

**TO THE  
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
ON THE MERITS OF THE PETITION OF  
MEMBERS OF JOSÉ ALVÉAR RESTREPO LAWYERS' COLLECTIVE**

*Case No. 12.380*

**BRIEF OF  
LAWYERS WITHOUT BORDERS CANADA  
AND  
LAWYERS' RIGHTS WATCH CANADA**

*AS AMICI CURIAE*

*Lawyers without Borders Canada*



*Lawyers Rights Watch Canada*

**Lawyers' Rights Watch Canada**

## TABLE OF CONTENTS

TABLE OF ABBREVIATIONS .....	3
INTRODUCTION .....	5
Interest of the Amici Curiae .....	5
Focus of the Amicus .....	7
PART I. IMPUNITY AND OTHER LONGSTANDING PROBLEMS WITH THE ADMINISTRATION OF JUSTICE.....	9
1.1. Impunity as a Structural and Systemic Problem.....	9
1.2. Unfair and Improper Administration of Justice.....	13
1.3. Failure of Colombia to Uphold the Rule of Law .....	15
PART II. IMPEDIMENTS TO THE INDEPENDENT PRACTICE OF THE LEGAL PROFESSION IN COLOMBIA AS A BREACH OF THE STATE’S DUTY TO PROTECT HUMAN RIGHTS DEFENDERS .....	17
2.1.Importance of Human Rights Defenders and Lawyers for Access to Justice and the Rule of Law.	17
2.2. International Law Standards with Respect to Intelligence-Gathering.....	19
2.3. Persecution, Surveillance and Illegal Intelligence Gathering as Violations of the Human Rights and Impediments to the Independence and Safety of Colombian Lawyers.....	27
Violation of Right to Life and Right to Humane Treatment (Articles 4 and 5.1).....	27
Violation of Right to Movement (Article 22) and Rights to Freedom of Thought and Expression (Article 13.1) and Freedom of Association (Article 16.1).....	31
Violation of Right to Honour and Reputation: Public stigmatization, Defamatory Declarations and Groundless Judicial Proceedings (Article 11) .....	34
CONCLUSION .....	40

## TABLE OF ABBREVIATIONS

AAJ	American Association of Jurists
CAT	UN Committee against Torture
CCAJAR	<i>Corporación Colectivo de Abogados "José Alvear Restrepo"</i> (“José Alvear Restrepo” Lawyers’ Collective)
DAS	<i>Departamento Administrativo de Seguridad</i> (Administrative Department of Security)
ECtHR	European Court of Human Rights
ELN	<i>Ejército de Liberación Nacional</i> (National Liberation Army)
ECOSOC	UN Economic and Social Council
HRC	UN Human Rights Council
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Commission of Jurists
LRWC	Lawyers’ Rights Watch Canada
LWBC	Lawyers without Borders Canada
OHCHR	Office of the UN High Commissioner for Human Rights
OTP-ICC	Office of the Prosecutor- International Criminal Court
UN	United Nations
UNCAT	United Nations Convention against Torture
UNHCHR	United Nations High Commissioner for Human Right
UNHRC	United Nations Human Rights Committee

UNSRIJL

UN Special Rapporteur on the Independence of Judges and  
Lawyers

## INTRODUCTION

### Interest of the Amici Curiae

The *amici* are Lawyers Without Borders Canada (“LWBC”) and Lawyers’ Rights Watch Canada (“LRWC”), both associations of lawyers that share an interest in the fundamental role that lawyers, and particularly human rights lawyers, play in ensuring respect for the human rights of all and the proper administration of justice. The *amici* respectfully submit this brief for the benefit of the Inter-American Commission on Human Rights (“Commission” or “IACHR”) in its consideration of the Petition of the Members of the “José Alvéar Restrepo” Lawyers’ Collective (“CCAJAR” or “Lawyers’ Collective” or “Petitioners”).<sup>1</sup>

LWBC is a non-profit association incorporated under the laws of the province of Quebec, Canada. It is the Canadian branch of the “*Avocats sans Frontières*” (“Lawyers without Borders”) international movement. Hundreds of Canadian lawyers are members of LWBC, which is supported by the Quebec Bar, the Quebec Department of Justice, the Canadian Department of Foreign Affairs and International Trade and several institutions and associations of the Canadian legal community.

LWBC’s mission is to uphold the defence of the human rights of vulnerable groups or individuals by reinforcing access to justice and legal representation. In Colombia, LWBC lends its support to lawyers who are threatened because of their work with, and support of, victims of human rights abuses committed during the armed conflict, and notably those of indigenous and Afro-Colombian communities. LWBC thus contributes to reinforcing access to justice by victims of the armed conflict, through furthering the free exercise of the profession of human rights lawyers.

LRWC is a committee of Canadian lawyers that promotes human rights and the rule of law internationally by providing support to lawyers and other human rights defenders in

---

<sup>1</sup> IACHR, Report 55/06, Petition 12.380, Admissibility, Members of José Alvéar Restrepo Lawyers’ Collective v. Colombia, July 20, 2006 [the “Petition”].

danger because of their human rights advocacy, engaging in legal research and education on human rights and rule of law issues, and working with other human rights organizations. LRWC is a non-profit, volunteer-run organization. LRWC has Special Consultative status with the Economic and Social Council of the United Nations (“ECOSOC”).

LWBC and LRWC join in presenting an elaboration of the scope of the Colombian State’s responsibility for the succession of attacks, threats, surveillance, acts of intimidation and harassment to which the Lawyers’ Collective has been subjected, in violation of Articles 4, 5, 8.1, 11, 13, 16, 22 and 25 of the *American Convention on Human Rights* (“American Convention”), in connection with the State’s obligations under Article 1.1.

## **Focus of the Amicus**

This *amicus* examines: (i) the Colombian State's failure to comply with its international obligations and protect the Petitioners from the violations of their human rights and professional functioning as lawyers; and (ii) the broader implications of these violations for the protection of human rights and the proper administration of justice in Colombia.

The *amicus* details the manner in which the State has (through action and inaction) restricted the right and duty of the Petitioners to carry out their legitimate professional duties and to vigorously represent their clients without fear and interference. In so doing, the State has also impaired the right of victims and accused persons to adequate legal representation, particularly in cases of wrongdoing by state agents. The State's actions and inactions include: wrongful surveillance and the interception of communications inconsistent with international law, and the failure to adequately protect the rights of lawyers to life, reputation, association and movement, and their right and duty to carry out their professional functions.

Starting from the premise that lawyers play an essential role in facilitating access to justice, guaranteeing respect for protected rights, combating impunity and ensuring the rule of law<sup>2</sup>, the *amicus* underlines the far-reaching implications of the various forms of interference with the Petitioners' professional activities. In this respect, the *amicus* focuses on the impediments to the full exercise of lawyers' professional duties, caused by: arbitrary surveillance of lawyers and interception of their communications; the wrongfully sharing of collected information; the failure to provide lawyers under threat with effective protective measures; the failure to investigate threats against and attacks on lawyers; the failure to ensure identification and punishment of perpetrators through prosecutions and trials; and, the failure to adequately prevent and punish violations to the protected freedoms of life, movement and reputation.

---

<sup>2</sup> International Commission of Jurists ("ICJ"), *International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors: Practitioners Guide No. 1* (2007) at p.63 [ICJ Guide].

To fulfill their vital role, lawyers in Colombia must be able to carry out their work independently, and there are certain essential international law guarantees for the legal profession that provide for this. The thrust of these safeguards is the requirement that States protect lawyers from unlawful interference of all types, from threats and physical attacks, and ensure there are no impediments to lawyers communicating with their clients on a private and confidential basis.<sup>3</sup>

---

<sup>3</sup>*Ibid.*



## **PART I. IMPUNITY AND OTHER LONGSTANDING PROBLEMS WITH THE ADMINISTRATION OF JUSTICE**

### **1.1. Impunity as a Structural and Systemic Problem**

The Commission has defined impunity as "the absence of an investigation, prosecution, capture, judgment and punishment of those responsible for violations of rights protected by the *American Convention*".<sup>4</sup> Impunity thus encourages the chronic repetition of human rights violations and results in the total defenselessness of the victims.<sup>5</sup>

In its third report on the human rights situation in 1999, the Commission expressed serious concerns about the situation of impunity and denial of justice that prevailed in Colombia. In the Commission's view, these fundamental and longstanding problems were also structural in nature:

Impunity in Colombia is structural and systemic. It is not simply a question of leaving numerous individual crimes unpunished. Rather, the issue is one of the creation of an entire system of impunity which affects the culture and life of the nation even for those individuals who are not directly affected by human rights violations or other crimes.<sup>6</sup> (emphasis added)

Since its 1999 report, impunity continued to feature prominently in the Commission's reporting on Colombia, as well as that of other prominent human rights bodies. For instance, in its 2004 *Report on the Demobilization Process in Colombia*, the Commission stated:

---

<sup>4</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, *Impunity, Self-censorship and Armed Internal Conflict: An Analysis of the State of Freedom of Expression in Colombia*, 31 August 2005, OEA/Ser.L/V/II, Doc. 51, at §79. See also ECOSOC, Report of the Independent Expert to Update the Set of Principles to Combat Impunity, Diane Orentlicher, *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, 8 February 2005, DOC NU E/CN.4/2005/102/Add.1, at Principle 1: "Impunity arises from a failure by States to meet their obligations to investigate violations; to take appropriate measures in respect of the perpetrators, particularly in the area of justice, by ensuring that those suspected of criminal responsibility are prosecuted, tried and duly punished; to provide victims with effective remedies and to ensure that they receive reparation for the injuries suffered; to ensure the inalienable right to know the truth about violations; and to take other necessary steps to prevent a recurrence of violations".

<sup>5</sup> *Ibid.*

<sup>6</sup> IACHR, *Third Report on the Human Rights Situation in Colombia*, 26 February 1999, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, at Chapter V, §16 [IACHR, Third Report].

