

COLOMBIA

Mid-term Report - Review of the implementation of recommendations with respect to the rule of law and the role of human rights defenders accepted by Colombia during the UPR in 2018

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I. Introduction

1. Lawyers for Lawyers (L4L), Lawyers' Rights Watch Canada (LRWC) and the Colombian Caravana ("the Caravana") seek to address the human rights performance of States with respect to the rule of law and the role of lawyers through the Universal Periodic Review (UPR). During the UPR of Colombia in 2018, Colombia received and accepted recommendations concerning human rights defenders (HRDs), including lawyers. In this mid-term report, L4L, LRWC and the Caravana assesses the extent to which these recommendations have been implemented.

II. Executive Summary

2. During the 2018 UPR, Colombia received and accepted¹ 28 recommendations with respect to effective protection of HRDs, including lawyers. Moreover, Colombia assumed the voluntary commitment to continue the adoption of measures required for the protection of HRDs, including lawyers. L4L, LRWC and the Caravana have listed six (6) recommendations with respect to the effective protection of human rights defenders and the need to conduct investigations against threats, attacks and killings of HRDs, including lawyers, in order to hold the perpetrators accountable.²
3. This submission outlines findings of L4L, LRWC and the Caravana as to the extent to which Colombia has implemented these recommendations. It illustrates that Colombia has, with regard to lawyers, neither prevented, investigated or properly prosecuted attacks and threats against lawyers involved in sensitive human rights cases. Lawyers and HRDs are in particular danger when representing clients in sensitive cases such as those dealing with free prior and informed consent, land restitution cases, and cases that deal with the Special Peace Jurisdiction.

Recommendations

4. L4L, LRWC and the Caravana urge the Colombian authorities to conduct investigate these threats and attacks against lawyers in accordance with the State duty to ensure an effective remedy for human rights violations set out in Article 2.3(c) of the International Covenant on Civil and Political Rights (ICCPR). Colombia should implement recommendations 120.55, 120.58 120.60, 120.65, 120.72, and 120.77 fully and without any delay.

III. UPR recommendations accepted by Colombia in 2018

5. During the 2018 UPR cycle, Colombia received many recommendations concerning HRDs. Article 9.3 of the UN Declaration on Human Rights Defenders reads: '[...] everyone has the right, individually and in association with others, inter alia: (c) to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms'. Since lawyers are human rights defenders, the UPR recommendations on human rights defenders are also fully applicable to lawyers.
6. Colombia received and accepted four recommendations on the effective protection of HRDs:
 - a. *Strengthen the existing mechanisms for the protection of human rights defenders, focusing on rural areas and territories where illicit economies flourish (120.60 - Costa Rica);*

¹ Report of the Working Group on the Universal Periodic Review of Colombia, Addendum 1, A/HRC/39/6/Add.1, 30 August 2018, p. 2.

² Report of the Working Group on the Universal Periodic Review of Colombia, A/HRC/39/6, 9 July 2018, p.14, and 15.

- b. *Ensure that activists, human rights defenders and other social and community leaders, especially in rural areas, are equally and effectively protected also in view of the current challenges facing the implementation of the Final Peace Accord, by inter alia ensuring an effective presence of government institutions in all areas of the country (120.65 - Germany);*
 - c. *Take further measures to prevent systematic violence against local leaders and human rights defenders, improve individual and collective protection of those at risk, and focus on investigating and prosecuting the intellectual authors of the threats and killings (120.72 - Netherlands);*
 - d. *Ensure that human rights defenders are able to carry out their work free from intimidation, threats, harassment and attacks and to guarantee their safety, especially those working in rural conflict-prone areas (120.77 - Sweden);*
7. Colombia also received and accepted two recommendations on the need to conduct investigations against threats, attacks and killings of HRDs in order to hold the perpetrators of human rights violations accountable:
- a. *Ensure that human rights defenders are protected while carrying out their important work and the judicial authorities conduct full and impartial criminal investigations so that perpetrators are held accountable (120.55 - Austria);*
 - b. *Take further actions to improve the prevention of, and response to, threats, attacks and killings of human rights defenders and social leaders, through strengthening security, timely investigations and addressing impunity (120.58 - Canada);*
8. It should also be noted that Colombia assumed the following voluntary commitment to:
- a. *Continue the adoption of measures required for the protection of human rights defenders in Colombia (123.1 – Colombia).*
9. L4L, LRWC and the Caravana welcome Colombia's acceptance of recommendations 120.60, 120.65, 120.72 and 120.77 on the effective protection of HRDs. In this connection, we welcome Colombia's acceptance of recommendations 120.55 and 120.58 on the need to conduct investigations against threats, attacks and killings of HRDs in order to hold the perpetrators of human rights violations accountable. We also welcome Colombia's voluntary commitment 123.1 to continue the adoption of measures required for the protections of HRDs in Colombia.
10. However, L4L, LRWC and the Caravana find that these six recommendations and Colombia's voluntary commitment have not been fully implemented at the time of submission of this report (September 2021) as threats against lawyers have continued³.

