



COLOMBIA

Human Rights Committee Consideration of the Seventh Periodic Report of Colombia

Submission on the List of Issues

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I Introduction

Submitting Party

1. Lawyers for Lawyers (L4L) is an independent Netherlands foundation and is funded by lawyers' donations. The foundation was established in 1986 and has special consultative status with ECOSOC since 2013.¹
2. L4L promotes the proper functioning of the rule of law through a free and independent exercise of the legal profession, in conformity with international law, including but not limited to the International Covenant on Civil and Political Rights (ICCPR) and the Basic Principles on the Role of Lawyers of the United Nations (Basic Principles).² We do this by supporting lawyers across the world who are threatened or suppressed as a result of discharging their functions and by promoting the proper role of lawyers.³
3. L4L wishes to provide its views to the Human Rights Committee, in advance of the preparation of the list of issues for the Periodic Report of Colombia.

II Executive Summary

Issues

4. This submission outlines L4L's key areas of concern about the failure of the Colombian authorities to comply with its international human rights commitments to guarantee effective access to legal services provided by an independent legal profession as set out in the Basic Principles, which is required to ensure the right to equality before courts and tribunals and to a fair trial, in accordance with Article 14 of the ICCPR.
5. It highlights, in particular, concerns in relation to the following issues:
 - (i) No effective guarantees for the functioning of lawyers:
 - a. increasing harassment and intimidation of lawyers and their family members, and attacks on lawyers, including killings (Articles 6, 7 and 14)
 - b. lack of protection against harassment and attacks on lawyers (Articles 6, 7, 14)
 - (ii) Impunity for harassment of and attacks on lawyers (Articles 6, 7 and 14).
 - (iii) The lack of access to a lawyer in remote area's

¹ For more information visit our website: <http://www.advocatenvooradvocaten.nl/about-us/>

² Basic Principles on the Role of Lawyers, adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

³ For more information visit our website: <http://www.advocatenvooradvocaten.nl/what-we-do/>

Recommendations

6. **The Human Rights Committee should address as a matter of priority the harassment of lawyers and attempts to impede or interfere with their defence of clients, immediately impacting the right to effective legal representation as enshrined in Article 14 of the ICCPR.**
7. **The Human Rights Committee should address as a matter of priority the lack of effective measures, in practice, to protect lawyers whose security is threatened due to their professional activities.**
8. **The Human Rights Committee should address the lack of effective investigations into the threats against, attacks on and killings of lawyers in relation to their professional activities. The impunity of these acts has an immediate negative effect on the right to effective legal representation as enshrined in Article 14 of the ICCPR.**
9. **The Human Rights Committee should address the lack of access to a lawyer in remote areas, where the need for legal representation is most necessary. The continuing lack of access to legal representation has an immediate negative effect on the right to effective legal representation as enshrined in Article 14 of the ICCPR.**

III Effective mechanisms for the protection of human rights

10. The adequate protection of human rights and fundamental freedoms requires that every citizen has effective access to justice and legal assistance. Legal assistance 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. This follows from – amongst other international instruments - the ICCPR.
11. In its task of promoting and ensuring the proper role of lawyers, the Colombian government should respect and take into account the Basic Principles within the framework of its national legislation and practice. Adherence to the Basic Principles – that apply universally - is considered a fundamental pre-condition to fulfilling the requirement that all persons have effective access to independent legal assistance.⁴
12. During the interactive dialogue in the UPR cycle of 2013 several recommendations with respect to the protection and role of human rights defenders (including lawyers) were supported by Colombia.⁵ These recommendations⁶ called upon the

⁴ Basic Principles on the Role of Lawyers, Preamble and paragraph 8 in particular.

⁵ Report of the Working Group on the Universal Periodic Review of 4 July 2013, A/HRC/24/6, par. 116, p. 14.

⁶ Recommendations 73-85, Report of the Working Group on the Universal Periodic Review, 4 July 2013, A/HRC/24/6, p. 19.

116.73. Ensure appropriate protection of human rights defenders operating in the country, recognising the legitimacy of their work, including full and impartial investigations and prosecutions into all alleged human rights violations committed against them (Slovakia);

Colombian government – amongst others - to ensure appropriate protection of human rights defenders operating in the country, and enact legislation recognizing the legitimate work of human rights defenders and ensuring their life, security and integrity, and conduct prompt, impartial and effective investigations into allegations of threats, attacks and violence against them. In 2012, the Special Rapporteur on the situation of human rights defenders expressed concern at reports that human rights defenders faced violence and insecurity, including murder, acts of intimidation and threats, in particular against judges and lawyers [...] ⁷. According to Colombia all these recommendations 'have already been implemented or are in the process of implementation'. ⁸

13. Reports gathered by L4L and information that we received from lawyers in Colombia show that Colombian authorities do not always uphold the necessary guarantees for the proper functioning of the legal profession in practice. Lawyers are regularly subjected to threats and attacks, including killings. Furthermore, there is a lack of protection against harassment and attacks on lawyers, and impunity for harassment of and attacks on lawyers.
14. As a consequence, lawyers encounter difficulties in carrying out their profession independently, immediately impacting the right to effective legal representation as enshrined in Article 14 of the ICCPR.