The high levels of impunity and the ineffectiveness of the administration of justice in Colombia – which have been the subject of repeated pronouncements and recommendations by the IACHR and the Office of the United Nations High Commissioner for Human Rights — demand that the future investigation of the crimes perpetrated by the actors to the conflict be supported by clear provisions that are consistent with the international obligations of the State.<sup>7</sup>

The same year, the UN Committee against Torture (CAT) expressed concern regarding:

The climate of impunity that surrounds human rights violations by State security forces and organs and, in particular, the absence of prompt, impartial and thorough investigation of the numerous acts of torture or other cruel, inhuman or degrading treatment or punishment and the absence of redress and adequate compensation for the victims.<sup>8</sup>

More recently, in 2011, the Office of the High Commissioner for Human Rights (OHCHR), "urge[d] the State to take bold steps in the fight against impunity and to establish and implement judicial reforms through participatory and transparent discussions towards a prompt, competent, independent and impartial justice".<sup>9</sup> The High Commissioner "emphasize[d] the need to ensure not only adequate funding and an independent governance structure for the judiciary, but also that the root causes of impunity be addressed".<sup>10</sup> (emphasis added) According to the OHCHR:

These issues include the needs: to improve access to justice, especially in rural areas and for specific groups, such as women, displaced persons, indigenous and Afro-Colombians; to resolve the backlog and expedite existing processes; to ensure the presence, and security, of well-trained judges and prosecutors throughout the country; to adopt appropriate sanctions for corrupt lawyers and judges; and to design strategies and

---

<sup>7</sup> IACHR, *Report on the Demobilization Process in Colombia*, 13 December 2004, OEA/Ser.L/V/II.120, Doc. 60 rev., executive summary at 8.

<sup>8</sup> CAT, *Conclusions and recommendations: COLOMBIA*, 4 February 2004, CAT/C/CR/31/1, at 9(a).

<sup>9</sup> UN Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*, 3 February 2011, A/HRC/16/22, at 109 (e) [HRC February 2011].

<sup>10</sup> *Ibid* at 49.

provide sufficient resources in the Attorney General's Office to systematically investigate human rights violations.<sup>11</sup>

To date, impunity remains a structural and systemic problem affecting the full enjoyment of rights of all Colombians, and the magnitude of the phenomenon is grave.<sup>12</sup> According to the OHCHR, "combating it [impunity] requires a criminal policy that upholds human rights, emphasizes crime prevention and strengthens training and education".<sup>13</sup>

Moreover, impunity in Colombia is an entrenched element in relation to all types of crimes, not only human rights violations. For instance, the Superior Council of the Judiciary of Colombia reported in 1996 that between 97% and 98% of all crimes went unpunished.<sup>14</sup> The situation has not improved significantly, as is demonstrated by the OHCHR's recent annual reports to the UN Human Rights Council on the situation in Colombia.<sup>15</sup>

The level of impunity for the perpetrators of human rights violations is even higher. According to the Interim Report of the Office of the Prosecutor of the International Criminal Court ("OTP-ICC"), the many proceedings initiated in relation to the killings of civilians in "false positive" cases<sup>16</sup>, "have perpetuated rather than diminished impunity enjoyed by

---

<sup>11</sup> *Ibid.*

<sup>12</sup> UN Human Rights Council, Annual report of the United Nations High Commissioner for Human Rights, Addendum, *Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia*, 31 January 2012, A/HRC/19/21/Add.3, at 9 [HRC January 2012].

<sup>13</sup> *Ibid.*

<sup>14</sup> IACHR, Third Report, *supra* note 6 at Chapter V, §12.

<sup>15</sup> In her February 2011 report to the UN Human Rights Council on the situation in Colombia, the UN High Commissioner for Human Rights, Ms. Navanethem Pillay, expressed concern for the impunity rate of cases involving sexual violence, which she asserted is near 100%: A/HRC/16/22, at §67; [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-21-Add3\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-21-Add3_en.pdf) <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-22.pdf>. The following year, she expressed the same distress in connection with what she claimed are "high levels of impunity" towards conflict-related violations of the rights of the child: HRC January 2012, *supra* note 12 at §78: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-21-Add3\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-21-Add3_en.pdf)

<sup>16</sup> *Interim Report on the Situation in Colombia*, The Office of the Prosecutor, International Criminal Court, November 2012, available at: <http://www2.icc-cpi.int/NR/rdonlyres/3D3055BD-16E2-4C83-BA85-35BCFD2A7922/285102/OTPCOLOMBIAPublicInterimReportNovember2012.pdf>, at §8 [OTP-ICC Report]. "State actors, in particular members of the Colombian army, have also allegedly deliberately killed thousands of civilians to bolster success rates in the context of the internal armed conflict and to obtain monetary profit from the State's funds. Executed civilians were reported as guerrillas killed in combat after alterations of the

virtue of official capacity”.<sup>17</sup> Moreover, within this sector, the extra-judicial killings of human rights defenders are especially likely to remain unpunished. During a 2007 joint mission to Colombia, LWBC and the American Association of Jurists (“AAJ”) recorded the testimony of several human rights lawyers subject to threats and attacks, and concluded that in the majority of cases, no intervention by competent public authorities had been conducted.<sup>18</sup> Similarly, the IACHR recently reported that it “received information indicating that from January to June 2011, every day and a half, a human rights defender was subject to attack; a total of 93 threats and 10 physical assaults were reported”.<sup>19</sup>

The reported rates of impunity do not take into account the significant under-reporting of crimes that prevails in Colombia. Victims are often inhibited from reporting abuses as a result of threats and attacks by the perpetrators, which are aimed at dissuading them from seeking justice. As the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions noted during his last mission to Colombia, “significant numbers of witnesses never report their cases at all because of well-justified fear of retaliation”.<sup>20</sup> Mr. Alston further reported that witnesses are fearful not only of the alleged perpetrators but, especially in more rural and remote areas, of state actors such as the local *fiscal* or

---

crime scene. Allegedly, these killings, also known as ‘falsos positivos’ (false positives), started during the 1980s and occurred with greatest frequency from 2004 until 2008.”

<sup>17</sup> *Ibid*, at §220.

<sup>18</sup> LWBC and AAJ, *Report on the Situation of Lawyers in Colombia*, 10 December 2007, available at [http://asfcanada.ca/uploads/publications/uploaded\\_report-lwb-aaj-english-translation-pdf-15.pdf](http://asfcanada.ca/uploads/publications/uploaded_report-lwb-aaj-english-translation-pdf-15.pdf). See also Asociación Colombiana de Abogados Defensores de Derechos Humanos (ACADEHUM), “*Ataques contra el libre ejercicio de la abogacía: Informe para la relatora especial de la ONU sobre la Independencia de los magistrados y abogados, señora Gabriela Carina Knaul de Albuquerque e Silva*”, December 2009, Bogotá, Colombia, available at [http://93.88.248.126/index.php?option=com\\_docman&task=doc\\_details&gid=177&Itemid=24&date=2012-04-01](http://93.88.248.126/index.php?option=com_docman&task=doc_details&gid=177&Itemid=24&date=2012-04-01).

<sup>19</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, 31 December 2011, OEA/Ser.L/V/II, Doc.66, at §50 [IACHR Rights Defenders 2011]. To review the Colombian Attorney General’s own list of reported attacks on lawyers between 2002 and 2012 in Colombia, see the report of the Fiscalía General de la Nación, Gobierno de Colombia, *Información- Organizaciones Defensoras de Derechos Humanos*, Radicado no. 20125000199421, 17 August 2012.

<sup>20</sup> See UN Human Rights Council, *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Addendum: Mission to Colombia*, 31 March 2010, A/HRC/14 /24/Add. 2 at §87, available at <http://www.unhcr.org/refworld/docid/4c0763db2.html>, [Special Rapporteur 2010, Colombia].

*procurador*, whom witnesses believe may be cooperating with, or under the influence of the alleged perpetrators.<sup>21</sup>

## 1.2. Unfair and Improper Administration of Justice

Serious flaws in Colombia's justice system contribute to the maintenance of impunity. A pressing and contemporary example is the Legislative Act No.16 of 2012,<sup>22</sup> which formally became law on 28 December 2012, will by constitutional amendment extend the competence of the military criminal jurisdiction. The effect of this reform is to extend the jurisdiction to include violations of international humanitarian law committed by members of the armed forces within jurisdiction of the military criminal jurisdiction. This is viewed as a significantly retrogressive step in terms of the promotion and defence of human rights.<sup>23</sup>

The Inter-American Court of Human Rights ("IACtHR") has consistently held that military jurisdiction is not competent to investigate, prosecute or sanction in cases of human rights violations.<sup>24</sup> The IACtHR has found that whenever military jurisdiction assumes competence over matters that should be heard by ordinary civil jurisdiction, the State violates the right to an independent and competent tribunal and to due process. Military jurisdiction cannot be considered as independent and impartial since the line of reporting is to the Ministry of Defence.<sup>25</sup> This constitutional reform could further entrench impunity

---

<sup>21</sup> *Ibid.*

<sup>22</sup> *Acto legislativo No. 02, "Por el cual se reforman los artículos 116, 152 y 221 de la Constitución política de Colombia"* 27 December 2012, available at: [wsp.presidencia.gov.co/Normativa/actos-legislativos](http://wsp.presidencia.gov.co/Normativa/actos-legislativos).

<sup>23</sup> LWBC, *Legal Analysis of Legislative Act no 2 of 2012 (Expansion of the jurisdiction of the Military Criminal Justice System)*, 15 February 2013, available at: [http://www.asfcanada.ca/uploads/publications/uploaded\\_analisis-jpm-asf-canada-2013-02-15-eng-pdf-42.pdf](http://www.asfcanada.ca/uploads/publications/uploaded_analisis-jpm-asf-canada-2013-02-15-eng-pdf-42.pdf) [LWBC, Military Criminal Justice]

<sup>24</sup> IACtHR, *Case of Radilla-Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 23, 2009. Series C No. 209, at §273: "Likewise, this Court has established that, taking into account the nature of the crime and the juridical right damaged, military criminal jurisdiction is not the competent jurisdiction to investigate and, in its case, prosecute and punish the authors of violations of human rights but that instead the processing of those responsible always corresponds to the ordinary justice system. In that sense, the Court, on multiple occasions, has indicated that "[w]hen the military jurisdiction assumes competence over a matter that should be heard by the ordinary jurisdiction, it is violating the right to a competent tribunal and, *a fortiori*, to a due process," which is, at the same time, intimately related to the right to a fair trial. The judge in charge of hearing a case shall be competent, as well as independent and impartial."

