LAWYERS FOR LAWYERS UPR SUBMISSION – COLOMBIA – OCTOBER 2017

A. Introduction

1. Lawyers for Lawyers (hereinafter 'L4L') submits this report on the state of human rights, especially those regarding the legal profession, in Colombia, with recommendations to the OHCHR for the 30th session of the UPR Working Group in the UN Human Rights Council in May 2018.

2. L4L is an independent and non-political Netherlands foundation, which was established in 1986 and is funded by lawyers' donations. L4L promotes the proper functioning of the rule of law through a free and independent exercise of the legal profession around the world and has special consultative status with ECOSOC since 2013.

B. Executive Summary

3. This submission highlights L4L's key concerns regarding Colombia's compliance with its international and national human rights commitments to guarantee effective access to legal services provided by an independent legal profession as set out in the UN Basic Principles on the Role of Lawyers[1] ('Basic Principles'), focusing on two main themes: (i) no effective guarantees for the functioning of lawyers, and (ii) no effective access to legal assistance. Non-compliance with the Basic Principles undermines the proper functioning of the judicial system and the right to fair trial in particular.

4. Recommendations to the government:

Regarding (i) no effective guarantees for the functioning of lawyers:

(a) to take all measures necessary to prevent that lawyers are threatened, intimidated, hindered, harassed or subjected to improper interference while exercising their professional duties, in accordance with article 16(a) of the Basic Principles;

(b) to take all measures necessary to ensure that crimes, harassment and other violations against lawyers are effectively investigated, publicly condemned at all levels and perpetrators of such acts are prosecuted;

(c) to take all measures necessary to duly protect lawyers whose security is threatened due to their professional activities in accordance with article 17 of the Basic Principles on the Role of Lawyers.

(d) to implement in practice recommendations 116.19, 116.21, 116.73, 116.74, 116.75, 116.76, 116.77, 116.79, 116.80, 116.81 and 116.82 of the UPR cycle in 2013 to ensure the proper functioning of the judicial system and the right to a fair trial.

Regarding (ii) effective access to legal assistance:

(e) to take all measures necessary to ensure access to a lawyer in remote areas

[1] The Basic Principles were unanimously adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba on 7 September 1990. Subsequently, the UN General Assembly "welcomed" the Basic Principles in their 'Human rights in the administration of justice' resolution, which was adopted without a vote on 18 December 1990 in both the session of the Third Committee and the plenary session of the General Assembly.

C. Normative and institutional framework of the State

5. 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 free to carry out their professional duties independently. This follows from the Charter of the United Nations, the Universal Declaration of Human Rights and Article 14 of the International Covenant on Civil and Political Rights to which Colombia is a party.

6. 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. The Basic Principles provide a concise description of international standards relating to key aspects of the right to independent counsel. Adherence to the Basic Principles is considered a fundamental pre-condition to fulfilling the requirement that all persons have effective access to independent legal assistance.

7. During its 29th session (from 15 June – 3 July 2015), the Human Rights Council adopted without a vote a resolution on the independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers. While recalling the Basic Principles on the Role of Lawyers and condemning the increasingly frequent attacks on the independence of lawyers, in particular threats, intimidation and interference in the discharge of their professional functions, the Human Rights Council reminded all States of their duty "to uphold the integrity of [lawyers] and to protect them, as well as their families and professional associates, against all forms of violence, threat, retaliation, intimidation and harassment resulting from the discharging of their functions, and to condemn such acts and bring the perpetrators to justice".[2]

8. During the interactive dialogue in the UPR cycle of 2013 several recommendations with respect to the protection of human rights defenders (including lawyers) and the facilitation of their work were accepted by Colombia[3], including recommendations

[2] UN Human Rights Council, Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers A/HRC/RES/29/6, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/29/L.11.
[3] Report of the Working Group on the Universal Periodic Review Colombia, 4 July 2013, A/HRC/24/6 and Report of the Working Group on the Universal Periodic Review Colombia, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/24/6/Add.1.

116.19[4], 116.21[5], 116.73[6], 116.74[7], 116.75[8], 116.76[9], 116.77[10], 116.79[11], 116.80[12], 116.81[13] and 116.82[14]. According to Colombia, the Government "*respected and protected the work of human rights defenders, including trade union leaders, as a State policy*."[15] At the same time, the Government recognized "*that there were still human rights challenges to overcome, such as lack of (...) impunity, (...) the need for greater protection for some human rights defenders* (...)"[16]

9. Reports gathered by L4L and information that we received from lawyers in Colombia, demonstrate that Colombia does not always uphold the necessary guarantees for the proper functioning of the legal profession as set out in the Basic Principles. As a consequence, lawyers encounter difficulties in carrying out their profession independently. This also undermines the proper functioning of the judicial system, including the right to fair trial.

