



WRITTEN STATEMENT

Hearing before the Senate Committee on the Judiciary Subcommittee on Human Rights and the Law

“Drug Enforcement and the Rule of Law: Mexico and Colombia”

Tuesday, May 18, 2010
Dirksen Senate Office Building, Room 226
10:00 a.m.

Introduction

For many years Human Rights First has supported and encouraged expanded US rule of law assistance to Colombia. The FY2010 Conference Report on Foreign Operations Appropriations provided \$45 million in foreign assistance to Colombia for justice and rule of law initiatives. It included over \$20 million for the Colombia Prosecutor General’s office, \$8 million for judicial reform and \$8 million for human rights initiatives. U.S. foreign assistance to Colombia for justice initiatives has been at similarly high levels for many years.

Such large sums of foreign assistance bring responsibility and opportunity. Human Rights First has actively engaged with the Department of Justice (DOJ), US Agency for International Development (USAID) and the State Department to strengthen US rule of law assistance to Colombia.

The House Appropriations Committee in its 2010 Foreign Operations Appropriations Report noted that it was “concerned with the timeliness of judicial assistance to Colombia”. We agree with these concerns and this statement outlines a number of recommendations to improve US rule of law assistance to Colombia.

Colombia Rule of Law Assistance and Human Rights Defenders

The House Appropriations Committee in its 2010 Foreign Operations Appropriations Report also noted that, “the Committee is concerned with reports of malicious or baseless prosecutions of human rights defenders, journalists, and political or social leaders who have criticized government policies, and urges the Government of Colombia to establish mechanisms to provide judicial review and oversight to prevent such misuse of the judicial process.”

In 2009, Human Rights First published *In the Dock and Under Gun: Baseless Prosecutions of Human Rights Defenders*, which for the first time documented the widespread use of baseless prosecutions to silence Colombian activists. The report explains key features of those prosecutions, such as, reliance on spurious intelligence



files, using weak witness testimony from ex-combatants receiving reintegration benefits, use of the old procedural code to allow for greater latitude in detaining defenders and the failure of judicial inspectors to act consistently to close specious investigations.

We applaud Congress for responding to this problem by approving in the final 2010 Foreign Operations Appropriations Act a new condition on US aid to Colombia requiring that the Colombian government protect human rights defenders.

However, the US government should do much more to ensure that its considerable rule of law assistance to Colombia is used to protect, rather than persecute human rights defenders.

US Assistance to Colombian Prosecutor General's Office (*Fiscalia*)

Colombia's Prosecutor General's office receives the majority of US rule of law assistance, which is administered by DOJ. Our 2009 Baseless Prosecutions report detailed the need to review investigations against defenders, address the conduct of Colombian prosecutors, regulate intelligence reports, and change prosecutorial attitudes toward human rights advocacy. Unfortunately, US rule of law assistance does very little to advance these important issues.

We recommend that DOJ use its considerable rule of law assistance to the Prosecutor-General's office to:

1. Empower a unit of the Prosecutor General's office in Bogotá to coordinate the review of all criminal investigations against human rights defenders. Its role should be similar to that which the human rights unit plays in investigations of enforced disappearances. The Unit should be able to quickly vet the investigation for compliance with due process standards. All cases found to be specious should be closed immediately. Human rights defenders should be able to lodge complaints directly with the Unit. In deciding which cases to review, the Unit should adopt the broad definition of human rights defenders used by the UN.
2. Obtain a resolution from the Prosecutor General that:
 - a. Reemphasizes to prosecutors relevant international law and provisions of the new Colombian Procedural Code that set standards for impartial investigations and fair trials and bar politically motivated criminal proceedings against human rights defenders and others;
 - b. Directs prosecutors to reject uncorroborated or otherwise unreliable witness testimony, refrain from unduly influencing witness testimony, evaluate carefully witness testimony from ex-combatants who are receiving reintegration benefits, and provide the accused with any evidence that may impeach a witness's credibility;

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4. Work with the Colombian Prosecutor-General's office to investigate and prosecute threats against defenders and reduce the unacceptably high levels of impunity for these crimes.
5. Work with the Colombian Prosecutor-General's office to ensure greater implementation of the new accusatory system and to crack down on Colombian prosecutors that continue to use the old criminal procedural code. DOJ should work to promote the legally correct view that for ongoing crimes (such as rebellion) the date to determine application of the procedural code is the time of the arrest (which would mean the new code would apply in all new cases). DOJ should encourage disciplining of prosecutors who continue to illegally use the old criminal system.