<sup>25</sup> LWBC, *Military Criminal Justice*, *supra* note 23 at p. 11.

and perpetuate the infringement of victims' rights and the violation of the State's obligations to prosecute and sanction the perpetrators of human rights violations.<sup>26</sup> The *amici* note with concern that in specific cases where military judges have transferred cases (particularly cases involving extrajudicial executions) to the civil justice system, the military judges have been dismissed, threatened and harassed.<sup>27</sup>

Turning to the cases that are within the civil justice system, the OTP-ICC found that the proceedings initiated in relation to false positive cases have not only failed to prosecute the persons who might be responsible for those crimes but to reveal the context and circumstances in which those crimes took place.<sup>28</sup>

Another deficiency in Colombia's justice system is the lack of protection for justice system operators, which further detracts from the fair and proper administration of justice. Perpetrators of human rights abuses have attempted to disrupt the justice system by threatening death or injury to judges, prosecutors, investigators, lawyers and witnesses.<sup>29</sup> For example, witnesses against former paramilitaries have been pressured not to testify, as was evidenced in the murder of Jesús Mazo Ceballos in 2008, a key witness against former paramilitary leader John William López.<sup>30</sup> The significant risk to which witnesses in proceedings are exposed is an indication of the persistence of impunity and the lack of access to justice and effective remedies.

---

<sup>26</sup> *Ibid*, at p.3.

<sup>27</sup> UN Human Rights Council, *Report of the Special Rapporteur on independence of judges and lawyers, Addendum: Summary of information, including individual cases, transmitted to Governments and replies received*, 19 May 2011, A/HRC/17/30/Add.1 at. §§256-265.

<sup>28</sup> OTP-ICC Report, *supra* note 16 at §220: "As documented in this report, a large number of investigations have been initiated into the killings of civilians in false positive cases. Yet, the existing proceedings have largely failed to focus on the persons who might bear the greatest responsibility for the commission of these crimes. In particular, these crimes appear to have been committed in a widespread and systematic manner, in furtherance of a State or organizational policy. The judicial activity so far has largely failed to bring to light the context and circumstances in which these crimes have been committed, and have perpetuated rather than diminished impunity enjoyed by virtue of official capacity."

<sup>29</sup> For a detailed account of the plight of judges working in isolated and war-torn regions of the country, see García Villegas, Mauricio (dir), *Jueces sin Estado: La Justicia Colombiana en zonas de conflicto armado*, (Bogotá: Siglo del Hombre Editores, DeJusticia, The John Merck Fund, 2008).

<sup>30</sup> International Crisis Group, *Correcting Course: Victims and the Justice and Peace Law in Colombia*, 30 October 2008, Latin America Report N°29, at p.8, available at: [http://www.crisisgroup.org/~media/Files/latin-america/colombia/recting\\_course\\_victims\\_and\\_the\\_justice\\_and\\_peace\\_law\\_in\\_colombia](http://www.crisisgroup.org/~media/Files/latin-america/colombia/recting_course_victims_and_the_justice_and_peace_law_in_colombia).

The threats and attacks on justice system operators send an ominous message to members of the entire legal profession, deterring them from prosecuting or trying human rights violators and from advocating for victims. The UN Special Rapporteur on the Independence of Judges and Lawyers (UNSRIJL) reported that according to the Colombian National Police, during the 2003-2009 period alone, one (1) magistrate, six (6) judges, 12 prosecutors and 334 lawyers were assassinated.<sup>31</sup> Perpetrators also try to bribe public officials and reach collusive agreements with them, to defeat efforts to effectively investigate such violations and bring those responsible to justice.<sup>32</sup>

### **1.3. Failure of Colombia to Uphold the Rule of Law**

The failure of the Colombian State to affirm and uphold the rule of law is due in part to the persistent systemic deficits in the administration of justice. Of particular note are the fundamental problems of the lack of capacity of Attorney General officials and the police to carry out timely and adequate investigations, along with insufficient resources and infrastructure. In assessing the adequacy and effectiveness of Colombia's justice system in investigating and prosecuting the most serious crimes reported to it, the OTP-ICC has determined that more resources must be assigned to these tasks.<sup>33</sup>

The State's lack of capacity and political will to carry out investigations, inevitably results in a failure to prosecute and sanction human rights offenders, as well as to provide reparation for victims of human rights violations. As such, the Colombian State is in breach of its

---

<sup>31</sup> *Informe de la Relatora Especial sobre la independencia de los magistrados y abogados, Sra. Gabriela Carina Knaul de Albuquerque e Silva, Misión a Colombia*, 16 April 2010, A/HRC/14/26/Add.2, at §53. [Silva, April 2010]

<sup>32</sup> UNHRC, February 2011, *supra* note 9 at §36 refers to such attempts on the part of the illegal armed groups that have emerged after the demobilization of paramilitary organizations: "OHCHR-Colombia has identified cases in Antioquia, Córdoba and Meta in which, as a result of corruption or threats, these groups have benefited from the acquiescence, tolerance and even collusion of members of security forces, including the National Police".

<sup>33</sup> OTP-ICC Report, *supra* note 16 at §197: With respect to the investigations conducted against army officials allegedly involved in the "false positives" phenomenon, the OTP-ICC reports that: "207 members of the armed forces have been convicted for murder of civilians within ICC temporal jurisdiction with sentences ranging from 9 to 51 years of imprisonment. In addition, the Office has information about 27 convictions for abetting and concealment of murder of civilians, with sentences ranging from 2 to 6 years of imprisonment. The Office of the Attorney General (Human Rights Unit) is investigating 1,669 cases of extrajudicial killings of civilians attributed to military forces and presented as death in combat, in which the number of victims could reach 2,896" (§180).

international law duty "to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation".<sup>34</sup> This fundamental breach of international law obligations is itself one of the most serious human rights violations occurring in Colombia.<sup>35</sup>

---

<sup>34</sup> IACtHR, *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, at 174. The duty of States to investigate and punish those responsible for human rights violations under the *American Convention*, which was first elaborated in the *Velásquez Rodríguez Case*, has been reiterated in subsequent cases. See IACtHR, *Case of Godínez-Cruz case v. Honduras*. Reparations and Costs. Judgment of July 21, 1989. Series C No.8, at 175; IACtHR, *Case of Caballero-Delgado case v. Colombia*. Merits. Judgment of December 8, 1995. Series C No. 22 at 3-5; ICtHR, *Case of the "White Van" (Paniagua-Morales et al.) v. Guatemala*. Merits. Judgment of March 8, 1998. Series C No. 37, at 4-12.

<sup>35</sup> According to Fernando Felipe Basch, "[...] the court's duty to punish doctrine not only governs states' international responsibility for human rights violations and victim redress in a traditional, compensatory approach, but also asserts that offenders must be punished. This approach applies to cases of grave human rights violations, as well as to every violation of any of the rights protected by the American Convention. It also applies to both violations committed by the state apparatus and those resulting from private crimes." Basch, Fernando Felipe. "The Doctrine of the Inter-American Court of Human Rights Regarding States' Duty to Punish Human Rights Violations and Its Dangers", *American University International Law Review* 23:1, 2007, available at: <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1019&context=auilr>.



## **PART II. IMPEDIMENTS TO THE INDEPENDENT PRACTICE OF THE LEGAL PROFESSION IN COLOMBIA AS A BREACH OF THE STATE'S DUTY TO PROTECT HUMAN RIGHTS DEFENDERS**

### **2.1. Importance of Human Rights Defenders and Lawyers for Access to Justice and the Rule of Law**

Given the extremely problematic legal and judicial context in Colombia, human rights lawyers have a particularly critical role to play in opposing impunity and advancing the protection of human rights and the proper administration of justice. Human rights lawyers and the Petitioners are engaged in efforts to address these deficiencies in the justice system by fulfilling their critical role as advocates for victims of the violation of human rights and other fundamental rights. Lawyers fulfill this function by denouncing violations, supporting and representing victims from vulnerable groups that struggle to access justice, and by challenging laws and all manner of phenomenon that undermine the protection of rights and sustain impunity.<sup>36</sup>

The Commission recently reiterated the fundamental importance of human rights defenders' work "for the universal implementation of human rights, and for the full existence of democracy and the rule of law".<sup>37</sup> In the Commission's view, "[h]uman rights defenders are an essential pillar for the strengthening and consolidation of democracies,

---

<sup>36</sup> A representative of the Colombian State has previously recognized this vital role before the UNHRC when it acknowledged the crucial role that lawyers played in the proceedings that culminated in the Colombian Supreme Court's decision that the law on the State of Emergency was unconstitutional. See Comité de Derechos Humanos, *Informe sobre el trigésimo quinto período de sesiones*, 18 September 1980, Suplemento No. 40 (A/35/40), at §261: [Unofficial translation] "The Supreme Court had declared certain articles of the Statute on Security as unconstitutional and those had been removed from the text currently in force. Several lawyers contributed to this result, by invoking the Covenant before the Court to this effect." *"La Corte Suprema había declarado la inconstitucionalidad de determinados artículos del Estatuto de seguridad y éstos habían sido retirados del texto actualmente en vigor. A este resultado contribuyeron algunos abogados que invocaron el Pacto ante el Tribunal a este respecto"*.

