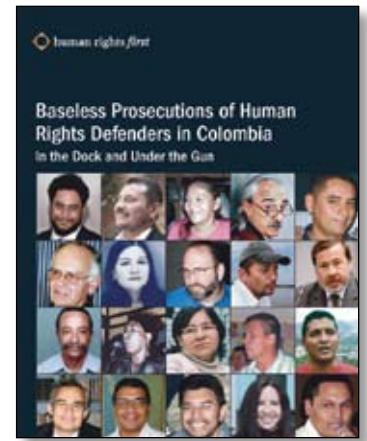


Baseless Prosecutions of Human Rights Defenders in Colombia

In the Dock and Under the Gun

FEBRUARY 2009 — REPORT SUMMARY



“If they cannot assassinate you, they follow you, threaten you and prosecute you. They prosecute us for whatever matter.”

Francisco Ramirez, human rights lawyer and president of the Colombian Mine Workers' Union SINTRAMINERCOL

IN A CRIMINAL JUSTICE SYSTEM PLAGUED BY IMPUNITY, the tenacity with which Colombian prosecutors pursue human rights defenders for supposed crimes is striking. While corruption and arbitrary actions are a systemic problem throughout the judicial system, those who peacefully promote human rights are singled out for particular intimidation through baseless investigations and prosecutions. Unfounded charges are often widely publicized, undermining the credibility of defenders and marking them as targets for physical attack, often by paramilitary groups.

While defenders are not alone in being subjected to false investigations, their persecution is distinctive due to the nature of the charges and the methods of collecting, and falsifying, evidence. They are usually accused of rebellion and membership in a guerrilla organization. By the time defenders are illegally detained, they have often been investigated in secret for many months or even years. Two of the hallmarks distinctive to defenders' cases are the use of false testimony from ex-combatants and of inadmissible intelligence files. Charges are typically based on spurious allegations by ex-guerrillas whose testimony has been coerced or coached by regional prosecutors. Armed with such erroneous evidence, which is objectively inadequate to initiate an investigation, prosecutors and others publicly pre-judge the defendants, stigmatizing defenders as terrorists.

The steadfast investigation of spurious criminal complaints against defenders stands in stark contrast to the failure to investigate attacks, threats, and other forms of intimidation perpetrated against them or against civilians more generally. The Colombian state also fails to prosecute or otherwise discipline judicial officials who instigate such specious prosecutions.

Human rights defenders in Colombia play a legitimate and essential role in protecting basic rights and strengthening democratic institutions. Charges against them are often politically motivated and intended primarily to discredit and stigmatize them individually and as a class. Unfounded criminal charges are damaging in many ways:

- The stigmatization of defenders as terrorist sympathizers places them at considerable risk of reprisal and death threats by paramilitaries or others;
- The proceedings force defenders to expend time and resources defending themselves, diminishing their capacity to perform productive human rights work;
- The charges discredit defenders and tarnish their reputations as legitimate human rights activists; and
- The threat of political prosecution has a chilling effect, encouraging defenders to practice self-censorship and limit their activities. In relation to Colombia, the U.N. Special Representative on Human Rights Defenders has stated that such “proceedings are part of a strategy to silence human rights defenders.”

A summary of Human Rights First's recommendations follows, based on an analysis of 32 cases and extensive interviews with government officials and human rights defenders.

Recommendations

To the Colombian Authorities

1. The Prosecutor General, or the prosecutors in charge of each case, should close the unfounded criminal investigations against the human rights defenders identified in this report.
2. The Prosecutor General should pass a resolution empowering his Human Rights Unit in Bogotá to coordinate the review of all criminal investigations against human rights defenders. The Unit should be able to quickly vet the investigation for compliance with due process standards or rapidly delegate the review to the regional prosecutorial Human Rights Unit, if appropriate. All cases found to be specious should be closed immediately. Human rights defenders should be able to lodge complaints directly with the unit.
3. The Prosecutor General should conduct a comprehensive internal investigation into corruption and connections between justice officials and paramilitaries or successor groups, focusing on regional prosecutors. The state should dismiss from judicial and prosecutorial institutions all individuals shown to be corrupt or connected to illegal armed groups.

4. The Prosecutor General should discipline and prosecute all prosecutors found to have breached the law in falsely investigating human rights defenders.
5. Prosecutors should reject patently implausible witness testimony, refrain from influencing witness testimony, and carefully evaluate witness testimony from ex-combatants who are receiving reintegration benefits. Prosecutors should also provide the accused with any evidence that may impeach the witness's credibility.
6. The Prosecutor General should issue a resolution addressed to all judicial and prosecutorial institutions reemphasizing relevant international law and provisions of the new Colombian Procedural Code, which set standards for impartial investigations.
7. All public officials should refrain from making statements that discredit or stigmatize human rights defenders as guerrillas. The President should enact a new Presidential Directive to this effect, similar to those issued by previous administrations.
8. The Inspector General's office should ensure that its judicial inspectors promptly intervene in cases of malicious prosecutions of defenders to support the dismissal of specious charges.
9. The Colombian Congress should amend the Intelligence and Counter-Intelligence Bill to better regulate the collection and use of information in government intelligence reports. The Inspector General should be empowered to exclude from those reports all manifestly unfounded information that is prejudicial to individuals. The law should forbid the dissemination of reports and prohibit the collection of information for arbitrary reasons, such as membership in a human rights organization.
10. Congress should amend the Colombian Criminal Code to decriminalize the offenses of slander and libel. While legitimate as civil complaints, such criminal offenses are incompatible with the protection of human rights.

To the Government of the United States

11. The U.S. government at the highest level should publicly support Colombian human rights defenders and this message should not be undercut by subsequent statements or policies.
12. The U.S. government should support and assist in implementing the structural reforms and recommendations contained in this report, to address the problem at a systemic level. For example:
 - The U.S. Agency for International Development (USAID), a major source of funding for judicial reform in Colombia, should work with the Prosecutor General and the Ombudsman to implement an education program for prosecutors and judges concerning the value of human rights advocacy. The program should emphasize that human rights advocacy has no connection with terrorism and is protected by Colombian and international law.
 - USAID and the U.S. Department of Justice should support the Prosecutor General to enable the Human Rights Unit to monitor and review all criminal investigations against human rights defenders as envisioned in the second recommendation above. Such support could include funding, technical assistance, and training.
13. The U.S. Congress should include in appropriations legislation a condition requiring certification by the State Department that the Colombian armed forces are not involved in human rights violations against human rights defenders.
14. The Department of State should end the practice of denying or revoking visas to Colombian human rights defenders based on the fact that they have been subject to a specious criminal prosecution or unfairly branded as a terrorist by public official.



Headquarters
 333 Seventh Avenue
 13th Floor
 New York, NY 10001
 Tel: 212.845.5200
 Fax: 212.845.5299

Washington D.C. Office
 100 Maryland Avenue, N.E.
 Suite 500
 Washington, DC 20002
 Tel: 202.547.5692
 Fax: 202.543.5999

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