US Assistance to Colombian Inspector-General's Office (*Procuraduria*)

The Colombian Inspector-General's office monitors state actions and conducts disciplinary investigation of public officials. It is a deeply troubled institution and has received at least \$3 million a year in USG assistance for many years without appreciable results. Human Rights First has documented that the Inspector General's Judicial Inspectors (*procuradores judiciales*) frequently act as second prosecutors, rather than upholding fundamental rights within the justice system, as is their mandate. We have also documented numerous cases of judicial inspectors pursuing baseless prosecutions against human rights defenders even when the prosecutor has dropped the case (for example Gabriel Gonzalez). Finally, Colombian intelligence files have been used as a basis to baselessly prosecute and persecute activists.

We recommend that the USG use its leverage:

1. With the Inspector-General's Office to draft guidelines directing judicial inspectors to promptly and consistently intervene in cases of malicious prosecutions of human rights defenders to support the dismissal of specious charges
2. With all Colombian state institutions (but especially the Defense Ministry) to allow the Inspector-General's office to review, unannounced, any intelligence report to exclude all manifestly unfounded information that may incriminate or prejudice individuals, particularly human rights defenders. The Defense Ministry and Inspector-General Working Group on Intelligence Files needs to be overhauled to allow such reviews to take place.



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We recommend that the USG use its leverage:

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2. With all Colombian state institutions (but especially the Defense Ministry) to allow the Inspector-General's office to review, unannounced, any intelligence report to exclude all manifestly unfounded information that may incriminate or prejudice individuals, particularly human rights defenders. The Defense Ministry and Inspector-General Working Group on Intelligence Files needs to be overhauled to allow such reviews to take place.



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Hearing before the Senate Committee on the Judiciary Subcommittee on Human Rights and the Law

“Drug Enforcement and the Rule of Law: Mexico and Colombia”

Tuesday, May 18, 2010
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10:00 a.m.

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The House Appropriations Committee in its 2010 Foreign Operations Appropriations Report also noted that, “the Committee is concerned with reports of malicious or baseless prosecutions of human rights defenders, journalists, and political or social leaders who have criticized government policies, and urges the Government of Colombia to establish mechanisms to provide judicial review and oversight to prevent such misuse of the judicial process.”

In 2009, Human Rights First published *In the Dock and Under Gun: Baseless Prosecutions of Human Rights Defenders*, which for the first time documented the widespread use of baseless prosecutions to silence Colombian activists. The report explains key features of those prosecutions, such as, reliance on spurious intelligence



files, using weak witness testimony from ex-combatants receiving reintegration benefits, use of the old procedural code to allow for greater latitude in detaining defenders and the failure of judicial inspectors to act consistently to close specious investigations.

We applaud Congress for responding to this problem by approving in the final 2010 Foreign Operations Appropriations Act a new condition on US aid to Colombia requiring that the Colombian government protect human rights defenders.

However, the US government should do much more to ensure that its considerable rule of law assistance to Colombia is used to protect, rather than persecute human rights defenders.

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2. Obtain a resolution from the Prosecutor General that:
 - a. Reemphasizes to prosecutors relevant international law and provisions of the new Colombian Procedural Code that set standards for impartial investigations and fair trials and bar politically motivated criminal proceedings against human rights defenders and others;
 - b. Directs prosecutors to reject uncorroborated or otherwise unreliable witness testimony, refrain from unduly influencing witness testimony, evaluate carefully witness testimony from ex-combatants who are receiving reintegration benefits, and provide the accused with any evidence that may impeach a witness's credibility;

3. Ensure that Colombian prosecutors carefully evaluate witness testimony from ex-combatants receiving reintegration benefits.
4. Work with the Colombian Prosecutor-General's office to investigate and prosecute threats against defenders and reduce the unacceptably high levels of impunity for these crimes.
5. Work with the Colombian Prosecutor-General's office to ensure greater implementation of the new accusatory system and to crack down on Colombian prosecutors that continue to use the old criminal procedural code. DOJ should work to promote the legally correct view that for ongoing crimes (such as rebellion) the date to determine application of the procedural code is the time of the arrest (which would mean the new code would apply in all new cases). DOJ should encourage disciplining of prosecutors who continue to illegally use the old criminal system.