<sup>37</sup> IACHR, Rights Defenders 2011, *supra* note 19 at §13.

since the purpose that motivates their work involves society in general, and seeks to benefit society".<sup>38</sup>

The International Commission of Jurists ("ICJ") has made similar pronouncements: "[l]awyers are, with judges and prosecutors, one of the pillars upon which human rights and the rule of law rest".<sup>39</sup> Specifically, "[l]awyers play an essential role in protecting human rights and in guaranteeing that the right to a fair trial is respected by providing accused persons with a proper defence in court".<sup>40</sup> Summarizing the role of lawyers in human rights protection, the ICJ stated:

In protecting human rights, lawyers play a crucial role in protecting the right against arbitrary detentions by challenging arrests, for example through presenting habeas corpus. Lawyers also advise and represent victims of human rights violations and their relatives in criminal proceedings against alleged perpetrators of such violations and in proceedings aimed at obtaining reparation. Furthermore, lawyers are in the best position to challenge before courts national legislation that undermines basic principles of human rights and the rule of law.<sup>41</sup> (emphasis added)

It follows that human rights lawyers must be permitted to fully and freely carry out their legitimate role in the defence of human rights and the facilitation of access to justice. States are obliged to ensure the proper functioning of lawyers, and ultimately, to fulfill the fundamental requirement that all persons have effective access to legal services and to justice. As such, improper interference with lawyers' legitimate and professional activities in the defence of fundamental rights means that lawyers cannot effectively provide those legal services.

As the Petition amply demonstrates, the Colombian State has failed to protect the Petitioners and other lawyers from unlawful interferences with the exercise of legitimate

---

<sup>38</sup> *Ibid.*

<sup>39</sup> ICJ Guide, *supra* note 2 at p.63.

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

professional rights and duties, which interferences include: threats of injury or death; physical attacks; extra-judicial killings; unlawful surveillance; obstacles to communicating with their clients; breaches of solicitor-client confidentiality; and violations of privacy rights necessary to maintaining the safety of clients and the integrity of legal cases. These attacks and the failure by the State to take effective measures to prevent and sanction said attacks, expose lawyers to intolerable risks (risks to personal safety and to proper conduct of the case) and create a chilling effect that prevents lawyers from engaging in human rights advocacy involving politically sensitive issues.

A recent and egregious illustration is the illegal surveillance activities of the now-defunct *Departamento Administrativo de Seguridad* (“DAS”) under the so-called *Operation Transmilenio*, which targeted the members of the Lawyers' Collective, including its administrative personnel and their families.<sup>42</sup>

Persistent and illegal surveillance and intelligence gathering constitute a serious interference with, and impediment to the right and duty of lawyers to freely and fully exercise their legitimate professional duties. Moreover, it is well-established that this campaign of harassment is directly related to the Petitioners' status as the legal representatives of victims, defendants and complainants.

## **2.2. International Law Standards with Respect to Intelligence-Gathering**

Members of the Lawyers' Collective were specifically targeted by the intelligence activities of DAS. The Commission summarized the serious allegations in these terms:

In that context, they said that the DAS intelligence files contained organizational charts with detailed information about the members of CCAJAR, including their names, photographs, the positions they held, fingerprints, and résumés. The DAS is also said to have investigated the “private lives, property, psychological profiles, ideological tendencies, weaknesses, strengths, and vices” of the CAJAR members. They said that they and their families have been followed and kept under surveillance in public places and at work by undercover agents, who filmed and photographed them. They claimed to have been the target of acts of

---

<sup>42</sup> Petition, *supra* note 1 at §17.

sabotage while travelling, given that DAS agents allegedly had detailed information on routes and destinations.<sup>43</sup> At the aforementioned hearing, the “José Alvéar Restrepo” Lawyers’ Collective presented documents from the DAS intelligence files to which it has had access as a civil party in the criminal proceedings underway. The documents are marked “SECRET” or “CONFIDENTIAL” and contain personal data, photographs of members of CCAJAR and their families in public places, a complete psychological profile that describes the habits, weaknesses, strengths, likes, hobbies and friendships of one of the members of CCAJAR, morphological studies, telephone wiretap orders, monitoring of international travel, and payment vouchers for the lease of properties from where the intelligence activities were carried out.<sup>44</sup>

Under international law, there are two primary methods of legally intercepting private communications. The first is through criminal investigations that reasonably require the interception of private communications; the legislation that enables those activities is found in the criminal legislation of the country in question. The second method covers activities related to state security and includes intelligence-gathering and the interception of private communications. This *amicus* focuses on the second dimension.

The legitimate function of intelligence services is to provide objective and independent information relevant to the vital interests and security of the nation.<sup>45</sup> The foundational principle is that intelligence services must pursue a legitimate purpose. In the Inter-American human rights system, “measures to interfere with private communications may be taken only where there are factual indications for suspecting a person of planning, committing or having committed certain criminal acts or that there is strong suspicion that offences are about to be committed”.<sup>46</sup> According to the Commission, it would therefore “be incompatible with the purposes of the Convention to intercept, monitor, or record the telephone communications of members of an organization for the purposes of monitoring

---

<sup>43</sup>IACHR, *Annual Report, 2009*, Chapter IV, at 131, available at [http://www.cidh.oas.org/annualrep/2009eng/Chap.IV.a.eng.htm#\\_ftn90](http://www.cidh.oas.org/annualrep/2009eng/Chap.IV.a.eng.htm#_ftn90).

<sup>44</sup> *Ibid*, at footnote 222.

<sup>45</sup> See Caparini, Marina, “Controlling and Overseeing Intelligence Services in Democratic States”, in Hans Born and Marina Caparini, eds., *Democratic Control of Intelligence Services: Containing Rogue Elephants* (Burlington: Ashgate, 2007) 3 at pp. 3-24, available at: [http://www.ssrnetwork.net/uploaded\\_files/3961.pdf](http://www.ssrnetwork.net/uploaded_files/3961.pdf).

<sup>46</sup> IACHR, Rights Defenders 2011, *supra* note 19 at §62. See IACHR, *Arley José Escher and Others v. Brasil*. Case 12.353, December 20, 2007, at §87.

their activities, as well as to publish such communications, when this is done expressly to discredit the work of associations to which the victims belong".<sup>47</sup> (emphasis added)

To be effective, intelligence services must function behind a veil of secrecy. It is commonly asserted that, in the absence of effective control and oversight, the conduct of intelligence gathering can readily lead to the erosion of the fundamental human rights of citizens<sup>48</sup>. In states that lack an adequate legal framework and where democratic control and oversight are either ineffective, meaningless, or non-existent, intelligence services are often transformed into tools of political repression and persecution and even the elimination of dissidents.<sup>49</sup> According to the Commission, illegal interception of the correspondence and communications of human rights defenders (including lawyers) tends to encumber the defenders' work, while also increasing the risks faced by these persons and by the victims they defend or the communities they accompany.<sup>50</sup> Such illegitimate intelligence service activities impair the independence and professional safety and proper functioning of lawyers and heighten the physical risks to lawyers and their clients.

The legislative framework for secret intelligence measures must have a number of substantive characteristics. The IACtHR stipulates that the legislation "must be precise and indicate the corresponding clear and detailed rules, such as the circumstances in which this measure can be adopted, the persons authorized to request it, to order it and to carry it out, and the procedure to be followed".<sup>51</sup> The UNHRC formulated the similar requirement that this legislation "must comply with the provisions, aims and objectives of the Covenant"<sup>52</sup> and

---

<sup>47</sup>*Ibid*, at §62. See IACtHR, *Case of Escher et al. v. Brasil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 6, 2009. Series C No. 200, at §166 [Escher et al. 2009].

<sup>48</sup> IACtHR, *Case of Myrna Mack-Chang v. Guatemala*. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, at §284. [Case of Myrna Mack]. The Court held that the activity of the military forces, police and other security organisms must conform with the democratic constitution as well as international human rights and humanitarian rights instruments. This is especially applicable to intelligence organizations. The Court also held that intelligence activities must be strictly controlled since they can perpetrate human rights violations, as in the instant case.

<sup>49</sup> Joffe, H. Alexander, "Dismantling Intelligence Agencies" 32 *Crime, Law & Social Change* 325, 1999, at 326.

<sup>50</sup> IACHR, *Report on the Situation of Human Rights Defenders in Americas*, OEA/Ser.L/V/II.124, Doc. 5 rev.1, 7 March 2006 at 184. [IACHR, Rights Defenders, 2006].

<sup>51</sup> Escher et al. 2009, *supra* note 47, at §131.

<sup>52</sup> UNHRC, *CCPR General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation*, 8 April 1988, at § 3, available at

"must specify in detail the precise circumstances in which such interferences may be permitted".<sup>53</sup>

The European Court of Human Rights (ECtHR) has held that in order to be consistent with the *European Convention on Human Rights*<sup>54</sup>, any interference by intelligence services with Article 8 (right to respect for private and family life) must fulfill three conditions: (1) it must be in accordance with law; (2) it must pursue a legitimate aim; and (3) it must be necessary in a democratic society and proportionate to the pursuit of that aim. On the first of these requirements, the ECtHR stated:

In the context of secret measures of surveillance by public authorities, because of the lack of public scrutiny and the risk of misuse of power, the domestic law must provide some protection against arbitrary interference with Article 8 rights. The Court must be satisfied that there exist adequate and effective guarantees against abuse. This assessment depends on all the circumstances of the case, such as the nature, scope and duration of the possible measures, the grounds required for ordering them, the authorities competent to permit, carry out and supervise them, and the kind of remedy provided by the national law.<sup>55</sup>

The ECtHR further stipulated that the legislation must be "accessible" to the potential targets as well as "foreseeable", meaning that "[t]he domestic law must be sufficiently clear in its terms to give citizens an adequate indication as to the circumstances in which and the conditions on which public authorities are empowered to resort to any such measures".<sup>56</sup> "Foreseeability" requires that the law does not leave the modalities of authorization and implementation of surveillance measures to the discretion of the authorities, because "it would be contrary to the rule of law for the legal discretion granted to the executive or to a judge to be expressed in terms of an unfettered power. Consequently, the law must indicate

---

<http://www.unhcr.org/refworld/docid/453883f922.html>.

<sup>53</sup> *Ibid*, at §8.

<sup>54</sup> Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, available at: <http://www.unhcr.org/refworld/docid/3ae6b3b04.html>.

<sup>55</sup> ECtHR., *Case of the Association for European Integration and Human Rights and Ekimdzhev v. Bulgaria*. 28 June 2007, Application no. 622540/00, at §77.

