Addressing the conduct of prosecutors

- The Prosecutor General should conduct a comprehensive internal investigation into corruption and connections between justice officials and paramilitaries or successor groups, focusing on regional prosecutors. The state should dismiss from judicial and prosecutorial institutions all individuals shown to be corrupt or connected to illegal groups.
- The Prosecutor General should discipline and prosecute all prosecutors found to have breached the law in conducting false investigations.

- Prosecutors should reject patently implausible witness testimony, refrain from influencing witness testimony, and carefully evaluate witness testimony from ex-combatants receiving reintegration benefits. Prosecutors should also provide the accused with evidence which may impeach the witness's credibility.
- The Prosecutor General should issue a resolution or directive addressed to all judicial and prosecutorial institutions reemphasizing relevant international law and provisions of the new Colombian Procedural Code. The resolution should emphasize that these laws set standards for impartial investigations and fair trials and bar politically motivated criminal proceedings.
- The new intelligence law should be implemented in practice so that: 1) intelligence reports are not used as evidence in criminal or administrative proceedings; 2) judicial approval is required to collect intelligence, and 3) that intelligence is not collected for arbitrary reasons.
- The human rights ombudsman should play a key role in changing attitudes of prosecutors and judges which remain inappropriately suspicious of human rights advocacy and in many instances equate the promotion of human rights with terrorism or subversive behavior.

C. Decriminalizing Defamation and Slander

- The Colombian Criminal Code should be amended to decriminalize the offenses of slander and libel. While legitimate as civil complaints, such offenses are incompatible with the protection of human rights.

In February 2009 Human Rights First published *Baseless Prosecution of Human Rights Defenders in Colombia: In the Dock and Under the Gun* examining the use of politically motivated criminal charges to harass, stigmatize, and endanger human rights defenders in Colombia. This report thoroughly reviews the problem and the root causes, and reveals a clear pattern of judicial mistreatment and persecution.

Full Report Available in [English](#) and [Spanish](#).