D. Promotion and protection of human rights

(i) No effective guarantees for the functioning of lawyers[17]

10. L4L has been informed by lawyers in Colombia that they are regularly subjected to threats or physical attacks, intimidation and even killings. Recently, the situation of lawyers in Colombia seems to have deteriorated even more. This follows from the following cases:

    a. ***Rommel Duran:*** *While protesting peacefully on 1 July 2017 in Ayacucho, lawyer Rommel Duran of Equipo Juridico Pueblos (EJP), together with two other human rights defenders, was subjected to violence by law enforcement officials and arrested for allegedly blocking public roads and for alleged violence against public servants.*

[4] Recommendation 116.19. Strengthen relevant institutions in order to take more effective measures at the national, regional and local level to guarantee the protection of persons involved in land restitution procedures, in particular the claimants, their counsel, the relevant officials and human rights defenders (Switzerland).
[5] Recommendation 116.21. Take all necessary steps to enhance the effectiveness of the Protection Programme, including through speedy risk assessment studies and implementation of approved schemes, clear criteria for defining risk, collective protection measures and the inclusion of family members in the scheme (Ireland).
[6] Recommendation 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).
[7] Recommendation 116.74. Reinforce measures for the protection of human rights defenders (Slovenia).
[8] Recommendation 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).
[9] Recommendation 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).
[10] 116.77. Ensure that judicial authorities carry out thorough and impartial investigations regarding acts of violence against human rights defenders (Belgium).
[11] 116.79. Ensure that the relatives of victims of enforced disappearances, their representatives, and those who report enforced disappearances will not be subject to attacks and persecution (Czech Republic).
[12] Recommendation 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).
[13] Recommendation 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).
[14] Recommendation 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).
[15] Report of the Working Group on the Universal Periodic Review Colombia, 4 July 2013, A/HRC/24/6, par. 6.
[16] idem, par. 7.
[17] Basic Principles on the Role of Lawyers, principles 16, 17, 18, 19, 20, 21, 22.

During the protest, the human rights lawyer intervened to protect local community leader Eliecer Alfonso Vergel from a physical attack by ESMAD agents. In response, the ESMAD under the command of Lieutenant Diego Jaramillo began to assault the human rights lawyer Mr. Duran Castellanos and the local community leader, Mr. Alfonso Vergel. Both men were punched, kicked and beaten by ESMAD officers, dragged across the ground, had their hair pulled and were hit in the groin area with the butts of weapons. Throughout this attack, we understand that Rommel Duran repeatedly advised that he is a human rights lawyer.
We have received information that the human rights lawyer and the other human rights defenders were detained for 31 hours. A police officer placed the hand of the human rights lawyer Mr Duran Castellanos against his genitals. All human rights defenders were released without charge by the Fiscal General of Aguachica, who was satisfied that the evidence of filmed material and photographs taken at the scene of the arrest did not support the allegations made by the police.[18]

b. ***CCALCP.*** *The Colombian human right defence lawyers collective Corporación Colectivo de Abogados Luis Carlos Perez (CCALCP) has been the target of security incidents since 2005*[19]*. Over forty incidents of attacks and other threats against CCALCP have taken place from 2005 to 2015. These incidents include physical attacks, harassment, illegal interception of and interference with internet and security infrastructure, and bomb threats. On 25 May 2017 the residence-office of the CCALCP in Cúcuta was broken into. These affairs must be considered against more security incidents regarding the protection of CCALP.*[20]

c. ***Jorge Molano****. Jorge Molano represents victims in some of the most emblematic human rights cases in Colombia. He received numerous death threats in the course of his work as a lawyer and human rights defender. Therefore, he felt obliged to send his daughters to live abroad for security reasons. Jorge Molano and other members the organizations he works with, have been the victim of several aggressions including attacks on family members, raids on his home to steal information, cyber-attacks on email and website accounts, telephone interception, and illegal surveillance, among others. Jorge Molano's family recently informed us that he is included on the death list of the military. This is most likely linked to his work on certain cases involving members of the army.*

d. ***Adil Melendez.*** *Adil Melendez is the only human rights lawyer working on transitional justice in the Cartagena region. He is furthermore one of the few lawyers that represents clients in land restitution cases. Due to the cases he works on, he receives many threats. He does get protection from the Unidad de Proteccion, but threats received by telephone are not investigated by this organization.*

e. ***Reinaldo Villalba and Soraya Gutierrez*** *are lawyers working for the CCAJAR collective. They have both received threats in relation to the case of the assassination of Jorge Dario Hoyos, a well-known syndicate leader.*