<sup>56</sup> ECtHR., *Case of Gabriele WEBER and Cesar Richard SARAVIA v. Germany*. 2006, Application no. 54934/00, at §93.

the scope of any such discretion conferred on the competent authorities and the manner of its exercise with sufficient clarity to give the individual adequate protection against arbitrary interference".<sup>57</sup> (emphasis added)

Elaborating on the content of legislation permitting secret surveillance measures, the ECtHR summarized its jurisprudence regarding minimum safeguards for such legislation in the following terms:

[i]n its case-law on secret measures of surveillance, the Court has developed the following minimum safeguards that should be set out in statute law in order to avoid abuses of power: the nature of the offences which may give rise to an interception order; a definition of the categories of people liable to have their telephones tapped; a limit on the duration of telephone tapping; the procedure to be followed for examining, using and storing the data obtained; the precautions to be taken when communicating the data to other parties; and the circumstances in which recordings may or must be erased or the tapes destroyed.<sup>58</sup>

The ECtHR held that, "[...] whatever system of surveillance is adopted, there [must] exist adequate and effective guarantees against abuse. This assessment has only a relative character: it depends on all the circumstances of the case, such as the nature, scope and duration of the possible measures, the grounds required for ordering such measures, the authorities competent to permit, carry out and supervise such measures, and the kind of remedy provided by the national law".<sup>59</sup>

The UNHRC has similarly interpreted the requirements of Article 17 of the *ICCPR*, stating:

While understanding that security requirements may be aimed at preventing violence and terrorism, the Committee takes note that the Law on Signals Intelligence in Defence Operations (2008:717), will apparently provide the executive with wide powers of surveillance in respect of electronic communications (art. 17). The State party should take all appropriate measures to ensure that the gathering, storage and use of personal data not be subject to any abuses, not be used for purposes contrary to the Covenant, and be consistent with obligations under article 17 of the Covenant. To that effect, the State party should guarantee that the

---

<sup>57</sup> *Ibid*, at 94.

<sup>58</sup> *Ibid*, at 95.

<sup>59</sup> ECtHR, *Case of Klass & others v. Germany*, 1978, Application No. 5029/71, at §50.

processing and gathering of information be subject to review and supervision by an independent body with the necessary guarantees of impartiality and effectiveness.<sup>60</sup> (emphasis added)

The IACtHR's judgment in *Myrna Mack v. Guatemala*<sup>61</sup> addressed allegations of serious abuses by intelligence service agents in that country. The Court underlined the significant risk that intelligence services will engage in illegal activities and went on to set out the general requirements of democratic control and oversight to which these services must be subject:

The Court deems that the activities of the military forces and of the police, and of all other security agencies, must be strictly subject to the rules of the democratic constitutional order and to the international human rights treaties and to International Humanitarian Law. This is especially valid with respect to the intelligence agencies and activities. These agencies must, inter alia, be: a) respectful, at all times, of the fundamental rights of persons; and b) subject to control by civil authorities, including not only those of the executive branch, but also, insofar as pertinent, those of the other public powers. Measures to control intelligence activities must be especially rigorous because, given the conditions of secrecy under which these activities take place, they can drift toward committing violations of human rights and illegal criminal actions, as occurred in the instant case.<sup>62</sup> (emphasis added)

The Court described the illegality of the operation that killed Myrna Mack in the following manner:

"[t]he death of Myrna Mack Chang was the result of a covert military intelligence operation carried out by the Presidential General Staff and tolerated by various authorities and institutions. This military intelligence operation had three phases. The first phase was to single-out the victim in view of her professional activity, an activity that bothered various

---

<sup>60</sup> UN Human Rights Committee, *Concluding Observations: Sweden*, 7 May 2009, CCPR/C/SWE/CO/6, at §18.

<sup>61</sup> *Case of Myrna Mack*, *supra* note 48, at §§ 134.6-134.7. Myrna Elizabeth Mack was a Guatemalan anthropologist placed under surveillance due to the research activities she carried out with the *Comunidades de Población en Resistencia* and for criticizing the policies of the Guatemalan army towards those vulnerable populations. Her research was perceived as a threat to the Guatemalan State and national security, and as a result, she was placed under surveillance and was subsequently executed in a military intelligence operation.

<sup>62</sup> *Ibid*, at §284.



authorities and institutions in Guatemala.<sup>63</sup> [...] The second phase of the military intelligence operation consisted of keeping watch on, following, and extra-legally executing the victims. This was done by a group of specialists of the Presidential General Staff.<sup>64</sup> [...] The third phase of the military intelligence operation consisted of covering up, insofar as possible, all the direct perpetrators and accessories of the operation, so as to ensure their impunity in the instant case to be able to continue acting in a clandestine manner, without any control, and to continue performing illegal acts".<sup>65</sup>

Concern about the conduct of intelligence operations and the importance of strict and transparent regulation is a topic of urgent international concern. The ICJ convened a working group on the subject of counter-terrorism, security and human rights, and produced a report that underlined the ICJ's grave concerns about the current political climate, which is fostering practices that violate international law:

"Respect for international human rights law requires that intelligence agencies, their behaviour, and international cooperation efforts be properly regulated and held to account. Yet, instead of transparency, the Panel heard that secrecy is growing: legal doctrines such as "state secrecy" or "public interest immunity" are being used to foreclose remedies to victims. Attempts to conceal human rights violations on national security grounds are not new, but the current counter-terrorism climate, in privileging intelligence needs, is encouraging yet greater secrecy".<sup>66</sup> (emphasis added)

International human rights law has progressively developed standards that apply to the operations of intelligence services, with a view to restricting and controlling their interferences with the privacy and other rights of citizens. In carrying out the collection, storage and use of information, intelligence services are especially prone to arbitrarily interfering with privacy rights. Although the right to privacy is susceptible to being restricted on grounds of national security, the institutions that interpret and elaborate the law should focus on the requirements for authorising lawful interferences with this right

---

<sup>63</sup> *Ibid*, at § 40-141.

<sup>64</sup> *Ibid*, at §145.

<sup>65</sup> *Ibid*, at §149.

<sup>66</sup> ICJ Report, *Assessing Damage, Urging Action: Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights* (2009), at p.86, available at: <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2012/04/Report-on-Terrorism-Counter-terrorism-and-Human-Rights-Eminent-Jurists-Panel-on-Terrorism-series-2009.pdf>.

that will sufficiently safeguard and prevent any abuse of power in the process.<sup>67</sup> As the IACtHR recently held: "The right to privacy is not an absolute one, and, so, it may be restricted by the States provided that their interference is not abusive or arbitrary; accordingly, such restriction must be statutorily enacted, serve a legitimate purpose, and meet the requirements of suitability, necessity, and proportionality which render it necessary in a democratic society".<sup>68</sup>

In the case of Colombia, the Commission has expressed deep concerns about the use of intelligence techniques by DAS against human rights defenders:

Without prejudice to the information it received, the IACHR views as extremely serious the intelligence activities carried out by Colombia's Administrative Security Department (DAS) in connection with judicial officials, political leaders, human rights defenders, and an IACHR Commissioner. The Inter-American Commission hopes that concrete actions will be taken so that this situation is not repeated and so that those responsible are identified and punished.<sup>69</sup>

The IACHR has repeatedly expressed concerns regarding the intelligence activities undertaken by the Colombian state entities and has described them as "unlawful intelligence activities against human rights defenders".<sup>70</sup> It is evident that international standards with respect to intelligence gathering were not met in Colombia at the time that the Petitioners were the object of such methods as employed by DAS.<sup>71</sup>

---

<sup>67</sup> In the words of UNHRC, General Comment No. 16, *supra* note 52 at §8: "Compliance with article 17 [ICCPR] requires that the integrity and confidentiality of correspondence should be guaranteed *de jure* and *de facto*. Correspondence should be delivered to the addressee without interception and without being opened or otherwise read. Surveillance, whether electronic or otherwise, interceptions of telephonic, telegraphic and other forms of communication, wire-tapping and recording of conversations should be prohibited, except in cases envisaged by the law".

<sup>68</sup> IACtHR, *Case of Tristán Donoso v. Panamá*. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193, at § 56.

<sup>69</sup> IACHR, *Annual Report 2009, Chapter II: Legal bases and activities of the IACHR during 2009*, 30 December 2009, OEA/Ser.L/V/II, at 19, available at: <http://www.cidh.org/annualrep/2009eng/Chap.II.eng.htm>.

<sup>70</sup> IACHR, *Rights Defenders 2011*, *supra* note 19 at §74. See also IACHR, *Annual Report of the Inter-American Commission on Human Rights 2010*, 7 March 2011, OEA/Ser.L/V/II, Doc. 5, rev. 1, at 219.

<sup>71</sup> Even though the DAS was dismantled in November 2011 in the aftermath of the scandal described above, a new Colombian intelligence agency, the so-called National Intelligence Directorate, was created simultaneously through Presidential Decree 4179/2011. While this administrative reform was meant to mark a break with old practices, the DNI has since been accused of perpetuating DAS' illegal practices: *El Espectador*, « El regreso de

### **2.3. Persecution, Surveillance and Illegal Intelligence Gathering as Violations of the Human Rights and Impediments to the Independence and Safety of Colombian Lawyers**

This section focuses on the major violations of the Petitioners' rights under the *American Convention* by the Colombian State, namely, the rights to: life and to humane treatment (Articles 4, 5.1); freedom of movement, expression and association (Articles 22, 13.1, 16.1); and honour and reputation (Article 11). All of these violations are attributable to the State sponsored or sanctioned persecution of and practice of illegal surveillance and intelligence gathering of the Petitioners.

#### **Violation of Right to Life and Right to Humane Treatment (Articles 4 and 5.1)**

The Petitioners have elaborated on the dimensions of the State's violations of Article 4 of the *American Convention*, encompassing death threats and assassinations. The Petitioners allege that these attacks against the lives of some members of the CCAJAR have been facilitated by the State's failure to fulfill its obligation to take reasonable steps to prevent such attacks, especially by its refusal to adopt effective measures to prevent harassment of CCAJAR lawyers despite the precautionary measures granted by the Commission; and because the State has neglected to conduct thorough, effective, and impartial investigations of the facts. The Petitioners' submission is set out in the Admissibility decision.<sup>72</sup>

The context of threats, attacks, and other acts of harassment committed against the members of the Lawyers' Collective has reduced the alleged victims to a situation of defencelessness as a result of the state of permanent risk that they face, which, in their opinion, violates the right to life recognized in Article 4 of the American Convention.