IV. Effective mechanisms for the protection of human rights

11. The adequate protection of human rights and fundamental freedoms requires that every citizen has effective access to justice, legal assistance, and legal representation. Such assistance and representation can only be provided effectively in a judicial system where lawyers, along with judges and prosecutors, are able to carry out their professional activities independently and

³ Human Rights Watch, Amicus brief on killings of human rights defenders in Colombia, Colombian Constitutional Court, Case: T8018193, 11001310304520200002500, available at: <https://www.hrw.org/news/2021/04/20/amicus-brief-killings-human-rights-defenders-colombia>

without external pressures and interference.⁴ This follows from – amongst other international instruments - the ICCPR and the United Nations (UN) Basic Principles on the Role of Lawyers (Basic Principles).⁵

12. To fulfil its duty to promote and ensure that the role of lawyers is respected, Colombia should ensure that the Basic Principles are implemented within the framework of its national legislation, policy, and practice. Adherence to the Basic Principles is a fundamental pre-condition for fulfilling the requirement that all persons have effective access to legal assistance and representation.⁶
13. On 10 May 2018, Colombia's advised the UPR Working Group that Colombia had made "concerted efforts made to ensure that Colombians enjoyed the widest and most effective enjoyment of their rights (...)". At the same time, Colombia stated that it recognized "the significant challenges that persisted in that respect and reiterated its commitment to upholding human rights in its territory to the greatest possible extent."⁷ Colombia reaffirmed its "commitment to proceeding with the implementation of the recommendations made during the universal periodic review, in the belief that in this way it will achieve substantial progress towards guaranteeing full respect for human rights in the national territory".⁸
14. The acceptance of these recommendations and the voluntary commitment of Colombia indicate some positive changes. However, reports gathered by L4L, LRWC and the Caravana and information received from lawyers in Colombia demonstrate that the accepted recommendations and Colombia's voluntary commitment have not been implemented and that in practice, lawyers who work on sensitive human rights issues are targeted and not sufficiently protected. Attacks against them are not sufficiently investigated and suspects are not prosecuted. As a consequence, lawyers continue to encounter difficulties in carrying out their professional duties to work with and protect human rights defenders and other sensitive human rights causes.

V. Effective protection of human rights defenders

a. Threats and harassment of HRDs

15. L4L, LRWC and the Caravana have long been concerned about attempts to harass, threaten and disrupt the work of lawyers in Colombia who work on cases that engage human rights or represent victims of crimes committed by (former) Colombian Army or State officials. The right of lawyers to perform their professional activities free from intimidation, threats, attacks or harassment is often not respected. Where improper interference or reprisals become widespread and systematic, a chilling climate emerges in which lawyers may refuse to represent clients connected to politically sensitive or controversial issues out of fear of becoming the target of harassment or acts of retaliation.

⁴ Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, submitted in accordance with Human Rights Council resolution 8/6, 28 July 2009, A/64/181 , par. 12: 'lawyers are not expected to be impartial in the manner of judges yet they must be as free as judges from external pressures and interference. This is crucial if litigants are to have trust and confidence in them'.

⁵ Basic Principles, Principle 16 in particular: Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; 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.

⁶ UN Basic Principles on the Role of Lawyers, Preamble and paragraph 8 in particular.

⁷ Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, 30 August 2018, A/HRC/39/6/Add.1, paragraphs 2 and 3.