---

[18] http://www.colombiancaravana.org.uk/caravana-concerned-risks-faced-members-equipo-juridico-pueblos-including-detention-rommel-duran/ ; http://jyp.megadatesystem.com/Detenido-campesino-de-CNA

[19] In August 2016, Lawyers for Lawyers participated in the 'Caravana Internacional de Juristas' mission. A group consisting of 70 lawyers, judges and public prosecutors visited Colombia to investigate the situation of the legal profession in the country. Colombian lawyers informed Lawyers for Lawyers that, despite the current peace negotiations, the threats against lawyers are increasing, in particular against human rights lawyers who defend the rights of the victims of the armed conflict in remote areas. For more information, please visit: http://www.colombiancaravana.org.uk/ . A delegation of the International Caravana visited the Colombian human rights defence organization Corporación Colectivo de Abogados Luis Carlos Perez (CCALCP) in August 2016 where they met with various individuals and organizations represented by CCALCP.

[20] International organizations amongst which Lawyers for Lawyers wrote to the president of Colombia on 5 September 2017 about this matter.

11. Colombian authorities sometimes fail to carry out prompt, thorough, impartial and transparent investigations into threats and attacks, so as to identify all those responsible and bring them to justice. In addition to the direct effects on the lawyers in question, impunity could have a "chilling effect" on other lawyers, negatively influencing the quality of their work, potentially forcing them to renounce certain kinds of cases, and work in the fear that they or their families may be at risk because of their work.

12. Where the security of lawyers is threatened as a result of discharging their functions, they must be adequately safeguarded by the authorities[21]. According to our information, security measures are not always provided to lawyers receiving threats. Furthermore, if security measures are offered, they are not always effective and sufficient. This is illustrated by the following cases:

    a. ***Rommel Duran.*** *When Lawyer Rommel Duran had the threats he received examined by the UNP in the beginning of February 2015, the UNP deemed Rommel Duran to be under extraordinary risk. However, until now, his level of risk has increased significantly and Rommel Duran and members of his law office did not get appropriate adequate individual protection of the UNP while exercising their professional activities. UNP is currently again in the process of determining risk studies before they can grant him additional protection measures. Measures provided are a bulletproof jacket and a means of communication. Those measures are not enough following the extraordinary risk that the organization faces. Following many communication about these concerns in the last years, it is worrying that no adequate protection measures are in place.*

    b. ***Adil Melendez.*** *Lawyer Adil Melendez stated that he does not receive the protection measures he needs to exercise his professional activities. The protection offered to him still excludes going to remote areas, as the bulletproof transport is restricted to the city of Cartagena and only partly financed. However, his work requires him to travel to other regions in Colombia as well.*

13. Recommendations:

    (a) to take all measures necessary to prevent that lawyers are threatened, intimidated, hindered, harassed or subjected to improper interference while exercising their professional duties, in accordance with article 16(a) of the Basic Principles;
    (b) to take all measures necessary to ensure that crimes, harassment and other violations against lawyers are effectively investigated, publicly condemned at all levels and perpetrators of such acts are prosecuted;
    (c) to take all measures necessary to duly protect lawyers whose security is threatened due to their professional activities in accordance with Article 14 of the Covenant and article 17 of the Basic Principles on the Role of Lawyers.
    (d) to implement in practice recommendations 116.19, 116.21, 116.73, 116.74, 116.75, 116.76, 116.77, 116.79, 116.80, 116.81 and 116.82 of

[21] This follows from article 17 of the Basic Principles on the Role of Lawyers

the UPR cycle in 2013 to ensure the proper functioning of the judicial system and the right to a fair trial.

(ii) No effective access to legal assistance

14. The Basic Principles set out that every state should ensure effective access to independent legal assistance. According to our information, due to the lack of protection of lawyers in remote areas, there is a lack of lawyers to represent individuals that need access to legal assistance in for example land cases.

Recommendation:

(e) That the Colombia government continues to implement in legislation as well as in practice recommendations 97.92, 97.95, 97.96, 97.98 and 97.109 of the UPR cycle in 2012 to ensure the proper functioning of the judicial system and the right to a fair trial.