116.74. Reinforce measures for the protection of human rights defenders (Slovenia);

116.75. Increase efforts to investigate and prosecute those responsible for threats or violence against human rights defenders, trade unionists, community leaders and journalists (United Kingdom of Great Britain and Northern Ireland);

116.76. Promptly investigate and prosecute perpetrators of threats, extortion, and attacks on human rights defenders, vulnerable individuals, unionists, and potential beneficiaries of the Victims' Law (United States of America);

116.77. Ensure that judicial authorities carry out thorough and impartial investigations regarding acts of violence against human rights defenders (Belgium);

116.80. Take all the necessary measures in order to protect human rights defenders against threats and attacks, and ensure that the perpetrators of such acts are brought to justice (France);

116.81. Ensure that human rights defenders in rural areas are equally and effectively protected also in view of the existing challenges of the implementation of the Victims and Land Restitution Law (Germany);

116.82. Enact legislation recognizing the legitimate work of human rights defenders and ensuring their life, security and integrity, and conduct prompt, impartial and effective investigations into allegations of threats, attacks and violence against them (Hungary);

116.83. Enforce the legislative efforts regarding the security of human rights defenders, with a view to effectively implementing measures and programmes (Netherlands);

116.85. Improve the access to the National Protection Unit and its impact in rural areas, and take new steps to protect human rights defenders, journalists, indigenous leaders and people involved in land restitution processes (Norway);

⁷ A/HRC/19/55/Add.2, para. 87. See also CCPR/C/COL/CO/6, paras. 16–17, CAT/C/COL/CO/4, para. 23; CRC/C/OPAC/COL/CO/1, paras. 20–21; letter dated 30 October 2009 from CAT to the Permanent Mission of Colombia in Geneva, p. 2, available from <http://www2.ohchr.org/english/bodies/cat/docs/followup/Colombialetterfollowup30102009.pdf> and E/C.12/COL/CO/5, para. 12 and A/HRC/19/21/Add.3, para. 14.

⁸ Report of the Working Group on the Universal Periodic Review, 4 July 2013, A/HRC/24/6, par. 116, p. 14

IV No effective guarantees for the functioning of lawyers

a. increasing harassment and intimidation of lawyers and their family members, and attacks on lawyers, including killings (Articles 6, 7 and 14)

15. L4L has been informed by lawyers in Colombia that they are regularly subjected to threats or physical attacks, intimidation and even killings. This is demonstrated by the following cases:

Cases:

Diana Montilla, one of the very few human rights lawyers in Pasto, received death threats on 23 February 2014 from an undisclosed group opposed to land restitution. In December 2014 she narrowly escaped serious injury when acid was thrown on her, destroying her clothes, but falling short of causing physical injury. Two days later she received an e-mail from the group that ensemble former paramilitary groups Aguilas Negras, declaring her a military target.

From 2009 onwards the CJD lawyers Sophia Lopez, Walter Mondragon and Alexander Montaña are being harassed on multiple occasions. In 2013 Montaña and Lopez were working on the case of the extra judicial killing of a minor, Norbey Bonilla. Both were charged with insult and slander in March 2013 by the Commander of Batalion 91 of the National Army. In April there were more threats, and on 12 April 2013 the CJD was informed that Sophia was to be arrested for "rebellion". On 19 April 2013 Sophia was approached by two individuals, one of whom identified himself as a member of the criminal investigation section of the national police. They tried to put her in a taxi, but she escaped. A disciplinary investigation of the SIJIN members was archived. Subsequently, Montaña and Lopez were charged with injury and defamation by the specialist prosecutor (fiscal quinta especializada) in Popayan. In December 2013, two laptops were stolen from CJD lawyers. The laptops contain information about extra judicial killings by the Colombian army.

In the Bolivar and Sucre region 14 lawyers were murdered where no investigation was done. The Caravana delegation has given a list of these cases to the Public Prosecutor in Bogota at their visit and they have asked for a follow up.⁹

b. lack of protection against harassment and attacks on lawyers (Articles 6, 7, 14)

16. L4L has been part of a delegation which observed a.o. the implementation of protective measures, The IV International Lawyers Delegation (Caravana) in August 2014.
17. In its report of this mission, the Caravana stated: "Delegates in Cali heard of the schemes failures to respond to requests, or to delay assessment, putting lawyers and human rights defenders at further risk. The delegates were briefed on specific legal cases that lawyers have been forced to abandon because of threats to their security."