---

las chuzadas », 12 October 2012; <http://m.elespectador.com/noticias/judicial/articulo-380966-el-regreso-de-chuzadas>.

<sup>72</sup> Petition, *supra* note 1 at §10.

The Lawyers Collective and its members have been the target of multiple death threats in reprisal for their work in defense of human rights.<sup>73</sup> The right to life is protected by Article 4 of the *American Convention* and other international instruments to which Colombia is a party. The UNHRC concluded in a complaint lodged by a Colombian lawyer subjected to death threats and murder attempts, that the State's failure to investigate was a violation of its obligation to protect the complainant's right to life, pursuant to Article 6(1) of the *ICCPR*.<sup>74</sup>

Other international standards have elaborated on the requirement that States take all necessary measures to protect the independence and safety of lawyers. The UN *Basic Principles on the Role of Lawyers*<sup>75</sup> (the "*Basic Principles*") also oblige States to take effective measures to protect the independence, proper functioning and safety of lawyers. This is to the end of fulfilling the fundamental requirement that all persons have effective access to legal services and to justice. Unanimously adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba (7 September 1990), the *Basic Principles* build on the premise that adequate protection of the rights of individuals is dependent on all persons having access to legal services for the purpose of accessing justice. The UN General Assembly subsequently endorsed the *Basic Principles* and "urged States to respect them and to take them into account within the framework of their national legislation and practice". The *Basic Principles* are broadly accepted in their own

---

<sup>73</sup> *Ibid*, at 11.

<sup>74</sup> UN Human Rights Committee, *Communication No 859/1999: Colombia*, 15 April 2002, CCPR/C/74/D/859/1999 (Jurisprudence), at § 7.3 available at : <http://www.unhchr.ch/tbs/doc.nsf/0/b8708c80eebec9ec1256c1b004c520f?Opendocument>: "With regard to the author's claim that article 6, paragraph 1, was violated insofar as the very fact that an attempt was made on his life is a violation of the right to life and the right not to be arbitrarily deprived of life, the Committee points out that article 6 of the Covenant implies an obligation on the part of the State party to protect the right to life of every person within its territory and under its jurisdiction. In the case in question, the State party has not denied the author's claims that the threats and harassment which led to an attempt on his life were carried out by agents of the State, nor has it investigated who was responsible. In the light of the circumstances of the case, the Committee considers that there has been a violation of article 6, paragraph 1, of the Covenant". (emphasis added)

<sup>75</sup> OHCHR, *Basic Principles on the Role of Lawyers*, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1990, U.N. Doc. A/CONF.144/28/Rev.1, available at: <http://www2.ohchr.org/english/law/lawyers.htm> [Basic Principles].

right by the international community, and are also reflected in binding human rights instruments such as the *ICCPR* and the *UNCAT*.<sup>76</sup>

Under Principle 16(a) of the *Basic Principles*, governments must ensure that lawyers "are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference".<sup>77</sup> Further to the State's obligation to protect the security of human rights defenders, Principle 17 of the *Basic Principles* provides that "where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities".<sup>78</sup>

In a similar vein, the ICJ's *Geneva Declaration on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis* ("Geneva Declaration" or "Declaration") addresses threats to human rights protection in situations of crisis, and establishes the key respective responsibilities and roles of judges, the legal profession and States. For this reason, the ICJ's *Geneva Declaration* is particularly relevant to Colombia and the *Declaration* affirms that during times of political or social crisis, increased vigilance must be accorded to the respective roles of these actors.<sup>79</sup>

---

<sup>76</sup> The Preamble of the UN Basic Principles states that [these instruments] "*should be respected and taken into account by Governments within the framework of their national legislation and practice*". The Basic Principles have been referenced by both the ECtHR and the IACtHR in several rulings: **(1)** ECtHR: *Case of Kyprianou v. Cyprus*. 2005, App. no. 73797/01, at § 58; **(2)** ECtHR, *Case of Kilikowski v. Poland*, 19 May 2009, App.,no. 18353/03.; **(3)** Eur. Ct.H.R, *Case of Elci and Others v. Turkey*, 13 november 2003, App. no 23145/93, 25091/94, at § 563; **(4)** IACtHR: *Case of Valle Jaramillo et al. v. Colombia*, Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, at footnote 49; **(5)** IACtHR, *Case of Nogueira de Carvalho et al v. Brazil*. Preliminary Objections and Merits. Judgment of November 28, 2006, Series C No. 161, at footnote 14 and 54. The Basic Principles also inspired the Recommendation No. R (2000) 21 of the Committee of Ministers to member States on the freedom of exercise of the profession of lawyer, adopted by the Committee of Ministers on 25 October 2000 at the 727<sup>th</sup> meeting of the Ministers' Deputies: available at : <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=533749&SecMode=1&DocId=370286&Usage=2>.

<sup>77</sup> Basic Principles, *supra* note 75, Principle 16(a).

<sup>78</sup> *Ibid*, at Principle 17.

<sup>79</sup> The ICJ's *Geneva Declaration* is an instrument adopted by the World Congress of that influential international body of jurists which is dedicated to ensuring respect for international human rights standards through the law. Information about the International Commission of Jurists available at: <http://www.icj.org/>.

Principle 7 of the *Geneva Declaration* addresses the State's obligation to ensure that lawyers are protected against human rights threats and insulated from impediments to their independent functioning. This is consistent with Principle 7 of the *Basic Principles*:<sup>80</sup>

Since the protection of human rights may be precarious in times of crisis, lawyers should assume enhanced responsibilities both in protecting the rights of their clients and in promoting the cause of justice and the defence of human rights. All branches of government must take all necessary measures to ensure the protection by the competent authorities of lawyers against any violence, threats, retaliation, de facto or de jure discrimination, pressure or any other arbitrary action as a consequence of their professional functions or legitimate exercise of human rights. In particular, lawyers must not be identified with their clients or clients' causes as a result of discharging their functions. The authorities must desist from and protect against all such adverse actions. Lawyers must never be subjected to criminal or civil sanctions or procedures which are abusive or discriminatory or which would impair their professional functions, including as a consequence of their association with disfavoured or unpopular causes or clients. (emphasis added)

These international law obligations are predicated on the essential role of lawyers in ensuring human rights and the rule of law. This foundational principle has been repeatedly underscored by bodies such as the European Parliament, which has recognized the crucial role of an independent legal profession in guaranteeing respect for fundamental rights in a democratic society,<sup>81</sup> and reaffirmed the importance of rules that guarantee the "independence, competence, integrity and responsibility of members of the legal profession".<sup>82</sup> States must adopt effective measures, including legislation and enforcement, to enable lawyers to perform their duties without harassment or intimidation.<sup>83</sup> Numerous

---

<sup>80</sup> *Ibid*, at Principle 7.

<sup>81</sup> European Parliament, *Resolution on the legal professions and the general interest in the functioning of legal systems*, 23 March 2006, P6\_TA(2006)0108, at par. 1., cited in ICJ, *Legal Commentary to the ICJ Geneva Declaration Upholding the rule of Law and the Role of Judges and Lawyers in Times of Crisis*, Human Rights and Rule of Law Series no 3, p. 113; <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2011/05/ICJ-genevadeclaration-publication-2011.pdf>

<sup>82</sup> *Ibid*, at 4.

<sup>83</sup> UN Commission on Human Rights, *Independence and Impartiality of the judiciary, jurors and assessors and the independence of lawyers*, 19 April 2004, UN Doc. E/CN.4/RES/2004/33.

international instruments affirm the State's duty to protect lawyers from such attacks on the right to life, and to take all necessary measures to ensure their protection.<sup>84</sup>

Failure to prevent and punish violations of the lawyers' personal and professional rights contravenes Article 5.1 of the *American Convention*, The death threats and attacks on the lives of the Petitioners, combined with the harassment, illegal surveillance and persecution of the members of CCAJAR and their family members, including their children, have persisted for years with impunity. The permanent anguish and fear of violence thereby created, constitutes a clear infringement of the right of the lawyers and their families to the effective respect for and protection of their mental and moral integrity. The IACtHR has held that similar patterns of harassment and threats, combined with the lack of investigation and punishment of those responsible, violate the right to humane treatment.<sup>85</sup> In *Gutiérrez-Soler v. Colombia*, where the victim and his family had "been subjected to a campaign of threats, harassment, surveillance, arrests, searches and attempts against their lives and their physical integrity", the Court decided that "due to their having suffered constant fear, distress and family separation", the victim and his family had undergone "such suffering as would amount to a violation of Article 5(1) of the *American Convention*, in relation to Article 1(1) of such treaty, to their detriment, by the State".<sup>86</sup>

### **Violation of Right to Movement (Article 22) and Rights to Freedom of Thought and Expression (Article 13.1) and Freedom of Association (Article 16.1)**

The Petitioners allege wiretapping of private and work-related communications<sup>87</sup>, and tracking of their movements have significantly inhibited their freedom of movement.<sup>88</sup> In

---

<sup>84</sup> See *inter alia*: the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms; the Guidelines on Human Rights Defenders of the European Union; the Resolution on the Protection of Human Rights Defenders in Africa of the African Commission on Human and Peoples' Rights (4 June 2004); General Assembly of the Organization of American States, Resolutions AG/Res. 1671 (XXIX-0/99), 7 June 1999, AG/Res. 1711 (XXX-0/00), 5 June of 2000, and AG/Res. 2412 (XXXVIII-O/08), 3 June 2008.

<sup>85</sup> *Myrna Mack, supra* note 48 at §§ 232-3; IACtHR, *Case of Juan Humberto Sánchez v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99, at §§ 101-103.

<sup>86</sup> IACtHR, *Case of Gutiérrez-Soler v. Colombia*. Judgment of September 12, 2005. Series C No. 132, at §§ 56-57.

<sup>87</sup> The interception of work-related communications between lawyers and their clients is a violation of the

tandem with the impossibility of having uninhibited communications between lawyers and clients at a distance from one another due to concern about ongoing unlawful wiretapping, direct contact with clients has also been hampered by restrictions on the Petitioners' right to free movement throughout the country under Article 22 of the *American Convention*.