⁸ Idem, paragraph 14.

16. In accordance with 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”.
17. Since the adoption of the UPR recommendations on the rights of HRDs in September 2018, new cases of harassment and threats have come to the attention of L4L, LRWC and the Caravana:

Daniel Prado. When the sensitive case of ‘Los Doce Apóstoles’, in which Mr. Prado represented a number of victims, reached its final stages in the fall of 2018, the threats and harassment against Mr. Prado began to surge. In December 2018, Mr. Prado reported bullets being fired at his office, attempted robberies of his office, receiving death threats at his office and home landline and many instances of being followed by seemingly armed individuals.⁹ At the time, defamatory public statements were made against him by high ranking (former) officials.¹⁰ All of these instances are directly linked to Mr. Prado’s work as a lawyer and HRD and constitute attempts to disrupt his work.

Gérman Romero Sánchez. Over the course of the late summer and fall of 2019, Mr. Romero Sánchez received a direct death threat over the landline at his home, had his laptop containing sensitive information relating to his work as a lawyer stolen in a robbery performed by four individuals, and was followed by two persons on a motorbike. A family member received multiple calls from an unknown person demanding Mr. Romero Sánchez to come to the phone.¹¹ During 2020, the monitoring of motorcycles and vehicles continued at his place of residence and office. In March 2021, a new direct threat was made through a telephone call, presenting risks for his family members. Mr. Romero Sánchez believes the harassment and threats are related to his work as a lawyer and HRD, as he often works on enforced disappearances and extrajudicial killings cases in which the alleged perpetrators are retired and active State agents and senior officers of the army and police. The death threat and other forms of harassment have hindered Mr. Romero Sánchez’s ability to effectively do his work as a lawyer and HRD.

Reinaldo Villalba. Over the course of 2020 and 2021, Mr. Villalba received a number of death threats over social media. For example, one threat sent over Twitter stated: “*we will see you in the street or in the mountains*”, referencing a potential attack against him.¹² Other tweets directly addressed to him clearly wish for his death or incarceration and call him a defender of terrorists. A number of these threats appear to be related to Mr. Villalba’s work as legal representative of Colombian Senator Ivan Cepeda Castro. These death threats contribute to the growing climate of hostility against members of the legal profession and affect Mr. Villalba’s ability to carry out his work effectively and without undue external influence.

b. The partial removal of protection measures

18. It has come to the attention of L4L, LRWC and the Caravana that the Colombian authorities have not only failed to take adequate measures to ensure the effective protection of HRDs, but in a number of cases have even partially withdrawn the personal security measures that were already in place, even when the risk for the individual HRD has not diminished. The (partial)

⁹L4L, *Joint letter on behalf of Daniel Prado* (6 December 2018) <https://lawyersforlawyers.org/joint-letter-on-behalf-of-lawyer-daniel-prado/>

¹⁰ Ibid

¹¹ L4L, *Joint letter on threats against Gérman Romero Sánchez* (6 November 2019) <https://lawyersforlawyers.org/en/joint-letter-on-threats-against-german-romero-sanchez/>

¹² L4L, *Joint letter to Rapporteurs on threats to Reinaldo Villalba and his team* (3 September 2020), <https://lawyersforlawyers.org/joint-letter-to-rapporteurs-on-threats-to-reinaldo-villalba-and-his-team/>

withdrawal of personal security measures is counterproductive to the effective protection of HRDs and makes them more vulnerable to harassment and threats.

19. One case of partial withdrawal of security measures has come to the attention of L4L, LRWC and the Caravana:

Adil Jose Meléndez Marquez. Mr. Meléndez, a lawyer and HRD who has been active in a number of land restitution cases and prosecutions against former members of the (para)military in the Bolívar region has often been the target of (death) threats, harassment and even assassination attempts. In December 2018, his security measures were partly withdrawn, even though the acute risk for Mr. Meléndez had not diminished at that point in time.. Mr. Meléndez' bullet-proof car was withdrawn and replaced with a standard car by the National Protection Unit (NPU), a special investigation unit of the Attorney General's Office. Moreover, Mr. Meléndez reported that since February 2019 he has not received protection from one of his two appointed bodyguards.¹³ Given the persisting risks Mr. Meléndez faces as a human rights lawyer, the partial withdrawal of his security measures effectively hinders Mr. Meléndez in his work as a lawyer and HRD.