⁹ Caravana report IV, page 19

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18. The Inter American Commission on Human Rights (IACHR) also criticized the national protection scheme in its recent country report on Colombia.¹⁰
 19. The L4L delegates followed up on a decision of the IACHR in the 2014 Caravana report: "In 2011 the IACHR ordered the state to provide protective measures for the Corporacion Juridica y Dignidad lawyers to protect the right to exercise their profession. The Colombian authorities were aware of the threats they had received and the risk they faced but had not provided protection. In fact, the authorities had refused protection for the lawyers to continue their work for 179 client families of El Vergel and El Pedregal de Caloto, Cauca who were the recipients of IACHR ordered protection measures. Following the IACHR order that protection be extended to the CJD lawyers, the State initially took the position that it was not mandatory and that it was entitled to carry out its own risk assessment for CJD. This contradicts the Inter American jurisprudence that states are required to implement measures automatically and without internal processes. The State did assess the CJD lawyers at the highest level "extraordinary risk" and it issued cell phones, bullet proof vests and special means of transport. But these measures on their own were of little value for various reasons including the fact that the threats have in part originated from public officials and criminal investigations into the source of the threats have either been archived or have not been concluded."
 20. The Caravana report furthermore highlighted significant delays in the application of protection measures (for example for the Buenaventura based members of the Red Juridica), ill-adapted measures, and the lack of availability of collective measures. Also it highlighted the continuing negative effects of privatisation and cuts on protection measures.
 21. The L4L part of the Delegation visited the Unidad Nacional de Protección (UNP), the authority responsible for the assignation of protective measures. It raised concerns about a.o. the Committee for the Evaluation of Risks and the Group for preliminary Evaluation, as they are made up of many organizations, where no one organization has sole responsibility. It raised concerns on "the apparent lack of authority within the UNP to make key decisions regarding the assignation and funding of protection measures and the lengthy process caused by the number of organizations involved". It also questioned "the extent to which the State has integrated its protection mechanisms with the relevant investigative entities. As the IACHR has established, this form of integration is critical in order to clarify the sources of the threats and risks."¹¹

¹⁰ IACHR country report: Truth, Justice and Reparation, supra at note 18, para. 30 and Colombia at the Crossroads

¹¹Report of the IV International Delegation of Lawyers to Colombia, August 2014, page 52

Recommendations

22. **The Human Rights Committee should address as a matter of priority the harassment of lawyers and attempts to impede or interfere with their defence of clients, immediately impacting the right to effective legal representation as enshrined in Article 14 of the ICCPR.**
23. **The Human Rights Committee should address as a matter of priority the lack of effective measures, especially in practice, to protect lawyers whose security is threatened due to their professional activities.**

V Impunity for harassment of and attacks on lawyers

24. As becomes clear from the cases mentioned above, the Colombian authorities in these cases concerning the functioning of lawyers in practice, have failed to carry out prompt, thorough, impartial and transparent investigations into the threats, attacks and killings, so as to identify all those responsible and bring them to justice. Impunity of such acts of persecution has a “chilling effect” on other lawyers, negatively influencing the quality of their work, potentially forcing them to renounce to certain kinds of cases, and working in the fear that they or their families may be at risk because of their work. The Caravana mission found a lack of investigation of threats against legal professionals, and criticized the high levels of impunity of these threats.
25. This negatively impacts the effective access to legal services provided by an independent legal profession as set out in the Basic Principles, which is required to ensure the right to equality before courts and tribunals and to a fair trial, in accordance with Article 14 of the ICCPR.

Recommendation

26. **The Human Rights Committee should address the lack of effective investigations into the threats against, attacks on and killings of lawyers in relation to their professional activities. The impunity of these acts has an immediate negative effect on the right to effective legal representation as enshrined in Article 14 of the ICCPR.**

VI Access to justice: access to a lawyer

27. The Basic Principles set out that every state should ensure effective access to independent legal assistance.
28. Accessing lawyers is problematic in Colombia, where the groups formally known as paramilitary groups, *Bandas Criminales*, still take land from the people. Since 2011, more than 50 claimants of land have been killed. These groups need access to legal representation, which in practice more often than not is nonexistent, because of threats and the lack of protection for lawyers that visit remote areas. Law 1448,

which deals with land restitution, is considered to be a post conflict law of transitional justice. Threats to lawyers are related to their work on these laws. In Cartagena it was noted by the Interior Secretary of the Mayors office that three lawyers working on land restitution issues had reported threats against them in the last two years. Also in Buenaventura it is reported that no local lawyers represent their clients on human rights issues like problems connected with land restitution.

- 29. The Human Rights Committee should address the lack of access to a lawyer in remote areas, where the need for legal representation is most necessary. The continuing lack of access to legal representation has an immediate negative effect on the right to effective legal representation as enshrined in Article 14 of the ICCPR.**