Also engaged by the facts alleged in the Petition are Articles 13(1) and 16(1) of the *American Convention*, which guarantee the right to freedom of thought, expression and association. In its concluding observations on the fifth periodic report of Colombia, the UNHRC stated that the harassment of human rights defenders that is the object of the instant Petition constitutes a violation of their freedoms of expression and association.<sup>89</sup> Operation *Transmilenio* targeted the Lawyers' Collective as a group. Its members are conscious that the harassment to which they are individually subjected is based on their association with the Collective and is pursued with the aim of silencing them as lawyers in an association.<sup>90</sup> The alleged facts demonstrate that State agents and authorities have

---

essential principle of the confidentiality of lawyer-client communications. This guarantee for the effective functioning of lawyers is recognized in Principle 22 of the *Basic Principles* (*supra* note 74), which provides: "Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential."

<sup>88</sup> Petition, *supra* note 1 at §14.

<sup>89</sup> UNHCR, *Concluding Observations of the Human Rights Committee, COLOMBIA*, 26 May 2004, CCPR/CO/80/COL, at §18: "The Committee deplores information received regarding actions taken against human, rights defenders, including intimidation and verbal and physical attacks originating at the highest, political and military levels, as well as the interception of communications. Such acts constitute restrictions of their rights to freedom of expression and association. The State party should halt such practices, and should also strengthen the protective measures that already exist in Presidential Directive 07 so that human rights defenders may fully enjoy the rights to freedom of expression and association recognized in articles 19 and 22 of the Covenant".

<sup>90</sup> In 2001, UN Special Rapporteur on Human Rights Defenders pointed out this objective of silencing the lawyers. See Commission on Human Rights, *Report submitted by Ms. Hina Jilani, Special Representative of the Secretary-General on human rights defenders, pursuant to Commission on Human Rights resolution 2000/61, Addendum: Mission to Colombia*, 24 April 2002, E/CN.4/2002/106/Add.2\*, at § 85-6: "85. The Special Representative noted that most of the threats and intimidation of human rights defenders are in reprisal for the complaints they have made against certain members of the security forces, the paramilitaries and the Government". In this regard, the CCAJAR is particularly targeted. On 12 July 2001, the Special Representative transmitted a joint urgent appeal with the Special Rapporteurs on extrajudicial, summary or arbitrary executions and on the independence of judges and lawyers regarding Dr. Alirio Uribe Muñoz, lawyer and human rights defender, and other members of CCAJAR in Bogotá and Luis Guillermo Pérez Casas, who were facing constant harassment and intimidation by paramilitary groups in Cundinamarca. Mr. Pérez, has reportedly been the victim of harassment and regular surveillance since he started working on the massacre committed by members of the army in Mapiripan. See World Organisation Against Torture (WOAT), Press release, "*Colombia: Nuevas difamaciones y acusaciones contra Luis Guillermo Pérez Casas y el CCAJAR por parte del ex Presidente Sr. Álvaro Uribe Vélez*", 23 March 2012, available at: <http://www.omct.org/es/human-rights-defenders/urgent>



unlawfully tried to deter the members of the Collective from exercising their freedoms of speech and association.

These rights under Articles 13 and 16 of the *American Convention* also intersect with the *Basic Principles*, which elaborate on the relevance of these rights to the activities of lawyers.<sup>91</sup> According to Principle 16(b), governments are obliged to ensure that lawyers "are able to travel and to consult with their clients freely both within their own country and abroad".

Pursuant to another judgment of the IACtHR, *Case of Escher et al. v. Brazil*, it is clear that these secret surveillance measures carried out by the State against human rights defenders negatively impact their enjoyment of these rights and have, for the Petitioners:

[...] altered the free and normal exercise of the right to freedom of association [and freedom of expression] of the abovementioned members [...] and this entailed an interference that is contrary to the American Convention. Based on the above, the State violated [the right to freedom of expression established in Article 13 and] the right to freedom of association established in Article 16 of the American Convention, in relation to the obligation to respect rights embodied in Article 1(1) thereof, to [the members'] detriment.<sup>92</sup>

Colombia's failure to protect the Petitioner's Article 22, 13.1 and 16.1 rights has brought the administration of justice into disrepute. The violations of the lawyers' Article 22 rights impairs the rights of victims, particularly those living in rural areas. The presence of lawyers is vital to ensure that the victims' right to the judicial protection of their rights is effectively exercised.

Consequently, the harassment and surveillance of the Petitioners and the surveillance and

---

[interventions/colombia/2012/03/d21693](#). [WOAT, 2012]

<sup>91</sup> *Basic Principles*, *supra* note 75 at Principle 23: "Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession".

<sup>92</sup> *Escher et al. 2009*, *supra* note 47 at §180.

tracking of their movements not only violates the Petitioners' right to freely move about in the national territory (Article 22) and their freedom of expression and association (Articles 13 and 16), it also profoundly infringes upon the rights of the lawyers' clients - the other victims - to a fair trial (Article 8), and to judicial protection (Article 25).

### **Violation of Right to Honour and Reputation: Public stigmatization, Defamatory Declarations and Groundless Judicial Proceedings (Article 11)**

The defamatory declarations referred to in the Petition constitute an immediate and unequivocal violation of the Petitioners' right to have their honour and reputation respected, under Article 11 of the *American Convention*.

This provision stipulates that no one may be subject to unlawful attacks on his or her honour or reputation and that everyone has the right to the protection of the law against such attacks. The Commission has already determined that this right was violated in a several previous cases where State authorities publicly defamed individuals with allegations of unproven illicit activities without the latter having the opportunity to defend themselves.<sup>93</sup>

Where there are reasonable grounds to believe a person or group is involved in unlawful activities of such serious nature as terrorism, the State party must launch a judicial investigation of the alleged facts, while respecting all guarantees of due process and defence to be accorded to the suspects.

In the absence of any evidence supporting the public statements of the Colombian authorities against the members of the Lawyers' Collective, it is evident that these statements constitute what the Commission has termed a "smear campaign" by the State against human rights defenders.<sup>94</sup> As such, the State's actions constitute unlawful attacks on

---

<sup>93</sup> IACHR, *Report N° 43/96, Case 11.430, José Francisco Gallardo (Mexico)*, 15 October 1996, at §§73-6; *Report on the Merits N° 49/99, Case 11.610, Loren Laroye Riebe Star, Jorge Barón Guttlein, and Rodolfo Izal Elorz (Mexico)*, 13 April 1999, at §§ 93-7.

<sup>94</sup> IACHR, *Rights Defenders 2006*, *supra* note 50 at §§175-7.

the honour and reputation of the Petitioners and violate Article 11. As the Commission reiterated in its latest report on the situation of human rights defenders in the Americas:

Cases in which state authorities make statements or issue communiqués publicly incriminating a human rights defender of acts that have not been legally proven constitute a violation of the human rights defender's right to honour. Along these lines, the Commission established that government statements and communiqués issued repeatedly against a person for unproven criminal acts attacked his dignity and honour, as they directly injured his good name and reputation... This demonstrated that he had been subjected to public harassment.<sup>95</sup>

The attacks and acts of harassment against members of the Lawyers' Collective have been all too common since the beginning of the 1990s.<sup>96</sup> In fact, since 2002, certain public declarations from the highest public officials, and the deployment of the State's aforementioned illegal intelligence operation against the lawyers of the Lawyers' Collective, provides strong indications of the active role played by State agents in further compromising the lawyers' right to life, physical and psychological integrity, security, privacy and honour, and unimpeded professional activity.<sup>97</sup>

Human rights defenders in Colombia have for many years been the subject of defamatory declarations and stigmatisation by military and civil authorities and paramilitary groups.<sup>98</sup> They have been accused of being part of guerilla or terrorist groups and of participating in criminal activities.<sup>99</sup> Those lawyers who have been active at the international level and

---

<sup>95</sup> IACHR, Rights Defenders 2011, *supra* note 19 at §123.

<sup>96</sup> The "Petition", *supra* note 1, at 9.

<sup>97</sup> See LWBC, *Mapiripán Masacre Scandal Affair: LWBC Troubled by Public Attacks against Its Partners in Colombia*, 21 November 2011, available at: [http://www.asfcanada.ca/documents/file/mapiripan\\_francais.pdf](http://www.asfcanada.ca/documents/file/mapiripan_francais.pdf) [LWBC Mapiripán].

<sup>98</sup> *Report by Special Rapporteur 2010*, Colombia, *supra* note 20 at p. 32, §2: "Paramilitaries targeted Government critics, in particular human rights defenders, trade unionists and journalists, for perceived "leftist" sympathies with guerrillas. The State, with which paramilitaries were aligned, saw criticism as a threat to social order and contributed to the stigmatization of such persons...".

<sup>99</sup> UN Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya, Addendum, Mission to Colombia*, 4 March 2010, A/HRC/13/22/Add.3, at §61: "The Special Rapporteur was shown video footage of public statements made by the President of Colombia in which human rights defenders were portrayed as colluding with terrorists or guerilla members. In addition, in early 2008, a presidential advisor, José Obdulio Gaviria, publicly accused human rights defenders who were taking part in a peaceful demonstration of supporting FARC. The judicial police, the army and regional units of the Attorney-General's Office reportedly made similar statements".

representing victims in various international fora have been accused of leading a campaign to discredit the country at the international level.<sup>100</sup> Unfounded accusations against lawyers have also been advanced in reports drawn up by the State's civil and military security apparatuses.<sup>101</sup> These reports have been used as "evidence" in the harassment of human rights defenders through the mechanism of initiating meritless judicial proceedings. The practice of launching judicial proceedings against human rights defenders represents another serious form of stigmatization. It is with regard to such practices that the UNSRIJL recommended that the State of Colombia: "[...] should implement mechanisms that prevent the abuse of recourse to criminal charges against lawyers or passing judgment in order to prevent their continued defence in concrete cases, as well as recourse to the accusation that they are part of illegal armed organizations or linked with organized crime" [Unofficial translation].<sup>102</sup>

---

<sup>100</sup> *Ibid*, at §62 : " ...in some instances, when human rights defenders went abroad to raise concerns about their situation, such as before the IACHR, newspapers and public officials reportedly stated that these defenders tarnished the reputation of the "motherland", weakened the democratic process and stripped the Government of its prestige. In fact, stigmatization sometimes prevents defenders from travelling abroad and reporting to international human rights mechanisms..." .

