



ACTION **4** JUSTICE

Lawyers' Rights Watch Canada



President Iván Duque Márquez
President of the Republic of Colombia
Carrera 8 No. 7 – 26, Palacio de Nariño
Bogotá, Colombia

14 July 2020

Re: The exercise of justice and the protection of lawyers and those involved in judicial processes in Colombia during Covid-19.

We write to you on behalf of the Colombian Caravana; Action for Justice; Lawyers for Lawyers; Lawyers' Rights Watch Canada; *Fundación de la Abogacía Española* (Foundation of Spanish Lawyers), *Asociación Libre de Abogadas y Abogados* (Free Association of Lawyers); as well as the individuals signing this letter.

The signatory organisations express our great concern about the situation of access to justice and the exercise of the legal profession, in particular for the defence of human rights, that has worsened by the current situation of the COVID-19 pandemic.

The suspension of the vast majority of judicial proceedings means that victims face even more delay in obtaining justice and reparations. In addition, lawyers have been forced into a situation of absolute paralysis of the litigation which is their source of income. Likewise, because they are independent, self-employed professionals, they have informed us that they have not had access to the state economic aid offered to workers in other professional sectors, and thus additionally and extraneously have been left without any source of income, putting their livelihoods at risk, both personally and professionally.

On the one hand, it is very difficult to meet the expenses that are necessary in order to maintain ongoing professional activity, such as office rent, utilities, the corresponding insurance for the professional activities, and other associated professional expenses. The risk of not being able to keep the office operational and the transfer of office activities to the habitual residence, puts at risk sensitive information about the cases that lawyers are advancing. Likewise, the professional exercise of the law for those who defend human rights is already very risky in Colombia. However, during the pandemic, the risk has been further increased by unifying in one space their place of residence with their place of work, putting their family at risk as well. The confinement of lawyers and defenders has increased the risk to their lives by making them an easy target for potential aggressors, thus some lawyers have adopted strategies to lower the risk, such as confining themselves to homes that are not their usual addresses or changing homes several times in order to safeguard their lives against possible attacks.

Due to the restrictions on movement by COVID-19, lawyers and human rights defenders have had great difficulty in accompanying the communities they represent, as many of them need to be visited in person and do not have access to the internet, leaving the communities even more



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unprotected than they normally are. Lawyers who have protection schemes have only been accompanied by escorts when they have had to move somewhere outside their homes within the cases permitted by law, but have not been accompanied while in their homes. Furthermore, lawyers fear that the escorts are not taking the necessary biosecurity measures to ensure that the virus is not spread.

With respect to the specific areas about which we express concern, we share these examples of the impact and increased risk that the pandemic situation brings:

- A human rights lawyer confined to his home near Cali informed us that he received a call from someone who identified as calling from the National Protection Unit, requesting that he provide his home address to ensure that the protection scheme could continue to operate, which we have been informed was suspended for this lawyer in 2007.
- DhColombia lawyer, Germán Romero, has reported monitoring, theft of sensitive information and other aggressions on several occasions. He has also informed us that he has been under surveillance at his home during this period of confinement; on several occasions he has seen the same vehicle parked in front of his house for many hours throughout the day. He also informed us that messaging applications such as WhatsApp or Signal do not work well and seem to be tampered with when he uses them. This is particularly relevant given recent reports in *Semana* magazine that several individuals, including lawyers, have been the subject of alleged illegal military intelligence.
- A Cali lawyer informed us that on 17 March 2020, one day before the start of the confinement, someone aimed a gun at her when she was getting out of a taxi in Cali, just outside the offices where she works as a human rights lawyer. The lawyer did not report the attack to the authorities for fear of the infection of COVID-19 at the police station.

On the other hand, we are also concerned about the situation of the Special Jurisdiction for Peace (JEP) and the Commission for the Clarification of Truth (Truth Commission), both with a temporary mandate of 15 years and three years, respectively, which is truncated by the current situation of slowdown and in some cases of paralysis presented by the restrictive measures taken because of COVID-19. While the terms for which they were created continue to run to the same timetable, this makes it difficult to fulfil their mandates of clarifying the truth and obtaining justice and reparation for the victims.

We have received information from judges from the JEP regarding difficulties in accessing the archives since they are not accessible online, making it very difficult to work remotely and access the information in the files. Likewise, the collection of testimonies from the Truth Commission becomes very difficult to carry out with the necessary guarantees required for this type of process and in many cases the communities that give testimony do not have access to the internet.