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The Colombian Inspector-General's office monitors state actions and conducts disciplinary investigation of public officials. It is a deeply troubled institution and has received at least \$3 million a year in USG assistance for many years without appreciable results. Human Rights First has documented that the Inspector General's Judicial Inspectors (*procuradores judiciales*) frequently act as second prosecutors, rather than upholding fundamental rights within the justice system, as is their mandate. We have also documented numerous cases of judicial inspectors pursuing baseless prosecutions against human rights defenders even when the prosecutor has dropped the case (for example Gabriel Gonzalez). Finally, Colombian intelligence files have been used as a basis to baselessly prosecute and persecute activists.

We recommend that the USG use its leverage:

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2. With all Colombian state institutions (but especially the Defense Ministry) to allow the Inspector-General's office to review, unannounced, any intelligence report to exclude all manifestly unfounded information that may incriminate or prejudice individuals, particularly human rights defenders. The Defense Ministry and Inspector-General Working Group on Intelligence Files needs to be overhauled to allow such reviews to take place.



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Hearing before the Senate Committee on the Judiciary Subcommittee on Human Rights and the Law

“Drug Enforcement and the Rule of Law: Mexico and Colombia”

Tuesday, May 18, 2010
Dirksen Senate Office Building, Room 226
10:00 a.m.

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The House Appropriations Committee in its 2010 Foreign Operations Appropriations Report also noted that, “the Committee is concerned with reports of malicious or baseless prosecutions of human rights defenders, journalists, and political or social leaders who have criticized government policies, and urges the Government of Colombia to establish mechanisms to provide judicial review and oversight to prevent such misuse of the judicial process.”

In 2009, Human Rights First published *In the Dock and Under Gun: Baseless Prosecutions of Human Rights Defenders*, which for the first time documented the widespread use of baseless prosecutions to silence Colombian activists. The report explains key features of those prosecutions, such as, reliance on spurious intelligence



files, using weak witness testimony from ex-combatants receiving reintegration benefits, use of the old procedural code to allow for greater latitude in detaining defenders and the failure of judicial inspectors to act consistently to close specious investigations.

We applaud Congress for responding to this problem by approving in the final 2010 Foreign Operations Appropriations Act a new condition on US aid to Colombia requiring that the Colombian government protect human rights defenders.

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The House Appropriations Committee in its 2010 Foreign Operations Appropriations Report also noted that, “the Committee is concerned with reports of malicious or baseless prosecutions of human rights defenders, journalists, and political or social leaders who have criticized government policies, and urges the Government of Colombia to establish mechanisms to provide judicial review and oversight to prevent such misuse of the judicial process.”

In 2009, Human Rights First published *In the Dock and Under Gun: Baseless Prosecutions of Human Rights Defenders*, which for the first time documented the widespread use of baseless prosecutions to silence Colombian activists. The report explains key features of those prosecutions, such as, reliance on spurious intelligence



files, using weak witness testimony from ex-combatants receiving reintegration benefits, use of the old procedural code to allow for greater latitude in detaining defenders and the failure of judicial inspectors to act consistently to close specious investigations.

We applaud Congress for responding to this problem by approving in the final 2010 Foreign Operations Appropriations Act a new condition on US aid to Colombia requiring that the Colombian government protect human rights defenders.

However, the US government should do much more to ensure that its considerable rule of law assistance to Colombia is used to protect, rather than persecute human rights defenders.

US Assistance to Colombian Prosecutor General's Office (*Fiscalia*)

Colombia's Prosecutor General's office receives the majority of US rule of law assistance, which is administered by DOJ. Our 2009 Baseless Prosecutions report detailed the need to review investigations against defenders, address the conduct of Colombian prosecutors, regulate intelligence reports, and change prosecutorial attitudes toward human rights advocacy. Unfortunately, US rule of law assistance does very little to advance these important issues.