<sup>101</sup> Cases have been cited in the Inter-American Commission's third report on the *Situation of Human Rights in Colombia* (1999) IACHR, Third Report, *supra* note 6 at Ch. VII, §§33-5. See also Human Rights First, *Baseless Prosecutions of Human Rights Defenders in Colombia*, February 2009, available at <http://www.humanrightsfirst.org/wp-content/uploads/pdf/090211-HRD-colombia-eng.pdf>, including that of Claudia Julieta Duque, a research journalist with focus on human rights violations who worked with the José Alvear Restrepo Collective to investigate crimes, § 44: "Duque was charged with criminal slander and libel by Prosecution Office 64 in Bogotá after a complaint by Emiro Rojas, a former Director of DAS in Antioquia [...] Duque conducted groundbreaking research into the murder of fellow journalist Jaime Garzon and accused Rojas of irregularities in the murder investigation. It appears that the criminal slander charges were a direct response to her important human rights investigations and retaliation for her exposure of alleged human rights violations. They therefore interfere with her right to freedom of expression. The Constitutional Court held in 2008 that DAS breached her right to privacy because her DAS bodyguard compiled intelligence reports on her while supposedly providing her with protection".

<sup>102</sup> *Informe 2010*, *supra* note 31 at §88(h)(vi). The Commission has also condemned such use of the judicial system. See IACHR, *Rights Defenders*, 2006 *supra* note 50 at §116: "In the Commission's view, states must investigate those who break the law in their territory, but states also have the obligation to take the necessary steps to ensure that government's refrain from using investigations to subject people who demand respect and protection of their human rights through legitimate means to unfair or unfounded prosecutions". Judicial harassment as a tool to stigmatize human rights defenders has been categorically denounced and condemned in the latest report of the Honourable Commission on the situation of human rights defenders in Americas: "The discrediting of the work of human rights defenders and their organizations in a context of criminal processes that may be unjustified creates a stigmatization that can impose psychological loads that violate the right to personal integrity of the defender. Further, this situation can generate a hostile environment that hinders the legitimate enjoyment of freedom of association of human rights defenders." IACHR, *Rights Defenders 2011 supra* note 19 at § 125.

In the same way, groundless judicial proceedings are inconsistent with the Principle 16(c) of the *Basic Principles*, which states that "governments shall ensure that lawyers shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics".<sup>103</sup>

The Lawyers' Collective as an organization, as well as its individual members, have frequently been the subject of defamatory statements. A military report once linked Mr. Alirio Uribe, CCAJAR's president, "to criminal activity on the grounds that he provides legal assistance to criminal defendants". The report state[d] that Mr. Uribe is "dedicated to having bandits held in various jails declared 'political prisoners'".<sup>104</sup> On May 11, 2000, this Commission granted precautionary measures for the protection of Mr. Uribe because another such military intelligence report had falsely referred to him as a member of the National Liberation Army ("Ejército de Liberación Nacional" or "ELN")'s support network.<sup>105</sup> Moreover, as alleged in the admissibility petition presented to the IACHR in the present case, "[s]ince 2003, the President of the Republic has publicly stated both in and outside the country that the Lawyers' Collective uses the defence of human rights as a shield to protect terrorists and guerrillas, a position echoed by paramilitary groups to threaten its members, thereby increasing the risk in which they were already living".<sup>106</sup>

Public statements that identify human rights lawyers with their clients' causes or conduct are contrary to Principle 18 of the *Basic Principles*, which stipulates: "[l]awyers shall not be identified with their clients or their clients' causes as a result of discharging their functions".<sup>107</sup> Recent examples of the violation of this fundamental principle emanated from

---

<sup>103</sup> Basic Principles, *supra* note 75, at Principle 16(c).

<sup>104</sup> IACHR, Third Report, *supra* note 6 at Ch. VII, §35.

<sup>105</sup> IACHR, *Precautionary Measures 2000*, at § 16, available at: <http://www.cidh.org/medidas/2000.eng.htm> [Precautionary Measures 2000].

<sup>106</sup> The "Petition", *supra* note 1, at §18 and the related note.

<sup>107</sup> In a similar vein, Principle 7 of the *Geneva Declaration* states: "All branches of government must take all necessary measures to ensure the protection by the competent authorities of lawyers against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of their professional functions or legitimate exercise of human rights. **In particular, lawyers must not be identified with their clients or clients' causes as a result of discharging their functions.** The authorities must desist from and protect against all such adverse actions [...]"(emphasis added).

President Santos, who characterized the Lawyers' Collective members as "opportunists", "corrupt" and seeking to "enrich themselves at the cost of the public resources of the state", as a result of their representation of victims of the 1997 Mapiripán massacre.<sup>108</sup> Also notable was the recent statement of Inspector General (*Procurador General*) Alejandro Ordóñez, who accused the lawyers of conduct "characteristic of criminal groups specializing in defrauding the Colombian state", statements clearly intended to discredit the CCAJAR in the eyes of the public.<sup>109</sup> Several ministers and the Inspector General demanded exemplary sanctions against the Petitioners even though no criminal or disciplinary authority had found that they had committed an offence.<sup>110</sup> Finally, the Lawyers' Collective and its member Luis Guillermo Perez Casas, have recently been subjected to public defamatory statements by former President Uribe, accusing them of defending terrorists and manipulating media in order to make false accusations against him.<sup>111</sup>

The fact that, in the Colombian context, these defamatory declarations can lead to the violation of the most fundamental rights of the victims, such as their right to life, humane treatment, and personal security, was recognized by this Honourable Commission in its decision to grant precautionary measures in favor of the members of the Lawyers' Collective. As stated above, this Commission granted precautionary measures in 2000 and called on the Colombian State to take steps to protect the life and physical integrity of Alirio Uribe Muñoz. The decision stated that "Mr. Uribe was identified in a military intelligence report as part of the "ELN support network" and that "[t]he persons mentioned in the intelligence report have been victims of non-judicial execution, forced disappearance,

---

<sup>108</sup> See the statement of President Santos, 27 October 2011, El Tiempo.Com: "Hay intereses oscuros y económicos que utilizan ese sistema, y hacen burla de él, para lucrarse con los recursos del Estado. (...) Lo que no nos imaginamos es que recomendaban que mintieran e hicieran pasar por víctimas a quienes no lo eran. ¡Qué más acto de corrupción que este!", available at: <http://m.eltiempo.com/politica/crticas-a-fallo-en-contra-del-estado-en-caso-demapiripn/10650084>. See also LBWC, Mapiripán, *supra* note 97.

<sup>109</sup> These statements were made after a witness in the Mapiripán massacre, represented by the Lawyers' Collective, changed her testimony: for more detail, see *El Colombiano*, 27 October 2011: "Ordóñez se refirió al caso de Mapiripán, como una acción propia de bandas criminales que se han especializado en estafar al Estado colombiano y solicitó a la Fiscalía y al Consejo Superior de la Judicatura compulsar copias para que se investigue a los abogados del Colectivo José Alvear Restrepo", available at: <http://m.elcolombiano.com/article/13877>.

<sup>110</sup> See LWBC, Mapiripán, *supra* note 97.

<sup>111</sup> WOAT, 2012, *supra* note 90.

arbitrary detention, or constant threats, forcing them to move or exile themselves".<sup>112</sup> The measures have been extended on several occasions due to the persistence of the risks that CCAJAR's members face.<sup>113</sup> In 2005, the Commission was informed that even though the members of the Collective have been beneficiaries of precautionary measures since 2000, and despite efforts to monitor compliance with them, the pattern of attacks, harassment, and threats against the members of the Lawyers' Collective continues.<sup>114</sup> To date, precautionary measures remain in force and the Petitioners regularly inform the Commission about new acts of aggression related to the measures granted.<sup>115</sup>

---

<sup>112</sup> Precautionary Measures 2000, *supra* note 105 at §16.

<sup>113</sup> IACHR, Rights Defenders 2006, *supra* note 50 at 159.

<sup>114</sup> *Ibid*.

<sup>115</sup> Petition, *supra* note 1 at §6.

## CONCLUSION

The role of Colombian human rights lawyers has been undermined by the State and its authorities for decades and this has adversely affected: (a) the safety of lawyers and their families; (b) the safety of lawyers' clients; (c) lawyers' right and duty to vigorously represent their clients without fear or interference; (d) the rights of clients to be fully represented; (e) the rights of clients to a fair trial; (e) equal access to justice by people in cases involving allegations of wrongdoing by state agents; (f) remedies for victims of violations that occurred during the armed conflict; and (g) remedies for victims of wrongdoing by state agents. The interferences with the Petitioners have had profound implications for their clients and potential clients, who might have advanced their cases but for the significant difficulties experienced by their legal counsel. The problems are particularly serious for victims in areas of open armed conflict, who could not trust that their communications with their lawyers would remain confidential. To this must be added the facts of widespread impunity and the terrorization and threats made against people who chose to testify in human rights and other cases.

Despite efforts to modernize Colombia's justice system, particularly through the implementation of an oral, accusatory criminal system, those efforts have thus far fallen short of ensuring effective access to justice and the rule of law. Illegal interceptions of private communications between lawyers and clients undermine any faith that victims might have in the justice system, as there are well-founded concerns that those communications will fall into the hands of perpetrators of serious human rights violations. Moreover, victims may reasonably fear that any such communications will be intercepted and used against them in the future, whether in the course of a prosecution or litigation or other circumstance.

The ultimate consequence of this situation is to undermine the ability of segments of the population, particularly those victims of the violent conflict, to seek justice through the legal system. The ineffectiveness of the justice system leaves victims without any effective legal



recourse to address and remedy their situation. This significantly contributes to the already inconceivable level of impunity that exists in Colombia. The cumulative effect of the serious, continued and longstanding infringement of the Petitioners' rights is to bring the entire administration of justice in Colombia into disrepute and to undermine the rule of law.