c. Illegal surveillance of HRDs

20. Colombia has a history of conducting state-sponsored illegal intelligence activities against HRDs. Illegal intelligence activities and surveillance threaten the security of HRDs, and some instances of illegal surveillance are alleged to have led to serious crimes, such as assassination attempts and murders. L4L, LRWC and the Caravana call on Colombia to ensure the effective protection of HRDs by putting a stop to the potentially dangerous illegal surveillance of HRDs and to ensure that each act of surveillance on any individual HRD complies with international human rights standards.

21. In the period since Colombia's last UPR in May 2018, there have been many instances of illegal surveillance of HRDs:

Illegal surveillance by the BACIB and other military bodies. On 1 May 2020, the Colombian magazine *Semana* reported the existence of "secret files" containing the personal information about at least 130 persons, including lawyers who represented victims in criminal cases against state agents.¹⁴ These persons were subjected to surveillance and profiling by parts of the Colombian National Army, which reportedly intended to prepare military intelligence reports on the private and professional lives of these persons without legal justification.¹⁵ Prior to this, in December 2019, the Supreme Court of Justice of Colombia ordered a search of information held by the Army Cyber-Intelligence Battalion (BACIB). The search revealed that intelligence activities had been coordinated by the BACIB and other military intelligence bodies.¹⁶ These illegal surveillance activities against lawyers and HRDs are a serious threat against the independence and security of HRDs.

Daniel Prado. In January 2020, it was reported that a drone illegally monitored the offices of the Comisión Colombiana de Juristas (CCJ). A week later, a drone was found crashed in the

¹³ L4L, *Joint letter on behalf of Adil Meléndez* (16 March 2019) <https://lawyersforlawyers.org/joint-letter-on-behalf-of-adil-melendez/>

¹⁴ <https://www.semana.com/nacion/articulo/espionaje-del-ejercito-nacional-las-carpetas-secretas-investigacion-semana/667616/>

¹⁵ L4L, *illegal intelligence activities against lawyers in Colombia* (27 July 2020) <https://lawyersforlawyers.org/joint-letter-on-the-alleged-illegal-espionage-against-colombian-lawyers/>

¹⁶ *Ibid*

courtyard of the home of Daniel Prado.¹⁷ More recently, Mr. Prado has reported the presence of a helicopter, equipped with a recording camera, flying over a rest house that he frequents at a very low altitude. This illegal monitoring threatens the security of Mr. Prado.

German Romero. Mr. Romero has reported many instances of surveillance and monitoring. Unidentified persons in cars and motorcycles without license plates have been taking photos of his residence, of Mr. Romero leaving his office and of the activities of his children.

VI. The need to conduct investigations against threats, attacks and killings of human rights defenders.

22. Efforts made and measures adopted to protect lawyers against threats and harassment can only be truly effective if the Colombian authorities respond to cases of threats, attacks or killings of lawyers by starting prompt, effective, independent, and impartial investigations capable of providing evidence sufficient to hold the perpetrators accountable in fair trials. Colombia acknowledged the importance of this by accepting two recommendations pertaining to the need for proper investigations and accountability for perpetrators. However, many cases that have come to the attention of L4L, LRWC and the Caravana have shown that the Colombian authorities have thus far failed to implement these recommendations, thereby allowing the impunity of these perpetrators to persist.
23. L4L, LRWC and the Caravana have found a number of cases of harassment or threats against lawyers in which the relevant authorities failed to launch a timely and impartial investigation and trials to hold the perpetrators accountable:

Adil Jose Meléndez Marquez. In late 2019, Mr. Meléndez received a number of threats by telephone. These threats are believed to be directly linked to his work as a lawyer and HRD in a number of land restitution cases and prosecutions against former (para)military members in the Bolívar region.¹⁸ By that point in time, Mr. Meléndez had been subjected to (death) threats, harassment and assassination attempts on a number of occasions.¹⁹ Mr. Meléndez promptly reported these threats to the relevant authorities. These threats and the lack of genuine efforts of the relevant authorities to investigate these threats and hold those responsible accountable prevent Mr. Meléndez' from effectively doing his work as a lawyer and HRD.