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2. With all Colombian state institutions (but especially the Defense Ministry) to allow the Inspector-General's office to review, unannounced, any intelligence report to exclude all manifestly unfounded information that may incriminate or prejudice individuals, particularly human rights defenders. The Defense Ministry and Inspector-General Working Group on Intelligence Files needs to be overhauled to allow such reviews to take place.



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Hearing before the Senate Committee on the Judiciary Subcommittee on Human Rights and the Law

“Drug Enforcement and the Rule of Law: Mexico and Colombia”

Tuesday, May 18, 2010
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10:00 a.m.

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“Drug Enforcement and the Rule of Law: Mexico and Colombia”

Tuesday, May 18, 2010
Dirksen Senate Office Building, Room 226
10:00 a.m.

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Colombia Rule of Law Assistance and Human Rights Defenders

The House Appropriations Committee in its 2010 Foreign Operations Appropriations Report also noted that, “the Committee is concerned with reports of malicious or baseless prosecutions of human rights defenders, journalists, and political or social leaders who have criticized government policies, and urges the Government of Colombia to establish mechanisms to provide judicial review and oversight to prevent such misuse of the judicial process.”

In 2009, Human Rights First published *In the Dock and Under Gun: Baseless Prosecutions of Human Rights Defenders*, which for the first time documented the widespread use of baseless prosecutions to silence Colombian activists. The report explains key features of those prosecutions, such as, reliance on spurious intelligence



files, using weak witness testimony from ex-combatants receiving reintegration benefits, use of the old procedural code to allow for greater latitude in detaining defenders and the failure of judicial inspectors to act consistently to close specious investigations.

We applaud Congress for responding to this problem by approving in the final 2010 Foreign Operations Appropriations Act a new condition on US aid to Colombia requiring that the Colombian government protect human rights defenders.

However, the US government should do much more to ensure that its considerable rule of law assistance to Colombia is used to protect, rather than persecute human rights defenders.

US Assistance to Colombian Prosecutor General's Office (*Fiscalia*)

Colombia's Prosecutor General's office receives the majority of US rule of law assistance, which is administered by DOJ. Our 2009 Baseless Prosecutions report detailed the need to review investigations against defenders, address the conduct of Colombian prosecutors, regulate intelligence reports, and change prosecutorial attitudes toward human rights advocacy. Unfortunately, US rule of law assistance does very little to advance these important issues.

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We recommend that the USG use its leverage:

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US Assistance to Colombian Inspector-General's Office (*Procuraduria*)

The Colombian Inspector-General's office monitors state actions and conducts disciplinary investigation of public officials. It is a deeply troubled institution and has received at least \$3 million a year in USG assistance for many years without appreciable results. Human Rights First has documented that the Inspector General's Judicial Inspectors (*procuradores judiciales*) frequently act as second prosecutors, rather than upholding fundamental rights within the justice system, as is their mandate. We have also documented numerous cases of judicial inspectors pursuing baseless prosecutions against human rights defenders even when the prosecutor has dropped the case (for example Gabriel Gonzalez). Finally, Colombian intelligence files have been used as a basis to baselessly prosecute and persecute activists.

We recommend that the USG use its leverage:

1. With the Inspector-General's Office to draft guidelines directing judicial inspectors to promptly and consistently intervene in cases of malicious prosecutions of human rights defenders to support the dismissal of specious charges
2. With all Colombian state institutions (but especially the Defense Ministry) to allow the Inspector-General's office to review, unannounced, any intelligence report to exclude all manifestly unfounded information that may incriminate or prejudice individuals, particularly human rights defenders. The Defense Ministry and Inspector-General Working Group on Intelligence Files needs to be overhauled to allow such reviews to take place.



WRITTEN STATEMENT

Hearing before the Senate Committee on the Judiciary Subcommittee on Human Rights and the Law

“Drug Enforcement and the Rule of Law: Mexico and Colombia”

Tuesday, May 18, 2010
Dirksen Senate Office Building, Room 226
10:00 a.m.