In addition, there is a prevailing fear that the expected funding to provide resources for the integral system will be reduced and redirected to respond to the Covid-19 emergency, which would make



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the work of these institutions and, consequently, the fulfilment of their mandate even more difficult. For example, we have received reports of the constant delay in the JEP's response to proceedings initiated by lawyers whom we accompany, highlighting the difficulty that this jurisdiction is experiencing in fulfilling its mandate.

We affirm the great importance of transitional justice and the rule of law. A lasting and stable peace requires lawyers' safety and the investment of financial and human resources in judicial and truth processes. The crisis of the pandemic must not mean a step backwards from the fulfilment of the Peace Agreement and lack of the justice, truth, reparation, and non-repetition that are sought by the victims of the conflict.

Consequently, and taking into account the above, we draw your attention to Articles 16 and 17 of the United Nations Basic Principles on the Role of Lawyers (1990)¹ and the United Nations Declaration on Human Rights Defenders (adopted by the United Nations Assembly on 8 March 1999).²

In light of these commitments and the concerns raised above, we respectfully request that you as President of the Republic, your government, and responsible state entities:

Ensure that any person can report crimes to the police or relevant entity with appropriate biosecurity measures;

- Provide appropriate biosecurity and telecommunication measures to restore judicial processes;
- Ensure proper biosecurity and telecommunication measures in prisons so that lawyers can continue to represent their clients who are deprived of their liberty;

¹ Which state that: Article 16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; and (c) 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. Article 17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

² Which state that: Article 9 (5) the State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction. [...] Article 12 (2) The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration. (3) In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms. [...] Article 14 (1) The State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights. [...] (3) The State shall ensure and support, where appropriate, the creation and development of further independent national institutions for the promotion and protection of human rights and fundamental freedoms in all territory under its jurisdiction, whether they be ombudsmen, human rights commissions or any other form of national institution.



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- Investigate how the state might financially support independent lawyers who have lost their income due to the pandemic and the restrictions put in place, recognising the lasting impact on the rule of law and justice, if lawyers are unable to continue their profession;
- Guarantee the necessary security measures to protect the physical integrity of lawyers and defenders and their families to enable them to carry out their important work, particularly if they have to stay at home or have to visit isolated communities to ensure the fulfilment of the population's fundamental rights;
- Ensure that all lawyers and human rights defenders can carry out their functions without fear of intimidation or harassment against them or their families;
- Carry out appropriate investigations into the tracking, threats, surveillance, and other attacks mentioned in this letter, and any other complaint from a lawyer or defender received by the relevant authorities;
- Ensure that the JEP and CEV are able to fulfil their mandates as set out in the Peace Agreement between the government of Colombia and the FARC, by providing the state resources required for their work and the political support for their mandates.

It is worth mentioning that we are not acting on behalf of or representing any of the individuals or entities mentioned in this letter; we are writing to support them and defend their ability to carry out the legal work in a safe and secure manner, necessary to build a stable and lasting peace in Colombia.

Yours sincerely,

Organisations:

- Charlotte Gill, Colombian Caravana
- Richard Lord QC, Action for Justice
- Sophie Graaf, Lawyers for Lawyers
- Heather Neun, Lawyers' Rights Watch
- Carles McCragh i Prujá, *Fundación de la Abogacía Española* (Foundation of Spanish Lawyers)
- Ángeles Chinarro Pulido, *Asociación Libre de Abogadas y Abogados* (Free Association of Lawyers)

Individuals:

- Professor Sara Chandler QC (Hon), Past President *Federation des Barreaux d'Europe* (FBE)
- David Palmer, member of Colombian Caravana
- Gemma Sunyer, lawyer and coordinator of Colombian Caravana
- Irina Muñoz Ibarra, LL.M
- Katie de Kauwe, lawyer
- Paul Dowling, associate solicitor Leigh Day
- Sue Willman, partner Deighton Pierce Glynn



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CC:

- Carlos Alfonso Negret Mosquera, National Human Rights Ombudsman
- Antonio José Ardila, Colombian Ambassador to the United Kingdom
- Mr Colin Martin-Reynolds CMG, British Ambassador to Colombia,
- Alberto Brunori, Representative in Colombia of the Office of the UN High Commissioner for Human Rights
- Mary Lawlor, UN Special Rapporteur on the Situation of Human Rights Defenders
- Diego García-Sayan, UN Special Rapporteur on the Independence of Judges and Lawyers
- Francisco José Eguiguren Praeli, IACHR Special Rapporteur on Human Rights Defenders