German Romero. In relation to the telephone threats, the theft of information and surveillance, evidence such as videos, photos and data of the origin of the call were delivered to the Prosecutor. Mr. Romero reports that this evidence was sufficient to be able to identify those responsible. The case for the theft was closed by the prosecution in just 24 days without conducting any investigation. The surveillance and monitoring of German Romero, as reported above, were also reported with no known results.

¹⁷ L4L, *Monitoring of lawyer Daniel Prado* (9 April 2020) <https://lawyersforlawyers.org/monitoring-of-lawyer-daniel-prado/>

¹⁸ L4L, *Joint letter on threats against Adil Meléndez* (6 February 2020) <https://lawyersforlawyers.org/joint-letter-on-threats-against-adil-melendez/>

¹⁹ L4L, *Joint letter on behalf of Adil Meléndez* (16 March 2019) <https://lawyersforlawyers.org/joint-letter-on-behalf-of-adil-melendez/>

VII. Conclusion

1. During the 2018 UPR, Colombia received and accepted four recommendations on the effective protection of HRDs and two recommendations on the need to conduct investigations against threats, attacks and killings of HRDs in order to hold the perpetrators of human rights violations accountable. Colombia also made a voluntary commitment to continue the adoption of measures required for the protection of HRDs.
2. The Colombian authorities have failed to respect the rights of lawyers by not adequately adopting measures required for the effective protection of HRDs. Since May 2018, a number of HRDs have been harassed, threatened and submitted to illegal surveillance, especially those who are involved in cases against (former) Colombian army or state officials. This prevents them from performing their professional functions without external interference.
3. Furthermore, the Colombian authorities have failed to conduct timely and impartial investigations into these threats and attacks against HRDs in order to hold the perpetrators accountable. This inaction has allowed the hostile climate and security threats against HRDs to persist, and has also affected HRDs' ability to perform their official functions without intimidation, hindrance, harassment or improper interference.
4. Colombia has, to date, not adequately implemented recommendations 120.55, 120.58 120.60, 120.65, 120.72, and 120.77.
5. L4L, LRWC and the Caravana urge the authorities of Colombia to:
 - a. Respect the rights of HRDs and guarantee that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference by taking effective measures to prevent these attacks and effectively protect HRDs at risk, in line with Principle 16(a) of the Basic Principles. Colombia should implement recommendations 120.60, 120.65, 120.72, and 120.77 fully and without delay.
 - b. Hold perpetrators of human rights violations committed against HRDs accountable by conducting prompt, effective, independent, impartial investigations into these cases. This is essential to ensure that lawyers can carry out their work free from intimidation, threats, harassment, and attacks, in line with Principle 16(a) of the Basic Principles. Colombia should implement recommendations 120.55 and 120.58 fully and without delay.

Lawyers for Lawyers (L4L) is an independent, non-political and not-for-profit lawyers' organization established in 1986. Our mission is to promote the independent functioning of lawyers and the legal profession across the world in accordance with internationally recognized norms and standards, including the Basic Principles on the Role of Lawyers. Our work to support lawyers who are at risk as a result of discharging their professional duties, seeks to protect them from threats, risks and reprisals, strengthens their international recognition and protection in laws, policies and practices, and empower them to fulfil their role as essential agents of the administration of Justice. Lawyers for Lawyers was granted special consultative status with the UN Economic and Social Council in July 2013.

Lawyers' Rights Watch Canada (LRWC) is a committee of Canadian lawyers and other human rights defenders who promote human rights and the international rule of law by providing advocacy internationally for the protection of human rights defenders in danger. LRWC is volunteer-run and is funded solely by its members and other donors. LRWC was granted Special Consultative Status by the United Nations Economic and Social Council in 2005.

The Colombian Caravana ("the Caravana") is a collective of international lawyers that monitors human rights abuses faced by legal professionals in Colombia. Members of the Caravana have participated in a number of international delegations to Colombia, most recently in 2018, and the Caravana carries out advocacy work on a domestic and international level providing support to Colombian human rights lawyers.