Introduction

For many years Human Rights First has supported and encouraged expanded US rule of law assistance to Colombia. The FY2010 Conference Report on Foreign Operations Appropriations provided \$45 million in foreign assistance to Colombia for justice and rule of law initiatives. It included over \$20 million for the Colombia Prosecutor General’s office, \$8 million for judicial reform and \$8 million for human rights initiatives. U.S. foreign assistance to Colombia for justice initiatives has been at similarly high levels for many years.

Such large sums of foreign assistance bring responsibility and opportunity. Human Rights First has actively engaged with the Department of Justice (DOJ), US Agency for International Development (USAID) and the State Department to strengthen US rule of law assistance to Colombia.

The House Appropriations Committee in its 2010 Foreign Operations Appropriations Report noted that it was “concerned with the timeliness of judicial assistance to Colombia”. We agree with these concerns and this statement outlines a number of recommendations to improve US rule of law assistance to Colombia.

Colombia Rule of Law Assistance and Human Rights Defenders

The House Appropriations Committee in its 2010 Foreign Operations Appropriations Report also noted that, “the Committee is concerned with reports of malicious or baseless prosecutions of human rights defenders, journalists, and political or social leaders who have criticized government policies, and urges the Government of Colombia to establish mechanisms to provide judicial review and oversight to prevent such misuse of the judicial process.”

In 2009, Human Rights First published *In the Dock and Under Gun: Baseless Prosecutions of Human Rights Defenders*, which for the first time documented the widespread use of baseless prosecutions to silence Colombian activists. The report explains key features of those prosecutions, such as, reliance on spurious intelligence



files, using weak witness testimony from ex-combatants receiving reintegration benefits, use of the old procedural code to allow for greater latitude in detaining defenders and the failure of judicial inspectors to act consistently to close specious investigations.

We applaud Congress for responding to this problem by approving in the final 2010 Foreign Operations Appropriations Act a new condition on US aid to Colombia requiring that the Colombian government protect human rights defenders.

However, the US government should do much more to ensure that its considerable rule of law assistance to Colombia is used to protect, rather than persecute human rights defenders.

US Assistance to Colombian Prosecutor General's Office (*Fiscalia*)

Colombia's Prosecutor General's office receives the majority of US rule of law assistance, which is administered by DOJ. Our 2009 Baseless Prosecutions report detailed the need to review investigations against defenders, address the conduct of Colombian prosecutors, regulate intelligence reports, and change prosecutorial attitudes toward human rights advocacy. Unfortunately, US rule of law assistance does very little to advance these important issues.

We recommend that DOJ use its considerable rule of law assistance to the Prosecutor-General's office to:

1. Empower a unit of the Prosecutor General's office in Bogotá to coordinate the review of all criminal investigations against human rights defenders. Its role should be similar to that which the human rights unit plays in investigations of enforced disappearances. The Unit should be able to quickly vet the investigation for compliance with due process standards. All cases found to be specious should be closed immediately. Human rights defenders should be able to lodge complaints directly with the Unit. In deciding which cases to review, the Unit should adopt the broad definition of human rights defenders used by the UN.
2. Obtain a resolution from the Prosecutor General that:
 - a. Reemphasizes to prosecutors relevant international law and provisions of the new Colombian Procedural Code that set standards for impartial investigations and fair trials and bar politically motivated criminal proceedings against human rights defenders and others;
 - b. Directs prosecutors to reject uncorroborated or otherwise unreliable witness testimony, refrain from unduly influencing witness testimony, evaluate carefully witness testimony from ex-combatants who are receiving reintegration benefits, and provide the accused with any evidence that may impeach a witness's credibility;

3. Ensure that Colombian prosecutors carefully evaluate witness testimony from ex-combatants receiving reintegration benefits.
4. Work with the Colombian Prosecutor-General's office to investigate and prosecute threats against defenders and reduce the unacceptably high levels of impunity for these crimes.
5. Work with the Colombian Prosecutor-General's office to ensure greater implementation of the new accusatory system and to crack down on Colombian prosecutors that continue to use the old criminal procedural code. DOJ should work to promote the legally correct view that for ongoing crimes (such as rebellion) the date to determine application of the procedural code is the time of the arrest (which would mean the new code would apply in all new cases). DOJ should encourage disciplining of prosecutors who continue to illegally use the old criminal system.

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